

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON IMMIGRATION

Jointly with

COMMITTEE ON COURTS AND
LEGAL SERVICES

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June 29, 2017

Start: 1:10 p.m.

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HELD AT: Council Chambers - City Hall

B E F O R E: Rory I. Lancman
Chairperson

Carlos Menchaca
Chairperson

COUNCIL MEMBERS:

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Vanessa L. Gibson
Ben Kallos
Paul A. Vallone
Barry S. Grodenchik
Mathieu Eugene
Daniel Dromm
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A P P E A R A N C E S (CONTINUED)

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Executive Director at New York County Defender
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Justine Luongo
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Hispanic Federation

Heidi Hoefinger
Red Umbrella Project

A P P E A R A N C E S (CONTINUED)

Katherine Bajuk

New York County Defender Services

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2 CHAIRPERSON LANCMAN: Good afternoon,
3 everyone. I'm Councilman Rory Lancman, Chair of the
4 Courts and Legal Services Committee, and welcome to
5 this joint hearing with the Immigration Committee,
6 chaired by Council Member Carlos Menchaca on the
7 presence of Immigration and Customs Enforcement
8 Agents in courthouses. I want to thank Melissa Mark-
9 Viverito in particular who could not be here this
10 afternoon for her strong leadership on this issue.
11 Two weeks ago, ICE agents showed up at the Human
12 Trafficking Intervention Court in Queens, a court
13 dedicated to treating those arrested for low-level
14 prostitution-related offenses with counseling and
15 social services in lieu of jail time. They were
16 there to arrest a woman who was about to have minor
17 prostitution-related charges dismissed after
18 completing her court-mandated series of programs, but
19 who ICE wanted for overstaying her tourist visa.
20 Rather than be released as planned, she asked that
21 the charges not be dismissed, that bail be set, and
22 that she be sent to Rikers Island rather than get
23 arrested by ICE. Let me repeat that. She asked to
24 be sent to Rikers Island to protect herself.
25 Thankfully, ICE left before she was shipped off to

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2 jail, and she was ultimately released. This is the
3 choice too many immigrant New Yorkers are now being
4 forced to confront. Show up in court, or get
5 deported. A survey released this morning by the
6 Immigrant Defense Project found that 44 attorney and
7 advocates reported working with immigrants who were
8 arrested by ICE in New York State courts, and it's
9 not just Criminal Court. Litigants in Civil Court,
10 Housing Court and Family Court report being afraid to
11 appear because ICE may be lurking. And it's not just
12 litigants, but victims and witnesses as well. The
13 integrity of our justice system is being undermined
14 by ICE's refusal to designate courthouses as
15 sensitive locations, like schools, hospitals or
16 houses of worship where immigration enforcement
17 actions are limited to extreme circumstances that
18 present a public safety threat, and that makes all of
19 us less safe. Even still, the Federal Government
20 says that while courthouses do not fall under ICE or
21 CDP policies, Customs and Border Patrol policies,
22 concerning enforcement actions at or focused on
23 sensitive locations, enforcement actions at
24 courthouses will only be executed against individuals
25 falling within the public safety priorities of the

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2 Department of Homeland Security's immigration
3 enforcement priorities. Meaning, even though
4 courthouses are not sensitive locations, they are
5 still supposed to be protected, and ICE's presence in
6 those courthouses defined and limited in the
7 following way according to the Department of Homeland
8 Security: DHS' enforcement priorities are, have
9 been, and will continue to be national security,
10 border security and public safety. DHS personnel are
11 directed to prioritize the use of enforcement
12 personnel, detention space and removal assets
13 accordingly. That obviously would not include a
14 woman who is being sought merely because she
15 overstayed her tourist visa. So, it seems evident
16 that in addition to disrupting the functioning of our
17 courts and making immigrant New Yorkers fearful of
18 any interaction with the justice system, ICE is even
19 failing to follow its own policies. Court systems
20 around the country are now struggling to address the
21 unwillingness of the Federal Government to designate
22 courthouses as sensitive locations. On April 26th
23 of this year, New York's Office of Court
24 Administration issued an updated policy governing law
25 enforcement activity in courthouses. The policy,

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2 which is displayed on the screen there, requires any
3 law enforcement official who does not have a judicial
4 warrant to identify themselves to court security
5 officers and state their specific purpose. A court
6 security officer must file a report to document and
7 track the enforcement, and must notify a supervisor.
8 That supervisor is then required to notify the judge
9 if an individual's appearing before the judge is
10 being sought for arrest. An absent extraordinary
11 circumstances, such as an extradition order, no
12 arrests or other enforcement action may be taken
13 inside the courtroom itself. Other courts, such as
14 King County Superior Court in Washington State have
15 likewise banned ICE from effectuating courtroom
16 arrests and have encouraged ICE not to make arrest in
17 courthouses at all, and there is a growing list of
18 states and courts and chief justices that have asked
19 ICE to stay out of their court houses. We regret
20 that OCA has declined the opportunity to attend this
21 hearing to share whatever information it has on ICE's
22 operations in New York courthouses and to explain its
23 policy governing ICE operations, which at this time
24 appears to be among the most far-reaching of any
25 jurisdiction in the country. We look forward to

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2 hearing from legal services providers, immigrant
3 advocacy organizations and others about what they are
4 seeing in our courthouses and immigrant communities
5 and what steps they believe the City and other
6 governmental actors can take to defend the integrity
7 of our judicial system. With that, I would like to
8 invite Council Member Carlos Menchaca, Chair of the
9 Immigration Committee, for opening remarks, and I
10 believe a statement from the Speaker.

11 CHAIRPERSON MENCHACA: Thank you, Chair
12 Lancman, and I want to give you all a-- not just a
13 "good afternoon," but an afternoon that I think all
14 of us are going to remember as a time where we stood
15 up and fought back. I know that we are all feeling
16 tested right now on so many different levels, not
17 just in our hearts, but in our system, our judicial
18 system. So, I'm really excited to be here with all
19 of you today. I am Council Member Carlos Menchaca,
20 and I am the Chair of the Committee on Immigration,
21 and the City of New York has always deemed the safety
22 of all New Yorkers our number one priority. To
23 achieve that safety, we need to ensure that all New
24 Yorkers, regardless of immigration status, feel
25 comfortable, engaging with our local law enforcement

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2 and our local courts. Our city has long welcomed
3 immigrants warmly, and today, our hearing is an
4 affirmation that immigrants have the right to feel
5 safe in their homes, in their schools, in their
6 parks, in their churches, and in their municipal
7 courts. This City Council has repeatedly spoken out
8 against the great injustices carried out by US
9 Immigration and Customs enforcement agents, including
10 the practice of arresting immigrants in our own
11 courthouses. Just last week, we held a rally on the
12 steps of City Hall to make clear that our city's
13 courts must not be used as an area for ICE to conduct
14 arbitrary arrests in order to meet their misguided
15 quotas. Courts are a place where New Yorkers go seek
16 justice. They are not a place they should feel
17 scared. Allowing immigration agents to stalk and
18 arrest undocumented immigrants in court houses
19 undermines the integrity of the entire judicial
20 system and denies immigrant New Yorkers equal access
21 to justice. Just last week, three plain-clothed
22 agents appeared at the Queens Human Trafficking
23 Intervention Court to arrest a young woman
24 represented by the Legal Aid Society. After hours of
25 advocacy and highly skilled lawyering, the Legal Aid

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2 attorneys were able to ensure that the client was not
3 detained by ICE. This incident demonstrates that
4 contrary to ICE's claims that they only pursue
5 individuals who are a threat to public safety, ICE
6 agents are targeting survivors of human trafficking.
7 As if ICE is targeting some of the most vulnerable
8 New Yorkers were not bad enough, when the ICE agents
9 were not able to address the trafficking survivor,
10 they retaliated by randomly arresting three
11 individuals outside the Queens Courthouse. This
12 shows that when ICE is faced with delays or is unable
13 to arrest their specific target, they will randomly
14 arrest individuals regardless of whether that person
15 has any criminal history or possesses a security
16 risk. ICE is also targeting individuals in other
17 courts throughout the City and the State. Recently,
18 ICE agents arrested a father, the father of two who
19 was appearing in Suffolk County Court for child
20 visitation matter. The father who was brought to the
21 US as a toddler by his family when they fled
22 persecution in their country is now indefinitely
23 detained in immigration jail. Immigration arrests at
24 courthouses threaten the constitutional rights
25 promised to all who are present in this country.

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2 They are-- they also create a chilling effect across
3 immigrant communities. ICE courthouses-- ICE
4 courthouses arrests are shameful. Predatory tactic
5 that destroys the trust that our city officials and
6 law enforcement officers have worked so hard to build
7 between themselves and our immigrant community.
8 Police officers, judges and prosecutors across the
9 country have long held that the assistance and
10 cooperation from immigrant communities is crucial to
11 maintaining public safety for all. To protect public
12 safety and ensure equal enforcement of the law and
13 help local and state law enforcement to do their
14 jobs, immigrant victims and witnesses must feel
15 comfortable filing reports with local law
16 enforcement. But that in of itself is just not
17 enough. Immigrant victims and witnesses must feel
18 comfortable to take that next step, and they must
19 feel comfortable cooperating with prosecutors by
20 appearing in court. New York City is safer as a
21 whole when all can access justice in our courts,
22 seeking help from law enforcement and get information
23 about the rights in our court. Luckily, a coalition
24 of local and state entities as well as advocates and
25 service providers have come together to address ICE's

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2 presence in New York courthouses. In fact, the
3 Office of Court Administration, OCE, recently
4 implemented protocols for court officers and staff on
5 how to handle law enforcement presence in
6 courthouses. These protocols are meant to ensure
7 that the courts remain a safe place and that access
8 to justice is not obstructed by unfettered
9 enforcement activity. I commend OCA for instituting
10 these protocols and look forward to working closely
11 with them and advocates to enhance them wherever
12 possible. I also want to commend the advocates who
13 have been working tirelessly to monitor ICE's
14 presence in the courts, track the detrimental impact
15 it has on immigrant communities, and develop
16 recommendations on how to protect immigrant New
17 Yorkers. I thank you for your time, your service,
18 your hard work, and continued partnership. This
19 hearing is truly a testament to the City Council's
20 commitment to doing everything we can to not only
21 support our immigrant communities and making our city
22 safe for all New Yorkers, but also our commitment to
23 defending the integrity of our court system.

24 [speaking Spanish] And now I'm going to read Speaker
25 Melissa Mark-Viverito's statement for the record.

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2 SPEAKER MARK-VIVERITO: Thank you all for
3 coming to provide insight for this important hearing.
4 I want to thank the Chairs of the Committees, Rory
5 Lancman of the Courts Committee and Carlos Menchaca
6 of the Immigration Committee for all their hard work
7 on this issue. As I have said many times since the
8 Presidential election, ICE enforcement in the
9 courthouses undermines our justice system and impedes
10 access to justice for our most vulnerable residents
11 and makes our city less safe, and it must be stopped.
12 The recent attempt by ICE to arrest a woman in Human
13 Trafficking Court confirmed our worst suspicions
14 about ICE's intentions. They are not targeting
15 hardened criminals. They are looking for anyone they
16 can get their hands on, no matter the depth of their
17 roots in their community or the nature of their
18 appearance in court. Over the last few months, I
19 have been in close communication with the Chief Judge
20 DiFiore and other high ranking office of the court
21 Administration officials to stress the urgency of
22 addressing this issue. I want to commend the New
23 York Chief Judge Janet DiFiore and Chief
24 Administrative Judge Lawrence Marks for implementing
25 ground-breaking protocols regarding ICE and other law

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2 enforcement activities in New York State Courts.

3 These protocols which regulate law enforcement

4 activity including immigration enforcement in the

5 states courthouses are a great first step and send a

6 clear message that we will not tolerate the

7 unnecessary degradation of our justice system. With

8 these protocols, the Chief Judge is leading the way

9 nationally to ensure that ICE does not strip away

10 litigant's rights to access justice. I hope that

11 other jurisdictions take note of these protocols and

12 implement their own protocols. The integrity of our

13 civil and criminal justice systems as well as the

14 safety of our residents and our nation depends on it.

15 While these protocols are a significant and much-

16 needed first step, I urge OCA to monitor their

17 implementation closely and enhance them by further

18 restricting disruptive enforcement activity in

19 courthouses and barring arrests by ICE or any other

20 enforcement agency within the courthouses. In

21 addition to OCA, I would like to thank the Immigrant

22 Defense Project, the Legal Aid Society, Her Justice,

23 Latino Justice, [inaudible], Sanctuary for Families,

24 Bronx Legal Services, and Make the Road New York for

25 their tireless, tireless tracking of ICE activity in

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2 our courts as well as their continued advocacy with
3 OCA regarding ICE activity. I would also again like
4 to thank the Chairs for their incredible work and
5 oversight of today and to explore the recommendations
6 heard for further limiting ICE's seemingly unbridled
7 enforcement in our courthouses.

8 CHAIRPERSON MENCHACA: And with that I'll
9 hand that back to the Chair. Oh, and we're going to
10 do a Spanish, another Spanish version.

11 UNIDENTIFIED: [speaking Spanish]

12 CHAIRPERSON MENCHACA: Thank you, Yana
13 [sp?], for that. And I want to also welcome from the
14 Immigration Committee from Queens, Peter Koo. From
15 Brooklyn we have Mathieu Eugene and Rafael Espinal.

16 CHAIRPERSON LANCMAN: Thank you. Also,
17 we've been joined from the Committee on Courts on
18 Legal Services, Council Member Andrew Cohen and Paul
19 Vallone. With that, if you all would raise your
20 right hand we can swear you in and we can get
21 started. Do you swear or affirm the testimony you're
22 about to give is the truth, the whole truth and
23 nothing but the truth? Terrific. Who would like to
24 lead off? Great. If the Sergeant at Arms would set
25 the clock at five minutes, and go.

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2 ANDREW WACHTENHEIM: Oh, thank you.

3 Thank you to the committee for the opportunity to
4 speak on this critical issue of ICE arrests in New
5 York City courts. My name is Andrew Wachtenheim and
6 I am a Supervising Attorney with the Immigrant
7 Defense Project which works to protect and expand the
8 rights of those caught in the intersection of the
9 criminal justice system, the child welfare system and
10 the immigration system. For years, IDP has monitored
11 ICE operations in New York State and has seen
12 firsthand the transition from President Obama to
13 President Trump and the sudden escalation of ICE
14 presence inside New York State courthouses. In the
15 first six months of 2017 we have seen triple the
16 number of courthouse arrests as in all of 2016. So
17 what is it that ICE is doing when it comes into New
18 York State courts? They are accessing court files
19 without subpoena to obtain identifying and other
20 sensitive and confidential information about
21 litigants. They are asking court staff to delay
22 arraignment and change court calendars to facilitate
23 arrests. They are physically trapping arrest targets
24 inside courthouses and as recent events indicate, and
25 as Council Member Menchaca, when unable to arrest the

person that they want, they are going around the courthouse to look for others. And who is it that ICE is arresting inside our courts? They are arresting an extraordinary diversity of New York State's immigrants which includes lawful permanent residents, green card holders, people with pending applications for protected status; they are arresting people with significant mental health issues and survivors of violence. ICE's representations that they are going after a certain kind of immigrant or that they are going to courthouses for a specific reason is a fallacy. The group of people that ICE has apprehending inside New York State courts in 2017 is entirely indistinguishable from the many more people that they are arresting at their homes and at their workplaces and on the streets. There is no reason for ICE to be going into courthouses specifically. Nationwide, judges and policy makers have publicly called on ICE to stop this practice, citing the tremendous threat to public safety and to the constitutional underpinnings of our court systems. In New York State, we at IDP along with coalition partners surveyed the lawyers and advocates statewide who work with the immigrant and mixed

status communities that are directly impacted by ICE's presence inside the courts. These are lawyers and advocates who represent the people who are afraid to enter a courthouses to seek protection and to participate in a basic and fundamental component of civil life, and what our survey shows is that 75 percent of the more than 200 advocates surveyed have worked with immigrants who have expressed fear of the courts because of ICE, and of those who work with survivors of violence, 67 percent have had clients who decided not to seek help from the courts due to fear of ICE, which includes declining to seek orders of protection and failing to seek custody or visitation with their children because of fear of immigration agents. In the Housing Court arena, 56 percent of Housing Court advocates have clients who have expressed fear of filing a Housing Court complaint due to fear of ICE. ICE has publicly responded that it will not stop doing this, and that it will continue with this process exactly as it sees fit. And what else can we expect from an agency that went to make an arrest in a Human Trafficking Intervention Court and recently went to a Family Court-ordered supervised visit between a child and

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2 parent in New Jersey in order to take that father
3 into custody? I respect the judges and policy makers
4 including our state's Chief Judge who have approached
5 ICE and our Attorney General to engage in a civil
6 conversation and to ask them politely to stop coming
7 into our courts. But further conversation with ICE
8 and with the Attorney General is futile. The agency
9 has publicly defended its practice of entering the
10 state courts to make arrest and to obtain
11 information. This is an agency that zealously guards
12 its ability to arrest anyone that it wants wherever
13 it wants to do it. And moreover, this is an agency
14 that is disingenuous and often dishonest in
15 communicating about the way it does its job. ICE
16 purports to be an agency that tries to protect public
17 safety, but then why does it park its vans outside of
18 New York's Family Justice Center? Why does it track
19 a woman in Texas from the domestic violence shelter
20 where she was living to the court appearance where
21 she sought an order of protection against her abusive
22 partner? ICE is not going to stop coming into our
23 courts of its own volition. They have given every
24 indication that they will continue to do this and
25 with greater frequency and an ever-widening net of

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2 people that they want to arrest. The intervention
3 must come from the New York State government, and
4 part of that intervention must come from our Chief
5 Judge and Chief Administrative Judge. Our State's
6 Constitution and Judiciary Law-- may I continue,
7 Councilman?

8 CHAIRPERSON LANCMAN: You can conclude.
9 We want to have the opportunity to ask you questions.

10 ANDREW WACHTENHEIM: Okay. It is our
11 position that it would be perfect-- it is perfectly
12 appropriate and defensible for our Chief Judge to
13 promulgate rules that will protect our courts and it
14 is our belief that this is what needs to happen in
15 order to stop this practice. Thank you for
16 considering my testimony, and I would welcome the
17 opportunity to answer any questions that would help
18 the Council to better understand the parameters of
19 this pernicious problem.

20 CHAIRPERSON LANCMAN: Thank you. It's
21 that last part I do want to ask you questions about,
22 so trust me, you'll have an opportunity.

23 ANDREW WACHTENHEIM: Thank you.

24 CHAIRPERSON LANCMAN: Who wants to go
25 next? Thank you.

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2 STAN GERMAN: Good afternoon, and thank
3 you Chairman Lancman and Chairman Menchaca for
4 convening these hearings to discuss ICE in our
5 courtrooms. My name is Stan Germán, and I am the
6 Executive Director of New York County Defender
7 Services here in Manhattan. Before continuing with
8 my prepared remarks, let me say that I do not share
9 this Council's optimism with regard to the leadership
10 that is coming from OCA, and that memorandum
11 represents nothing more than recycled policies that
12 have been around forever, and ICE does not appear
13 anywhere in that memorandum. But to continue, before
14 my colleagues from other defender offices provide
15 this Council with ideas about what the Office of
16 Court Administration can and should be doing to
17 protect our immigrant communities' access to justice,
18 I want to give a brief overview of what has
19 transpired over the last six months with respect to
20 ICE in our courthouses. In early February of this
21 year, the Defenders were planning a press conference
22 to address the disturbing tone emanating from the
23 Executive Branch in Washington, D.C. following the
24 January 20th Inauguration. The event, however, we
25 pre-empted, because on February 18th, 2017 ICE agents

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2 were seen in a Manhattan Criminal Court arraignment
3 part to take a person into custody. It was the first
4 time that anyone could recall the presence of ICE in
5 an arraignment courtroom only 24 hours after the
6 arrest of an individual, and the event set off alarm
7 bells among everyone who was concerned about
8 protecting our immigrant population. Three days
9 later, on February 21st, Chairman Lancman joined by
10 the Defenders and members of the community held a
11 press conference on the steps of City Hall drawing
12 attention to the issue of ICE in our courtrooms. In
13 response to the press conference, the Defenders met
14 with members of the Mayor's Office of Criminal
15 Justice as well as the Office of Court
16 Administration, and we were told that OCA had no
17 contingency plans in place to deal with what everyone
18 knew would become a real issue after January 20th of
19 this year, ICE in our courts. In the wake of no
20 leadership or action plan by OCA officials, we saw
21 disturbing trends among New York City and New York
22 State judges. Some judges were suddenly making
23 inquiries about client immigration status, and even
24 highlighting those who were foreign-born. The head
25 of the State's Court Officer Union, Dennis Quirk,

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2 declared that court officers must cooperate with ICE.

3 Once again, now leadership or action plan by OCA

4 officials. At a Criminal Court arraignment on March

5 11th, 2017, I'm going to read you part of a

6 transcript that took place in conjunction with an

7 arraignment. The court: "It also appears that ICE

8 should be contacted if you haven't already." ICE:

9 "Remember them?" The prosecutor responds, "Yes, your

10 honor." The court in a sarcastic tone says,

11 "Immigration Customs Enforcement." Finally, on June

12 16th of this year, the incident that directly led to

13 all of us gathering here today occurred when victims-

14 - I missed one page, I apologize. On April 5th, the

15 Defenders met with the OCA's Office of Chief

16 Administrative Judge and we were essentially told

17 that there was no need for concern, but that they

18 would monitor the situation and encouraged us to

19 report any ICE presence in the courtrooms. We all

20 warned OCA that this is simply the beginning of

21 increased ICE presence in the courts and that a

22 proactive and not a reactive approach must be taken.

23 As requested by OCA, during the ensuing two months,

24 all of the public defender offices of New York City

25 reported every incidence of ICE in our courtrooms.

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2 We communicated with each other and with OCA every
3 time one of our clients were taken away by ICE
4 officials when our clients simply appeared in court
5 voluntarily as required to do so. ICE presence was
6 spotted in all five boroughs, and we all heard-- and
7 all we heard from OCA was silence, no leadership, no
8 bold action, simply silence. Finally, on June 16th
9 of this year, the incident that directly led to all
10 of us gathering here today occurred when victims were
11 taken away by ICE officials when they appeared in the
12 Queens Human Trafficking Intervention Court. At
13 last, we heard from our Chief Judge Janette DiFiore
14 that she was "greatly concerned" and that they would
15 talk to ICE. Still no leadership. Still no plan of
16 action. The time for talking is done. We need
17 action to protect our immigrant community's access to
18 justice, and it is incumbent on OCA leadership to
19 take bold and innovative steps.

20 CHAIRPERSON LANCMAN: Thank you.

21 JUSTINE LUONGO: I'm Tina Luongo and I'm
22 the attorney in charge of the criminal practice at
23 Legal Aid Society, but I sit here also representing
24 the Legal Aid Society's other two practices, our
25 civil practice and our juvenile rights practice. I

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2 cannot understate what Stan just testified to. Every
3 single day public defenders are in our courts and
4 legal services' lawyers are in our courts to protect,
5 to surround, to reinforce the tenants of justice for
6 probably 300,000 families, not clients, but families.
7 So whether it's in Criminal Court or Civil Court or
8 Immigration Court, if you're going there for a
9 housing matter, or as a member of our Immigration Law
10 Unit reminded me, we represent children as part of
11 the ICARE Coalition who are undocumented,
12 unaccompanied minor children in Family Court who are
13 seeking adjustment of their status. We're hearing
14 fears. We are seeing people not show. We are
15 watching our clients be shackled and taken away from
16 their families, and what we have asked for from OCA
17 is at a minimum, at a minimum let us know as the
18 attorneys so that we can speak to our client so we
19 can prepare them for what might happen, so that we
20 can call their family to say, "I'm sorry to tell you
21 the bad news, but your father, your mother, your
22 child, your loved one is not coming home. They're
23 probably at Hudson or Orange. They're about to be
24 put in deportation, and I know nothing else."
25 Because when we have found out after the fact, when

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2 we've asked to see a warrant to get information we
3 are told, "There is no warrant. I can't provide you
4 any information." So what we have had to do, not
5 only-- and Kate will sort of-- my colleague will sort
6 of talk about the Queens matter-- but what we have
7 had to do not only in that case, but in a case in the
8 Bronx is set bail where our client had to sit in for
9 two weeks until, by the way, we corrected the
10 information that ICE had wrong, and that client was
11 released. Because the other thing that is happening
12 to the defenders in this city is that because the
13 State has agreed with the Federal Government to not
14 give us a document called the NCIC our lawyers, our
15 public defenders, the people who you contract that is
16 mandated to represent people in this city against--
17 in their criminal proceedings, doesn't have the back
18 sheet of a rap sheet that says that ICE may want them
19 or that they have an issue. So we can't correct it
20 ahead of time. So, in that case and in many cases,
21 we found out after the fact, and then we had to
22 correct the issues to try to get our clients out.
23 So, excuse us if we are a little frustrated by the
24 notion that this policy is groundbreaking, because
25 this policy does not-- this stands for all law

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2 enforcement. And what do we know? ICE is not NYPD.
3 NYPD has to give warnings, right? We're allowed to
4 invoke warnings. We're allowed to say, "Don't talk
5 to our client." We're allowed to say, "You're to
6 bring the person back within 24 hours to meet another
7 public defender." There is process and due processes
8 embedded in that system that allows a client to then
9 be advised of their rights and then brought before
10 another court to say whether or not there is
11 reasonable suspicion, probable cause, something that
12 we can then fight to protect. We have none of that.
13 So, when we talk about general law enforcement
14 policies, let's be straight, that isn't going to
15 protect our clients. What is going to protect our
16 clients, and others will talk about this, is getting
17 ICE out of our courtrooms. And at a minimum, right
18 now, right now, every public defender and every
19 lawyer who has a client in a courthouses where ICE is
20 there should be told ahead of time, not by luck, not
21 by circumstance, and not by a brave judge who
22 probably broke a rule by telling the lawyer that ICE
23 was there on Friday. And on that, I'm going to turn
24 it over to my colleague, Kate.

25

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2 KATE MOGULESCU: Hi, I'm Kate Mogulescu.

3 I am the Supervising Attorney of the Exploitation

4 Intervention Project in the Legal Aid Society's

5 Criminal Defense Practice. Our team represents

6 individuals arrested and charged with prostitution

7 offenses in the Human Trafficking Intervention Courts

8 and victims of human trafficking charged with a whole

9 host of other offenses in New York City's Criminal

10 Court. It was our team that represented the woman

11 whose case Council Member Lancman described at the

12 beginning of the hearing, and we were in court and

13 notified by the judge when we were on the record.

14 That was the first that we learned that there were

15 three ICE Deportation Officers in court looking to

16 detain our client. I agree with Tina and Stan that

17 this policy is not what allowed us to prevent that

18 client from being taken into custody. It was the

19 fact that the court notified us, and we were able to

20 scramble, admittedly, and while I certainly

21 appreciate Council Member Menchaca's characterizing

22 our lawyering as highly skilled,-- I'll take that

23 anytime I can get it-- that wasn't was this was.

24 This was panic. This was deep concern. This was

25 terrifying for the client and her family, and this

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2 was us trying to figure out what to do in a moment's
3 notice, but we had that moment's notice, and that's
4 why we were able to act. The numerous other people
5 that were taken into custody in Queens Criminal Court
6 that day did not have that benefit, and we don't
7 even-- we have no idea who those people even are.
8 So, I agree that this policy here which does not
9 mandate that lawyers be notified is not what allowed
10 us to advocate for our client and prevent her being
11 taken into custody on June 16th. It is also worth
12 pointing out here that while we share in all of the
13 outrage and shock that this happened in a Human
14 Trafficking Intervention Court, we really can't be
15 very surprised. The Human Trafficking Intervention
16 Courts are criminal courts. People come into them by
17 virtue of their own arrest. This is a question of
18 arrest policy and who is being brought into Criminal
19 Court and sort of sitting as sitting ducks for
20 potential ICE enforcement. I know this Council, our
21 organization, many of the organizations represented
22 here today have done a lot to try to make the
23 Trafficking Intervention Courts as least harmful as
24 possible for the people coming through them, but
25 nothing will make them safe from, for example,

immigration enforcement when they're criminal courts, and this is a question fundamentally of who's coming into Criminal Court, who's vulnerable to being taken into custody, and what can we do about it. So when we think about standing up and fighting back, as Council Member Menchaca said at the beginning, what can we actually do? Well, I've sat in this very chamber before and talked about our arrest policy when it comes to prostitution arrests. This woman in the Queens case was arrested in a massage parlor in Queens in February. Law enforcement in massage parlors in this city has skyrocketed over the last several years. We have seen an unbelievable jump of arrests of primarily foreign nationals in massage parlors throughout the City. A report that we just released with the Urban Institute show these arrests increased over 1,900 percent between 2012 and 2016. This is a crisis. Of those clients that we represent who are arrested in massage parlors, 91 percent are not US citizens, 37 percent are undocumented. These are the people that are coming into the Human Trafficking Intervention Courts. So, arrest policy, what are we seeing here and what can we do about it? That's the conversation that we need to have. The

second-- and because I suspect that that is a long conversation that we're probably going to continue to have over many years. I may be sitting here many years from now making the exact same point-- is what creative approaches can we do to really take the lead here? Efforts that have stalled on pre-arrest diversion, pre-arraignment diversion, keeping people out of Criminal Court so they are less vulnerable to these collateral harms, that's what we need to be talking about, and I would be happy to make several recommendations about that, that I think would benefit this population and the population that we're all concerned about in this room. Finally, we need to be looking at our procedures in these criminal courts, even in our diversion courts. The woman that appeared in this case that we keep talking about had already done everything the court had asked of her and had already appeared three times in that court. She was there to get her charges dismissed. So, we should be thinking about how long are we forcing people to be involved in court? How many times are we making them come back? How protracted is this involvement, and does that increase vulnerability as

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2 well. So, I'd be happy to take any questions about
3 any of those points after we finish.

4 ZACHARY AHMAD: Hi. I'm Zachary Ahmad.
5 I'm the Policy Counsel with the New York Civil
6 Liberties Union. The NYCLU is an affiliate of the
7 ACLU, and it is our mission is to promote and protect
8 the fundamental rights, principles, and values
9 embodied in the US Constitution and the New York
10 Constitution. That includes fundamentally the rights
11 of individuals to participate meaningfully in the
12 judicial process, to enjoy equal access to the
13 courts, and to be afforded due process of law. We're
14 pleased that the City Council is taking steps to
15 raise awareness of this urgent issue. We're all
16 aware-- as we are all aware, arrests by ICE have
17 spiked dramatically under the current administration.
18 Among the cruelest and most misguided tactics used by
19 ICE is its practice of arresting people when they
20 appear in state courthouses for matters wholly
21 unrelated to their immigration status. These actions
22 undermine basic constitutional guarantees of due
23 process and threaten the integrity of New York's
24 court system. Though this practice is not new, the
25 targeting of immigrants, as you've heard already, for

2 arrests at courthouses has become more frequent and
3 more brazen. It can't be argued anymore, as ICE has
4 claimed in the past, that its courthouses enforcement
5 tactics only target those who pose a threat to public
6 safety. Rather, these actions reflect the attitude,
7 stated bluntly by ICE's Acting Director recently,
8 that immigrants without lawful status "should be
9 uncomfortable." The impact of ICE's courthouse
10 enforcement tactics are far-reaching, and I'm sure
11 you'll hear more about that throughout the day as you
12 already have. Our testimony today focuses on how
13 ICE's actions undermine due process of law and the
14 deeply rooted constitutional right to access the
15 courts. As is laid out more fully in our written
16 testimony, the Supreme Court has long recognized that
17 the access to the courts is an essential component of
18 liberty and due process. The Constitutional
19 guarantee of due process arising under the fifth and
20 fourteenth amendments to the US Constitution demands
21 that individuals be afforded a meaningful opportunity
22 to be heard in the courts. For those accused of
23 crimes, the notion of a fair trial requires that the
24 defendant have a chance to appear in court and
25 confront their witnesses. These guarantees of due

process cannot be realized when individuals are intimidated from availing themselves of the courts in the first place. The right to court access is not just a matter of due process, but of equal protection of the law. Courts must be made equally accessible to all people without unreasoned distinctions. A practice that makes courts less accessible to immigrant's works to create an underclass that is denied the basic rights and benefits afforded to others. This offends the notion of equal protection under the law embedded in the US Constitution. The right to court access is also rooted in the First Amendment Right to Petition, which protects the rights of individuals to turn to the courts to resolve legal disputes. The right to petition the government for redress of grievances cannot be separated from the rights of freedom of speech, freedom of expression and freedom of assembly. Practices that infringe on an individuals' right to petition the courts run contrary to the notion of justice built into the constitutional system. ICE's enforcement actions in and around New York courthouses undermine these fundamental rights by chilling free and open access to the courts. Our

2 state courts are often the exclusive venue for New
3 Yorkers to resolve legal matters involving personal
4 safety, family relations, parental rights, criminal
5 justice, and fair access to housing. When immigrants
6 face the prospect of interrogation and arrest by ICE
7 when they file for custody of their children,
8 petition for child support or respond to a summons,
9 they're effectively denied the opportunity to
10 vindicate their rights under the law. In a state
11 with roughly 4.3 million foreign-born residents these
12 concerns are very real, as you've heard. ICE's
13 courthouses enforcement tactics contribute to a tier
14 justice system where an entire class of individuals
15 cannot depend on the courts to ensure their
16 protection under the law. The consequences of this
17 are broadly felt. Immigrants subject to domestic
18 violence may be reluctant to seek orders of
19 protection against their abuses. Foreign-born
20 workers how suffer harassment or discrimination in
21 the workplace may choose to endure such treatment
22 rather than bring actions against their employers.
23 Victims of crimes may be unwilling to testify in
24 court or may avoid bringing crimes to light in the
25 first instance. Ensuring the right to be heard in

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2 court requires the government to do more than just
3 open its courthouses doors. Where fundamental rights
4 are at stake, the government must remove barriers
5 that prevent certain classes of people from
6 meaningfully accessing the courts to vindicate those
7 rights if the promises of due process and equal
8 protection are to be realized. Just as New York may
9 not maintain its court system in a way that denies
10 individuals the opportunity to be heard, it should
11 not tolerate external threats to judicial fairness
12 that undermine equal access to its court system. We
13 welcome the City Council's efforts to bring needed
14 attention to this issue. ICE's actions threaten the
15 constitutional rights of immigrant New Yorkers and
16 interfere with the administration of justice in ways
17 that we can only begin to measure and in ways that
18 I'm sure you'll hear more about as this hearing
19 continues. We look forward to hearing-- we look
20 forward to working with the City Council on ways to
21 address this matter, and ensure that New York's
22 courthouses in New York City and across the state are
23 open and accessible to all. Thank you.

24 CHAIRPERSON LANCMAN: Thank you.

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2 JUSTINE OLDERMAN: Good afternoon. My
3 name is Justine Olderman. I'm the Managing Director
4 of the Bronx Defenders. I also want to thank the
5 Council for holding this hearing, and while I'm
6 always grateful for the opportunity to testify and be
7 in dialogue with the Council on the issues that are
8 most pressing to us and our clients, in this respect
9 today I'm particularly thankful. The reason I'm
10 particularly thankful is I think that there is an
11 enormous danger here of complacency. There is a
12 danger that eventually we will all become inured to
13 the presence of ICE in our courthouses, that we will
14 become inured to the ways in which it is upending our
15 Criminal Court process, faith in our judicial
16 institutions, the impact that it's having on
17 attorney/client relationships, and obviously most
18 importantly, the impact that it's having on not just
19 immigrant New Yorkers involved in the criminal
20 justice system, but their families and entire
21 communities. I can sit here just like all the other
22 defenders, and I can attest, and to the extent you're
23 interested in it, I can dive deep into the ways in
24 which in fact what we are seeing every day on the
25 ground is in fact impeding the function of the

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2 courts, and I can attest firsthand to the ways in
3 which it is impeding, as it's already been commented
4 on, access to justice for immigrant New Yorkers who
5 are seeking to avail themselves of their
6 constitutional rights in our court system, and I can
7 attest to the ways every single day that we see
8 clerks, court officers, judges and prosecutors be
9 complicit in using our court system as an enforcement
10 playground for immigration officials, and I can
11 attest to the ways in which it is transforming the
12 way we as defense attorneys engage with our clients
13 as we have to give them really difficult advice about
14 whether they should choose to avail themselves of
15 their constitutional rights, come back to court for
16 their court dates, and yet at the same time risk not
17 making it home at night to kiss their loved ones and
18 tuck their children into bed. I can give you details
19 about all of that, but everybody has also touched on
20 that, and I think I wouldn't be telling you anything
21 that you don't already know and aren't aware of. So
22 the question is where do we go from here? What we
23 have had so far, we've had data collection. We've
24 had assessing the situation, and we've had sharing
25 concerns with OCA. We've had enough data collection,

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2 and we haven't had plenty of time to assess, and OCA
3 has had plenty of opportunity to share their
4 concerns. What we need now at this moment in time to
5 make sure that this city actually can be what it
6 claims to be, a Sanctuary City, so that ICE does not
7 end up upending our judicial institutions in this
8 city and across this state. What we need is, as has
9 already been commented on, is we need bold action.
10 And is that going to be hard? A hundred percent
11 that's going to be hard. But you know what? Justice
12 often is hard, and what we are hearing is, "Well, I'm
13 not quite sure we can make that distinction. How do
14 we do that?" What I come back and say, "We haven't
15 even begun to try." We haven't seen anything from
16 OCA to indicate that they are even engaged in a very
17 real way of trying to figure out is there a legal
18 mechanism by which not just give notification to
19 lawyers. That's easy. Of course they should be
20 doing that. But to actually prevent these arrests
21 from taking place in our courthouses. Our
22 courthouses are not like the public street. It's not
23 a park. We don't have the same freedoms and rights
24 to engage in whatever behavior we want inside of the
25 halls of a hallowed institution like a courthouse.

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2 It is different. It is fundamentally different. I
3 can't protest up and down the halls of the Criminal
4 Court building in the Bronx, as much as many times I
5 would like to do so. Arguably and rightfully, that
6 would upend court process. Guess what else upends
7 court process? ICE in our courthouses. And one of
8 the things that's so great about the example-- excuse
9 me, that's probably the worst word I could use. But
10 what is helpful for this dialogue of what happened in
11 Queens is because there was a reporter there, because
12 of the amazing work of the Legal Aid Society and Kate
13 and the attention that has been brought to bear on
14 that instance, everyone can feel in a visceral way
15 the panic, not just for that particular client in
16 that particular moment, but the scrambling of lawyers
17 and advocates to try to figure out what to do, how to
18 manage it. That is not just happening in specialty
19 parts. That is happening every single day across our
20 courthouses. I can be a witness in the litigation
21 that says, "Is it in fact upending court process?"
22 and attest to the fact under oath, 100 percent that
23 it is. Everybody who's testified here is exactly
24 right. We need bold action. The time is now. If in
25 fact we are to preserve our judicial institutions,

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2 protect immigrant communities, uphold our
3 Constitution and give at least a modicum of meaning
4 of what it means to be a Sanctuary City, we need
5 action and we need it now. Thank you.

6 CHAIRPERSON LANCMAN: Excellent. Thank
7 you very much. Let me just mention, we've been
8 joined by Council Members Danny Dromm and Barry
9 Grodenchik. Yeah. So, let's get right into it.
10 There are some who think that this policy is the
11 limit of what OCA has the authority to do, that the
12 courtrooms, at least the hallways and the common
13 areas, are public areas that law enforcement is
14 engaged in law enforcement activities all the time in
15 the courthouse, whether it's the NYPD or the FBI or
16 State Troopers or you name it. What more do you
17 believe OCA has the authority to do? And what is the
18 basis for that? Whoever wants to start?

19 JUSTINE AHMAD: Admittedly, this is not
20 my area of expertise, but as I just alluded to, there
21 is a fundamental difference between the law
22 enforcement activities that we see that even result
23 in arrests in our courthouse and have since the
24 beginning of time and what we are seeing here. When
25 NYPD goes into our courthouses and they have probable

cause to make an arrest, and they do so let's say right outside of a courtroom, it does not trigger in every single person sitting in that courtroom or in the hallways outside, both people who are litigants and the public who are there, it does not trigger a fear in them that they too could be arrested. It's not the nature of it. The very nature of the action is different, and that's where the differentiation lies. That is why NYPD coming in and making a targeted arrest does not necessarily trigger or rather upend court process the way that we're seeing--

CHAIRPERSON LANCMAN: [interposing] I understand that, but that doesn't necessarily give OCA greater authority to limit ICE's operations, because ICE has greater impact. I'm not saying that they lack that authority, but has anyone given thought to--

JUSTINE LUONGO: [interposing] So, this notion of the public-- the hallways are public, I sort of want to push back on that, right? I think that's what Justine said. Like, you can't actually protest. Court officers can actually stop people from coming in, because it is either disruptive to

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2 the process or a safety issue, both of which OCA
3 could rely on to literally say we're not going to let
4 you. The notion also of law enforcement and whether
5 ICE is law enforcement, I sort of think we're
6 stretching it. Most of these agents are civil. The
7 detainers that they claim to have are generated
8 internal paperwork that is civil. So, in the context
9 of the Criminal Court what we then have to admit is
10 we are allowing a civil servant of the Federal
11 Government to come in and actually drag somebody out
12 of a Sixth Amendment Constitutional due process
13 procedure, their case, without the benefit of a
14 lawyer. Because our hallways are public? If our
15 hallways were public, then the court officers
16 couldn't stop anybody from coming in, right? It's
17 public. So they're not. Are they perhaps quasi-
18 public? Yes, but then you could actually lay out a
19 set of procedures and protocols. There's also city--
20 we've also sort of raised this with the Mayor's
21 Office of Criminal Justice and that per-- and the
22 Speaker's Office to say perhaps there's a city
23 function. You own the buildings. There's a HR-- a
24 case that HRA was able to keep an organization, I
25 believe it was Make the Road, out of their reception

2 areas because it was disruptive, and it was upheld by
3 the appellate courts to be that they have a right to
4 do that. We've raised that. We've given that memo to
5 the Mayor's Office of Criminal Justice. So, I don't
6 necessarily think that we should fold on this notion
7 that there's nothing we can do because those
8 buildings are public, because there is a landlord,
9 City of New York, and there is-- I'm going to use the
10 phrase "tenant," being OCA, and aren't there
11 contractual obligations that could be put in place?
12 And frankly, here's what I'd like to throw out too,
13 do something, somebody, and let the Federal
14 Government try to sue us. We have really smart
15 people in the City and State that would maybe take
16 this on, since we are a Sanctuary City.

17 ANDREW WACHTENHEIM: And-- please.

18 STAN GERMAN: If I could, this notion
19 that somehow it's just happening in the hallways.
20 Let's be clear about what's happening. OCA and their
21 employees are aiding and abetting in this process.
22 When an ICE official calls up the court part and
23 says, "Do me a favor, Mr. Clerk, don't call the case
24 until 2:15 in the afternoon so that I when I get
25 there at 2:15, the person is still in court." When

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2 you go up to a court officer and say, "Can you call
3 this person's name out so I could identify who that
4 person is and make an arrest before his or her lawyer
5 gets there?" That is aiding and abetting. When a
6 judge says this person was foreign-born, you need to
7 look into this and contact ICE, that's aiding and
8 abetting. We have no obligation to help ICE in this
9 function as a Sanctuary City in New York City. So
10 those are just a few examples of ways in which OCA
11 can take action with their employees and say, "You
12 know what, OCA employees? This is going to be our
13 position with respect to ICE." But they have refused
14 to do such a thing.

15 CHAIRPERSON LANCMAN: Even short of
16 banning ICE from the courthouses, there are things
17 that OCA could do beyond the-- what's in that memo,
18 which would limit ICE's ability to operate.

19 STAN GERMAN: We could make it as hard as
20 possible for ICE to do their job.

21 CHAIRPERSON LANCMAN: I want to hear from
22 you, and then I want to give everyone else an
23 opportunity without conceding the point that OCA has
24 the authority to ban ICE entirely, whether or not
25 there are other procedural steps that OCA could

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2 require, other prohibitions in terms of its own
3 employees cooperating that would also be helpful, to
4 just expand on that policy. But go ahead.

5 ANDREW WACHTENHEIM: Well, this is a
6 partial answer to that question. You know, when
7 we're thinking-- when we're asking the question of
8 what can OCA or what can Chief Judge DiFiore do to
9 push back on this inappropriate arrest practice by
10 federal immigration agents, the question is not what
11 can the Chief Judge do to regulate federal
12 immigration agents. The question is what can the
13 Chief Judge do to protect her courts and the
14 administrative-- and administration of justice within
15 her courts? And the answer is, she can do quite a
16 lot. There is ample precedent nationwide and across
17 history where states and entities and localities
18 within states regulate their institutions and their
19 public spaces, and that has the effect of protecting
20 the rights of the immigrants who lived within our
21 states and within our communities to participate in
22 the basic functions of daily life, like going to
23 court as a criminal defendant, like going to court to
24 complain about an exploitative landlord like seeking
25 and Order of Protection. And so, you know, the

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2 question is really what can the Chief Judge do in
3 order to make sure, as these panels have pointed out,
4 that these courts are functioning as they should be
5 and in a non-discriminatory fashion, and as I'm sure
6 that many of the panelists here will talk about,
7 there are a number of steps that she could plausibly
8 take that would be quite legally defensible, and that
9 go beyond what's in this memo. Because this was--
10 from what I see here, this was issued in April of
11 2017. It's been two months since then and the number
12 of--

13 CHAIRPERSON LANCMAN: [interposing] So,
14 what are some things?

15 ANDREW WACHTENHEIM: Some things that
16 we've considered at IDP that I've heard suggested by
17 others on this panel--

18 CHAIRPERSON LANCMAN: [interposing] Yeah.

19 ANDREW WACHTENHEIM: are prohibitions on
20 information sharing between court staff and the
21 Federal Government, which is certainly an-- it's
22 certainly within the judge's inherent authority to
23 regulate the administration of justice. There could
24 be warrant requirements as I've heard Tina suggest in
25 our recent rally, and these, you know, some of this

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2 would be-- this would be directing what court staff
3 can be doing. The way in which they should and can
4 be doing their jobs. They should not be
5 participating in federal immigration enforcement.
6 It's not their job. The warrant requirement the team
7 has spoken about--

8 CHAIRPERSON LANCMAN: [interposing] Any
9 other ideas specific--

10 KATE MOLGULESCU: No, I think this notion
11 of not making easy. So, in the case in Queens, for
12 example, one of the-- the deportation officers didn't
13 come specifically for that one client. They came
14 with a list. They came with a list of individuals
15 they believed were going to be in court that day, and
16 they were happy to get any vary-- I mean, they were
17 not-- I don't believe that ICE woke up that morning
18 and said we're going to go to the Human Trafficking
19 Court and get a trafficking victim to detain. They
20 came with a list of people who were appearing in
21 Criminal Court in Queens County. What they-- what
22 was interesting about the experience in our
23 courtroom, though, was that they needed to see this
24 person appear on the record to confirm who she was.
25 They couldn't figure out for whatever ever reason,

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2 and maybe it was that their photos were older or
3 because there are in Queens Court on any Friday
4 morning a high number of Chinese and Korean women
5 appearing in that court. And so, in order to verify
6 the identity of the person they were seeking to
7 detain they wanted a visual of the case being called
8 on the record, and there was a lot of back and forth
9 about that. So, again, it's about making it easy for
10 them, right? When we know that they're there to look
11 for someone not becoming an accomplice in that. I
12 had a lengthy conversation with one of the
13 deportation officers that was present in Queens
14 Court. I asked numerous times for any detainers,
15 warrants, paperwork that we could see to understand
16 who they were there to detain and what their basis
17 was. Not only would he not provide me any, he said
18 he did not have any. They just had a list of people
19 that they were coming to get. So, unlike when NYPD
20 comes into the courtroom to execute a warrant-- I
21 mean, the courthouse to execute a warrant, where we
22 very clearly see who they're there for, what their
23 authority is, and then there are the other checks
24 that Tina mentioned down the road. Here, this is
25 just-- there is nothing to verify. There is nothing

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2 to check, and we should be building in that at each
3 step of the way.

4 CHAIRPERSON LANCMAN: The-- what NYPD
5 does when it shows up, is that covered by any OCA
6 rule, or that's just how NYPD operates in the
7 courthouses? I wonder if there's a possibility for
8 us to say, for example, to OCA, "This is how NYPD
9 operates. At the very least you should require the
10 same of ICE."

11 JUSTINE LUONGO: Look, I think that they
12 are-- the procedure might be the same. We often will
13 want to say, "Why aren't you calling my client?" And
14 they will say, "Well, because we're waiting for
15 NYPD." Again, I sort of want to point out two
16 things. Whether or not they're acting on a warrant
17 or whether they're acting on reasonable suspicion
18 because there's a complaint, the due process
19 requirement does really make it different. This is
20 law enforcement in New York City that's about to
21 arrest somebody for a crime or an allegation of a
22 crime in New York City that's going to come back to
23 New York City courts and be under the authority of
24 the Constitution and be provided a public defender or
25 have an attorney that they can pay. That is not the

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2 case with ICE, and in fact, there again I'm going to
3 sort of question. I know we're using the term law
4 enforcement to mean ICE agents-- not exactly law
5 enforcement. Not exactly probable cause or
6 reasonable suspicion. In fact, much of their
7 information is outdated as our immigration law unit
8 sort of parcels out how many times they have gotten
9 the wrong information on this civil signed by a
10 supervisor in their office saying, "Hey, go get this
11 person." Right? So, I think that there-- like,
12 there are apples and oranges in many ways in
13 particular in this instance, and we have to treat it
14 that way. The thing that everybody sort of
15 references attributed to me is I just keep saying,
16 look, New York City Council and the Mayor signed off
17 on a great detainer law that actually protects people
18 that are housed at Rikers, which is why we have
19 started to ask for bail, right? Because the detainer
20 law allows us to protect our clients. Why? Because
21 ICE won't get that person unless they show a warrant
22 that says a judge in a court vetted the accuracy of
23 that information and ha snow said you have a basis
24 according to the federal judicial system and my

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2 authority under the law to go get that person. How
3 about we just do that?

4 CHAIRPERSON LANCMAN: My last question,
5 have any of you considered the question of whether or
6 not whatever OCA would require of ICE or prevent ICE
7 to do, it would have to require or prevent all law
8 enforcement or similar agencies, otherwise we'd run
9 into a problem of-- or discriminating against the
10 federal government? That was something that was
11 raised in our research in this issue.

12 JUSTINE OLDERMAN: Yeah, I'll just say
13 that I think that that's exactly where all of the
14 information and experience that we have and the data
15 collection we have comes into play, which is to say
16 that while in fact the-- one could make the argument
17 that the behavior is similar. That as Tina pointed
18 out, they are not the same in terms of whether one is
19 a civil servant and one is law enforcement. One is
20 coming with probable cause to make an arrest. One is
21 coming with not is one area. But the other thing is
22 that the impact that it's having is so vastly
23 different. I mean, we do not see NYPD coming in
24 either at the numbers that we're seeing, the
25 frequency with which we're seeing it with ICE, number

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2 one, and number two, the impact on the number of
3 people, and you know, what we're seeing in terms of
4 the delaying of arraignments, the delaying of court
5 process, the shutting down of court parts where
6 people don't have access ingress or egress out of the
7 court system while that's taking place, the fear the
8 people-- the warranting from court because people
9 can't access it. All the circumstances around it
10 differentiate this situation from law enforcement.

11 ANDREW WACHTENHEIM: And councilman, we
12 have looked at that question. There are absolutely
13 rules that OCA can promulgate that would not be
14 discriminatory in the way that you're referencing,
15 and that would be lawfully promulgated and legally
16 defensible if challenged.

17 CHAIRPERSON LANCMAN: Sorry, I lost the
18 last sentence. That would be what?

19 ANDREW WACHTENHEIM: That can be lawfully
20 promulgated and would be legally defensible if
21 challenged.

22 CHAIRPERSON LANCMAN: Oh, okay. Are you
23 going to share them with us?

24 ANDREW WACHTENHEIM: Pardon me?

25

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2 CHAIRPERSON LANCMAN: Are you going to
3 share them with us, or?

4 ANDREW WACHTENHEIM: Well, I think that a
5 lot of the suggestions that we-- that all of the
6 suggestions that you've heard here today are non-
7 discriminatory under the theory that you're
8 suggesting that they might be. You know, they can
9 be-- the policies that we have written, that others
10 have written, they are worded and thought through in
11 particularly carefully ways so that they are not
12 discriminatory against one law enforcement agency or
13 one agency versus any other, and we're confident that
14 those rules would be defended.

15 CHAIRPERSON LANCMAN: Got it. Thank you.
16 Council Member Menchaca?

17 CHAIRPERSON MENCHACA: Thank you, Chair,
18 and I again want to thank you all for not only your
19 testimony, but the suggestions before us today. My
20 questions, I'm going to go and really kind of better
21 understand what we're going to be able to do to
22 continue to explore how we're going to push. I also
23 want to say that I know that in my remarks that I
24 want to clearly state that while the memorandum has
25 become public since its April date, that this is not

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2 a place where we celebrate. This is a place where we
3 mark and we keep moving forward. And so I just want
4 you to know that I am with you on that front. The
5 better sense of these questions for me are really
6 relating to exactly what's happening on the ground.
7 So, I have a couple questions to clarify. We talked
8 about the hallways, we talked about the courtrooms.
9 Is there a place where ICE usually conducts its
10 arrests right now? Is there a place that is a
11 priority for ICE that could tell us? Is there a
12 pattern about where they are doing their arrests?

13 JUSTINE LUONGO: So, in terms of physical
14 location, what mostly happens, and again, this does
15 require them to alert the court officers who conduct,
16 sort of, the patrol of the hallways to allow people
17 in and out of courtrooms. Most courtrooms have an
18 exterior hallway door and an interior door to the
19 courtroom, which creates a vestibule in between the
20 two doors, and almost every courtroom has that. It's
21 for sound buffering and other sort of safety
22 protocols, right? So what happens is, ICE will come
23 in and when your client if you're not told and you
24 haven't asked-- haven't been forced to ask for bail
25 on behalf of your client and your client leaves, they

2 get trapped between the two sets of doors. Without
3 the lawyer, sometimes we can push our way in, but
4 it's mostly without the lawyer. There's no other
5 witnesses, and it is sometimes assisted by a court
6 officer standing on the outside to prevent people
7 from coming in from the general public who has to
8 access that or people leaving the courtroom. So, in
9 essence you could have a few court officers and a few
10 ICE agents now having this person in this vestibule
11 with no benefit of counsel, no benefit of witnesses,
12 and they're going to be cuffed, and that's normally
13 the way it happens with the exception of the time sin
14 which they have waited and followed somebody out and
15 sort of arrested them. in the case in Queens,
16 arrested three people right outside the courthouse,
17 and I happen to believe that that took place in the
18 way in which it did, because Beth Furtig [sp?] from
19 WNYC was there, had spoken to the officers, so they
20 knew that she was there. So they weren't going to
21 try to do it again to three other people. So they
22 waited until the end.

23 CHAIRPERSON MENCHACA: And the place that
24 you talk about, this vestibule that's outside that's
25 disconnected, that's outside the courthouse or

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2 outside the courtroom is a place that ICE as a law
3 enforcement officer can access with the court
4 officers as well. That is a--

5 STAN GERMAN: [interposing] Well,--

6 JUSTINE LUONGO: [interposing] Go ahead.

7 STAN GERMAN: I mean, if you look at this
8 chamber, Councilman--

9 CHAIRPERSON MENCHACA: [interposing] Yeah.

10 STAN GERMAN: you have the exterior door.

11 CHAIRPERSON MENCHACA: Right.

12 STAN GERMAN: Then you have these
13 interior doors. So, what usually happens is that
14 after the case is called, the client is now leaving
15 the courtroom. The attorney is walking along. A
16 court officer will usually stop the attorney and say
17 you have to wait here. The client will go through
18 that first set of double doors, and they will arrest
19 them and trap them in that area. They will not let
20 counsel be present for that often. I've had my
21 attorneys ask, "Do you have a warrant?" Try to get
22 information from ICE agents, and they just kind of
23 ignore them and say, "Are you the attorney of
24 record?" And if you're not, they just whisk the
25 person away.

2 CHAIRPERSON MENCHACA: And is that a
3 place-- so, just to understand the sense of public
4 spaces, is that a public space? Is that a place? Is
5 that a court? Is that part of the court space as
6 well?

7 KATE MOGULESCU: It's the way you enter
8 and leave the courtroom. It's a public space.
9 Everyone needs to walk through it, every member of
10 the public, in order to access the courtroom as well
11 as attorneys come in and out all the time. I would
12 say that the vestibule becomes very sort of critical
13 in cases where the enforcement agency needs to
14 confirm the identity, as I was saying, where they're
15 sort of waiting for the proceeding to end in order to
16 take the person into custody, but we're also hearing
17 reports of people being taken into custody before
18 they're even able to see a judge. So, the
19 enforcement is haphazard. There isn't consistency,
20 which is part of the trouble. So we can't pinpoint
21 or ascertain one place that is more dangerous or one
22 court or one area. It is all over the place, and its
23 people outside of court. It is people after appearing
24 on their cases. It's people before appearing on
25 their cases. And I think that it just leads to a

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2 really important question. We can spend a lot of
3 time, and we should spend a lot of time probably,
4 more time than anyone in here has thinking about well
5 what can OCA do? What-- where-- you know, what are
6 these agency relationships? But one thing we could
7 also consider is just limiting the amount of exposure
8 people have, limiting the amount of times people have
9 to come into Criminal Court. Right? Criminal Court
10 is plagued by delays, a lot of appearances in which
11 nothing actually occurs on a case. So, something
12 that happens in the Bronx from time to time. It's
13 been noted before. But-- right? So, how disruptive
14 this is to anyone, any criminal defendant's life is
15 one thing, but here, enhancing the vulnerability. So
16 what can we do? Can we stop requiring people to come
17 to court unless something is actually going to occur
18 that they need to be present for? This is true in
19 the diversion parts and in our traditional courts.

20 CHAIRPERSON MENCHACA: So, let's just
21 follow that. How do we do that?

22 KATE MOGULESCU: We tell people they
23 don't have to come unless we tell them to come.

24 CHAIRPERSON MENCHACA: Who's we?
25

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2 KATE MOGULESCU: The judge in
3 collaboration with the prosecutors and the defenders.

4 CHAIRPERSON MENCHACA: So, this is a
5 collaborative process of determining return, and
6 that's a negotiate--

7 KATE MOGULESCU: [interposing] That's
8 right.

9 CHAIRPERSON MENCHACA: We can negotiate
10 that.

11 JUSTINE LUONGO: A judge can excuse the
12 appearance of someone.

13 CHAIRPERSON MENCHACA: They have the
14 discretion?

15 JUSTINE LUONGO: What we-- right. They
16 have the authority. They can excuse somebody from
17 coming and saying you don't have to come. Since it's
18 only on the filing of motions or nothing will be
19 happening where you will be making a decision, speak
20 to your counsel, but you have a-- I can excuse you
21 for your next two or three appearances until there is
22 something, and which case then we can have a
23 conversation with our client as to whether that is in
24 their best interest. And I will say, given sort of
25 what has been happening, many of us would say, in

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2 fact, it would be in our best interest of our client
3 in that moment.

4 CHAIRPERSON MENCHACA: How far is that
5 discretion?

6 JUSTINE OLDERMAN: I mean, I will just
7 say, in fact, that is something that lawyers are
8 trying to do, but without any, you know, imprint of
9 acceptance by the Chief Judge, either locally or the
10 Chief Judge of the State, there are judges that are
11 reluctant to do that. So, it is certainly within
12 their discretion, but I think that they are looking
13 for leadership from their chief judges to say whether
14 or not that is acceptable. So, sometimes we know
15 that there is a client who is particularly
16 vulnerable, and we will go in on that court date and
17 ask that the person not be required to appear, and
18 some judges say yes and some judges say no, but they
19 feel very much like they are out on their own there
20 without any leadership, without any support and
21 without any guidance for doing so.

22 CHAIRPERSON MENCHACA: So, this is back to
23 Chief Justice work and pushing for leadership in
24 bold. So, this is one-- one of those places where we
25 reduce the times through negotiated understanding for

2 clients who are vulnerable, specifically our
3 immigrant and undocumented clients.

4 JUSTINE OLDERMAN: Absolutely.

5 KATE MOGULESCU: And you can start in the
6 diversion courts where a lot of the appearances are
7 for updates or, you know, for simply reporting on how
8 the person is doing in terms of compliance, and these
9 are collaborative courts to begin with, and so there
10 would be a structure in place in order to do that,
11 and then think about how this can also apply
12 throughout our more traditional courtrooms, and I
13 think that that would do a lot to protect folks from
14 just having to appear repeatedly.

15 CHAIRPERSON MENCHACA: Okay. So, what
16 happens in a situation where there is a criminal case
17 that is ongoing and the defendant is arrested? What
18 happens to that case?

19 JUSTINE OLDERMAN: If I may? That's an
20 excellent question, and there are two problems with
21 it. One, the criminal case ends up being in limbo.
22 Getting riddled back into the criminal process so that
23 you can appear in your criminal case is very
24 difficult and very rarely happens. In fact, I don't
25 think we have seen it happen once. So, ultimately,

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2 what ends up happening is that the case lives in
3 limbo for a period of time and eventually the case
4 would have to get dismissed, because there isn't any
5 mechanism by which to bring that person back. The
6 other thing--

7 CHAIRPERSON MENCHACA: [interposing]

8 There's no mechanism or there's no power? So, who
9 would--

10 JUSTINE OLDERMAN: [interposing] I mean,

11 there is a mechanism by which somebody could be
12 brought to court from detention on their court dates,
13 but it is not done.

14 CHAIRPERSON MENCHACA: And what's

15 preventing that from happening?

16 JUSTINE OLDERMAN: Probably will,

17 resources, priorities, decision-making by the various
18 parties. That's-- I mean, that is-- that's something
19 that we have seen sort of at its core whether or not
20 there's any, you know, sort of written policy that
21 governs that data I'm not aware of. But I would also
22 note that what our advocates and lawyers who work in
23 doing immigration detention work will say is that not
24 only is it problematic for that person's criminal
25 case, right, they had been-- they had pleaded not

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2 guilty, right? They were coming to court to fight
3 their case to get justice for themselves and are
4 unable to do that, but it actually makes it harder
5 for them to fight their deportation case in
6 Immigration Court because they show up in Immigration
7 Court with an open matter. If that had ultimately
8 been adjudicated to its completion, it might have
9 resulted in the dismissal. It might have resulted in
10 acquittal. It might have resulted in some other kind
11 of favorable disposition, but where discretion can be
12 applied in the deportation cases, whether that's in
13 ultimate relief or in setting bond, that is a place
14 where those same clients are now hurt doubly by the
15 fact that that case was left unresolved.

16 CHAIRPERSON MENCHACA: I'm now interested
17 in understanding a little bit about the kind of
18 criminal history that the individuals arrested by ICE
19 are-- criminal histories in general that are being
20 targeted by ICE. Is there rhyme or reason or
21 patterns on who they're targeting? Are we're talking
22 about DUI's, drug offenses, misdemeanors, felonies?
23 Tell me a little bit more about that, if there's any
24 pattern?

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2 JUSTINE LUONGO: So, I think every-- I
3 think sort of the rhetoric and what ICE has put out,
4 what even some of folks in the administrations, both
5 City and State sort of have said is these are people
6 who have serious violent felony histories. The
7 reality of that, our EAP client, the young man who
8 actually I think New York One broke a story recently
9 about, a young man being taken out of Traffic Court
10 where his mother was crying. These are not-- so,
11 this is the story of every immigrant because there is
12 no rhyme or reason. The public safety rhetoric is
13 fear mongering. It is an excuse for ICE to act and
14 perhaps an excuse for our inaction. It is not at all
15 the reality of this situation, the surveys provided
16 that IDP has been tracking across this count-- across
17 the State has said this, not to mention across the
18 country. So, they are people who are asylum seekers
19 and in the process of that could have derivative
20 citizenship, could have been here because they're a
21 victim and may have an adjustment based on that.
22 They have no criminal histories. They may have some
23 criminal histories. New, old, you name it, there is
24 no rhyme or reason and that in and of itself should

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2 be something that really motivates all of us to
3 immediate action.

4 CHAIRPERSON MENCHACA: And this is not
5 for this discussion, but it's related, this is why
6 NYFUP is just so important at the end of the day and
7 getting lawyers in front. Tina, you mentioned
8 something about suing, that we should just do
9 something and allow them to sue us. Give us some
10 examples about what we can do, and I want to kind of
11 explore that concept--

12 JUSTINE LUONGO: [interposing] Look, there
13 is affirmative litig-- Legal Aid Society, we do this,
14 we do this a lot. You know, you can take affirmative
15 litigation, right? So, of course, we are looking
16 into affirmative litigation. We have NYCLU [sic] at
17 the table. IDP has been looking. We have law firms,
18 pro-bono law firms that want to do something that see
19 this as a grave injustice. So, there is affirmative
20 litigation, but what I was also suggesting is perhaps
21 sometimes you just have to defend the litigation, and
22 that may be up to the city and the state to do
23 through RAG or our Court Counsel, which is if in fact
24 there are, and I believe IDP has done the research,
25 so have we, that many of these policies that we're

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2 suggesting actually, the Federal Government might try
3 to litigate, but I think that they are defensible.
4 And so sometimes you just have to do it, right? That
5 the-- no matter what the analysis is, we're never
6 going to know, and I'm going to sort of probably
7 guess that given who we have at the Federal
8 Government, anything we do, they may try to stop us
9 from doing, even the most sort of benign perhaps even
10 policies like this. So we have to be ready to
11 defend, and we cannot have inaction because we think
12 we may get stopped. So, sometimes you just have to
13 defend a litigation as well.

14 ANDREW WACHTENHEIM: I also wanted to add
15 that, you know, as you certainly identified, this is
16 a really complicated and multidimensional problem,
17 and it needs a complicated and multidimensional
18 solution. I agree that affirmative litigation is
19 something that all of the actors who Tina mentioned
20 should be considering and comparing for, but this
21 problem also requires an intervention by OCA. It
22 needs a set of rules from the Chief Judge. That is
23 something that can happen now. It can happen
24 quickly. It can be affective, and it is an
25 absolutely crucial first step in getting ICE out of

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2 the courts and restoring community's sense of safety
3 in coming to court.

4 CHAIRPERSON MENCHACA: Got it. And
5 finally, I think there's a real sense of evolution of
6 our courts. We're in a time and place that we are
7 being tested on so many different levels, this
8 complicated nature of courts, and is there-- are
9 there ways that we can either through legislation,
10 both the City or the State, to reduce the amount of
11 visits that can incorporate things that our founding
12 fathers didn't have back then like technology or
13 teleconferencing, for example, can be an opportunity
14 to inject both in pilot forms or others where we can
15 say, okay, you won't be able-- you're not going to
16 need to appear, but we can have-- we can have a skype
17 session so that you can be present, but not be
18 physically present for the reason that we're here
19 today. Are those examples of the "let's do it and
20 see what happens?" And this is an idea that I think
21 some folks have been talking to me about where we can
22 begin to inject in New York State where we're seeing
23 some movement-- we're not happy with it-- some
24 movement in exploring the evolution of how our courts
25 work and how we can continue to protect not just our

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2 clients and New Yorkers but the actual institution
3 itself? How does that work?

4 JUSTINE LUONGO: So there are many--

5 CHAIRPERSON MENCHACA: [interposing] How
6 do we--

7 JUSTINE LUONGO: many sort of reform
8 efforts that actually the City and State can do, and
9 I think we touched on some of them, but sort of put
10 them in sort of a one-pager so to speak, right? So,
11 Kate talked about what could we do at the City level.
12 Well, look, if we-- the more people we arrest, the
13 more people we would put through the criminal justice
14 system that are immigrants or from communities of
15 color, the more likely, right, we have this devaluing
16 of justice, this unfairness, and now this
17 consequence. So, let's look at that. We can do that
18 as a city, right? As a state, speedy trial reform,
19 which was almost close to passing and then did not,
20 is something that fundamentally is a principle by
21 which we should be guided in the Criminal Courts that
22 we shouldn't have due process and the right trial
23 take years or have multiple adjournments. So that's
24 something we can do, and that is something we can
25 control right now. If we want to see a systemic

2 shift in making our courts more just, we can't--
3 there are things separate and apart of the Chief
4 Judge immediately issuing rules that we can do to
5 make the system fairer and more leaner so that less
6 people are being arrested and prosecuted,
7 particularly immigrants and people of color that also
8 then make the process, the efficiency of the court
9 work better, speedy trial, discovery. All of those
10 things, I think, have to be looked at from the lens
11 now of creating a real sanctuary.

12 STAN GERMAN: And part of that,
13 Councilman, is just cultural. So, if you ever
14 practice in Federal Court, you know, you do not go
15 into a federal judge's courtroom unless there is
16 something that's going to happen on the case. If
17 you're just going to go in and report to a federal
18 judge, "We need more time," you know, he or she's
19 going to look at you and say, "Why are you wasting my
20 time?" You could have sent a letter. You could have
21 called my clerk and said we're just going to roll
22 this case over." So, I think, you know, Kate has
23 certainly addressed this. If we're in a diversion
24 court, and we know it's just time for an update, and
25 the client has gone to therapy and they're doing

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2 great, and all we're going to do is adjourn the case
3 for 30 days, why are we dragging that person all the
4 way to court to maybe miss work, to have, you know,
5 home care issues, to maybe miss school, all these
6 things.

7 CHAIRPERSON MENCHACA: Or confront ICE
8 [sic].

9 STAN GERMAN: And that's just culture.

10 CHAIRPERSON MENCHACA: Right.

11 STAN GERMAN: Yes.

12 CHAIRPERSON MENCHACA: Exactly. Thank
13 you. Those are all my questions for now. Thank you
14 so much.

15 CHAIRPERSON LANCMAN: Thank you. Let me
16 mention that we've been joined by Council Member Ben
17 Kallos, and I know that Council Member Danny Dromm
18 has questions.

19 COUNCIL MEMBER DROMM: Thank you very
20 much, Chair Lancman. Some of you may know that I
21 wrote a letter to Honorable Lawrence K. Marks, the
22 Chief Administrative Judge, on this issue on April
23 26th, 2017, and got a less than satisfactory, in my
24 opinion, letter from Judge Marks dated May 10th. BY
25 the way, it's interesting that my letter to Judge

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2 Marks is dated the same day as the memo is dated.

3 So, I was just wondering if that was coincidental,

4 but I don't know, and I think the Chair might have

5 mentioned that in his opening statement as well. But

6 in the letter that I received from Judge Marks, he

7 does say that as a result of some discussions that he

8 had been having with advocates as well that protocols

9 were being instituted and offices have been now

10 directed to prepare written report whenever ICE

11 enters the State courthouse with the intent to take a

12 person into custody. Do we know what those reports

13 look like or how many of them there are, or how often

14 they're being filed, or just a general idea of what's

15 going on with those reports?

16 JUSTINE LUONGO: So, the report that I

17 think he's referring to is mentioned in here, which

18 is when there's an unusual occurrence. So, this

19 wasn't something that OCA put in process as a result

20 of ICE. They've had these unusual reports. Two

21 people get into a fight in the vestibule. Court

22 officers have to sort of fill out this report so that

23 OCA understands what's happening.

24 CHAIRPERSON LANCMAN: But--

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2 JUSTINE LUONGO: [interposing] I will tell
3 you--

4 CHAIRPERSON LANCMAN: [interposing] Sorry,
5 let me just interrupt--

6 JUSTINE LUONGO: [interposing] Yes.

7 CHAIRPERSON LANCMAN: because I, you know,
8 I have the letter that was written to Danny, and it
9 says, "We have directed our court officers to prepare
10 a written report whenever ICE enters a state
11 courthouse with the intent to take a person into
12 custody." That is broader and more usual than what
13 is spelled out in the policy, which as you're
14 referring to, you know, is only unusual occurrences.
15 So,--

16 JUSTINE LUONGO: [interposing] Right. And-
17 -

18 CHAIRPERSON LANCMAN: [interposing] you
19 know, we should figure out--

20 JUSTINE LUONGO: [interposing] So, I will
21 tell you that here's-- the first problem with that is
22 the report happens after the fact. Damage done,
23 right? Person gone, no notice. Lawyers may not
24 know. I will also say that as Stan mentioned in his
25 initial remarks, each and every one of us, we have an

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2 email list that every single time one of our
3 attorneys or managers see something going on as to an
4 ICE agent in a courthouse, we alert each other, and
5 the Chief Clerk is on that email. And I will tell
6 you that I've been a little sort of concerned that
7 his answer sometimes is, "We weren't-- we'll look
8 into it. We haven't been notified of that one." So,
9 the state court system is huge. There is enormous
10 amount of staff. To think that OCA in real time, OCA
11 leadership in real time is going to get this, and
12 again it is something that's filed after the fact.
13 It was an occurrence that already happened. Doesn't
14 really do much to actually help protect the person or
15 the sanctity of the process.

16 COUNCIL MEMBER DROMM: So, I think in
17 that protocol, if I'm not mistaken as well, it says
18 that law enforcement agencies who enter a New York
19 State courthouse to take a person into custody but do
20 not have a warrant issued by a judge in the unified
21 court system authorizing them to do so, and then it
22 lists the procedures. How often do law enforcement
23 agents enter a courthouse that don't have a warrant?

24 JUSTINE LUONGO: All the time.

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2 COUNCIL MEMBER DROMM: It happens all the
3 time.

4 JUSTINE LUONGO: All the time.

5 COUNCIL MEMBER DROMM: So, you would have
6 an NYPD officer--

7 JUSTINE LUONGO: [interposing] NYPD will
8 routinely come in unless they have an arrest warrant
9 because somebody warranted from another court
10 proceeding or an arrest warrant because they have
11 already vetted this with a judge for probable cause.
12 It would happen all the time, and certainly the ICE
13 agents are acting in almost all instances with, in
14 fact, the civil detainer.

15 STAN GERMAN: And Councilman, if I could?
16 I mean, if you look at the first bullet point, upon
17 entry to a courthouse, law enforcement officials
18 covered by these protocols shall identify themselves
19 and tell the unified court system in play why they're
20 there and what their purpose is. You can go to 100
21 Center Street right up the street right now. If you
22 have a badge, you flash it, you walk in. There's
23 nobody stopping you. There's nobody saying where
24 you're going. There's nobody saying, "Who are you
25 here to arrest?" So, there is a disconnect between

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2 what is on this memo and what actually happens every
3 day in the courthouses.

4 COUNCIL MEMBER DROMM: Well, I kind of
5 personally know that a little bit too because Council
6 Members previously, I have one, were issued badges,
7 and whenever I use my badge I can pretty much go
8 anywhere I want with that badge.

9 STAN GERMAN: Exhibit A for my point.

10 COUNCIL MEMBER DROMM: So, that's true.
11 But I also had an experience at 26 Federal Plaza
12 where it was a little bit different actually, and
13 then the argument has been made, I'm not sure who
14 made it on the panel, that courthouses and/or federal
15 buildings which are supposed to be public places, and
16 I think there may have been previous law determining
17 that anybody is supposed to be allowed to enter, but
18 before I was enter-- before I was allowed to enter, I
19 had to state where I was going and for what purpose I
20 was going, and I think the intent of that was to
21 prevent me from actually getting into the building,
22 and then even when I got into the building, we were
23 there for a specific case for somebody who was
24 possibly going to face a deportation, we were not
25 allowed to gather in the hallways or to talk, and I

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2 also happened to be with the Speaker of the New York
3 City Council, and we were told we were not-- even
4 after identifying ourselves-- they told us in no
5 uncertain terms, cursing at us actually to, "get the
6 F out of the hallway" and trying to move us out of
7 the building. So, the argument that courthouses and
8 federal buildings as well as public places doesn't
9 really hold true from my experience. Is it from the-
10 - I would say from the Speaker's as well.

11 STAN GERMAN: And Councilman Dromm, they
12 go one step further. If you are a law enforcement
13 official going into a federal building and you are
14 armed, you must, and they take your side arm away.
15 Whether you're FBI, NYPD, ICE, no one is allowed in a
16 federal courthouse with a firearm except the Marshall
17 service who are given the responsibility for security
18 for that courthouse, and OCA could do the same exact
19 thing with anybody entering their courthouses and
20 should.

21 COUNCIL MEMBER DROMM: So, and the
22 Director of ICE for New York City himself tried to
23 throw us out of the federal courthouse building that
24 day. So, I don't buy that argument at all. Anyway,
25 let me go on. I just have some other questions,

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2 because I heard some disturbing statistics, and that
3 is in the issue of prostitution, and I'm wondering
4 why we have seen such an increase in the number of
5 prostitution cases. I, for one, I have a State
6 Senator, Jose Peralta, actually who has been pushing
7 for increased enforcement along Roosevelt Avenue. He
8 calls it, "Cleaning up Roosevelt Avenue." And I'm
9 wondering if the number of arrests don't coincide
10 with the push by some electeds [sic] for increased
11 enforcement of prostitution cases.

12 KATE MOGULESCU: That may have something
13 to do with it, sure. I mean, we see arrest patterns
14 as really cyclical and responsive to a lot of
15 different factors, but one thing that is very
16 concerning is that actual arrest under the Penal Law
17 section for prostitution and loitering for
18 prostitution are pretty much down across the City and
19 across the State, which is a trend that we want to
20 see continue for a lot of reasons. We understand
21 these arrests to be harmful for individuals in the
22 commercial sex industry under whatever circumstance,
23 but it's the massage parlor enforcement where we're
24 seeing the huge spike, huge. And this was a law,
25 it's the Education Law, that deals with the license

2 to practice a profession, and in 2012 we had
3 something like 30 arrests across the City under this
4 statute. It went up to 631 last year. So, it's a
5 huge increase, and what is driving that? I don't
6 know. I think that there is-- there was a
7 reorganization in Vice, in the Vice Units, that dealt
8 with narcotics and Vice that may have shifted
9 priorities. We see teams doing these arrests now
10 that we didn't see before. I would point out also
11 that the New York City Police Department had a press
12 conference on February 1st where it said it was not
13 going to focus enforcement on people engaging in
14 commercial sex anymore, that it was not going to make
15 prostitution arrests. Our experience since February
16 1st has been quite the opposite. As a matter of fact,
17 in the first few days after that announcement we saw
18 a spike in arrests in hotels across the City. So,
19 the enforcement here is troubling, but I would really
20 love to get at the answer to that question, which is
21 why the massage parlor enforcement right now. What's
22 coming of it? I hope we are not doing it in the name
23 of combatting human trafficking because there's
24 nothing flowing from that that actually does anything
25 about human trafficking. That could be a whole

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2 another hearing, I suppose, but it's troubling, and I
3 would love to get to the bottom of it.

4 COUNCIL MEMBER DROMM: And can you
5 describe for us also what a prostitution charge means
6 in terms of immigration applications and how damaging
7 that is to a case?

8 KATE MOGULESCU: Yes, and there are a lot
9 of people in this room who I think are hoping to
10 testify also who can get into that in much more
11 detail. A lot of it is specific immigration
12 practitioners, but prostitution is one of the oldest
13 immigration exclusions. Involvement in any
14 prostitution activity, admission of involvement in
15 any prostitution activity or conviction, finding of
16 guilt on any prostitution activity can cause a bar
17 for obtaining release, adjusting status, etcetera.

18 COUNCIL MEMBER DROMM: And the stat that
19 you gave us, was that 91 percent of the arrestees are
20 undocumented, or was that black and--

21 KATE MOGULESCU: [interposing] That's for
22 massage parlor enforcement. Ninety-one percent are
23 foreign nationals, 37 percent are undocumented.

24 COUNCIL MEMBER DROMM: Thirty-seven
25 percent, okay.

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2 KATE MOGULESCU: But of our clients, of
3 our 1,400 or so clients arrested on prostitution
4 offenses in a one-year period, approximately 14
5 percent of that 1,400 are undocumented, and that's
6 for prostitution, massage parlor enforcement, all the
7 related offenses.

8 COUNCIL MEMBER DROMM: Okay. Thank you
9 very much.

10 CHAIRPERSON LANCMAN: Good? Thank you. I
11 was happy to get a parking placard. Now, I know I
12 can get a badge.

13 COUNCIL MEMBER DROMM: Not any more.

14 CHAIRPERSON LANCMAN: Council Members and
15 badges, what could go wrong? Barry?

16 COUNCIL MEMBER GRODENCHIK: Thank you
17 [off mic] on right? Okay, now I'm on. I'll say
18 thank you again just for the record. Anybody on the
19 panel, do we find that the people from ICE are
20 congregating in any specific courthouses more than
21 others? Are we more likely to find them in Criminal
22 Court than Family Court or Civil Court, or? Just
23 curious. They in Queens more than they are in Staten
24 Island, or you know?

25

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2 ANDREW WACHTENHEIM: Well, they're
3 certain-- they're certainly conducting more arrests
4 in the Criminal Courts than in the Family Courts, but
5 part of the disturbing trend of the Trump
6 Administration has been increased presence in Family
7 Courts, and we've seen that more and more as Trump's
8 ICE has continued with its operations. We have-- in
9 surveying advocates statewide, we've seen more of a
10 concentration of arrests inside New York City, but
11 still a significant number in Upstate counties as
12 well.

13 COUNCIL MEMBER GRODENCHIK: So, they're
14 pretty much all over. They're getting to be all over
15 the place.

16 ANDREW WACHTENHEIM: Yes.

17 COUNCIL MEMBER GRODENCHIK: I'm not as
18 aware of this as I should be, they're hiring, I
19 assume. ICE is hiring more employees? That's what I
20 can call them. I don't know what-- I guess that's
21 what they are.

22 ANDREW WACHTENHEIM: They are and
23 certainly trying to. By Executive Order President
24 Trump called on, called for the hire of 10,000
25

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2 additional ICE agents, which is almost tripping its
3 enforcement capacity.

4 COUNCIL MEMBER GRODENCHIK: And to your
5 knowledge or to anybody's knowledge here, are we
6 seeing this more in New York City? Let's just--
7 ground zero for immigration. We have some of the
8 most diverse places on earth here. Are we seeing
9 this more than, say you would see it in, you know,
10 middle America like Columbus, Ohio or Omaha or
11 something like that? Do you know the statistics
12 being kept? What I mean to say really is are they
13 targeting our fair city as opposed to somewhere else?

14 STAN GERMAN: I don't think you have to
15 go to Columbus, Ohio to make that distinction. So,
16 you know, we are all part of-- most of us are part of
17 the Chief Defender's Association of New York, and I
18 was on a board call last week, and I asked my Upstate
19 brethren whether they were seeing, you know, the same
20 kind of ICE presence in their courtrooms that we were
21 seeing in New York City, and they were not. So, it
22 seems to be much more concentrated in the City than
23 the rest of the state.

24 COUNCIL MEMBER GRODENCHIK: Thank you.
25 Oh, go ahead [sic].

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2 JUSTINE OLDERMAN: I just wanted to make
3 one comment about where we are seeing ICE in terms of
4 what types of courthouses. You know, one of the
5 concerns that we have is that there's an impression
6 out there that they're targeting the criminal
7 courthouses because those are like worse immigrants,
8 right? And that is far from the truth. There is no
9 distinction to be made between Criminal Court and
10 other courts, except the ease of access to
11 information about court names and court dates. That
12 is really the distinction that we are seeing in terms
13 of why people who have pending cases in Criminal
14 Court are being targeted more than other courthouses
15 is that it's easier to access that information, and
16 in fact, before I testified I did a cursory review of
17 all the emails that had been referenced that came
18 through our Lis serve [sic] about ICE agents in the
19 Bronx Criminal Courthouse, and every single one of
20 them took place in the upfront misdemeanor parts,
21 non-domestic violence. So these are people who are
22 currently in court on low-level nonviolent
23 misdemeanor cases and those are the people that are
24 being targeted. So, it's not like we're seeing
25 people being targeted because they're being charged

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2 with violent felony offenses currently, and that's
3 now triggering an examination of their prior
4 immigration history or prior criminal history. In
5 fact, some of the irony here is that is people who
6 are charged with violent felony offenses are more
7 likely to be incarcerated and therefore get the
8 protections of the detainer law, and people who are
9 currently being charged--

10 COUNCIL MEMBER GRODENCHIK: [interposing]
11 There's an irony.

12 JUSTINE OLDERMAN: with a trespass and
13 marijuana case and turnstile jump are the ones that
14 we are not able to protect.

15 COUNCIL MEMBER GRODENCHIK: The last
16 question for anybody on the panel, you know, my
17 name's Grodenchik; I get arrested, everybody's going
18 to know about it because there aren't that many of
19 us. But many of-- many people have very common
20 names, whether it's Jones or Johnson or whatever have
21 you. Have you had problems where people are being
22 sought out by ICE and they're the wrong person simply
23 because they have such common names?

24 JUSTINE LUONGO: So, one of the problems,
25 and I alluded to it in my statements, is the way in

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2 which when you're fingerprinted and your information
3 is fed into the federal system it reports back
4 something that's not always based on your
5 fingerprints, but on matching of information, name,
6 social security numbers. We use to, as public
7 defenders, get a report on the back of a rap sheet or
8 criminal history called the MCIC, and when we used to
9 vet that information with our clients, most often
10 they would say, "That's not me. That is-- that
11 social security number is oen digit off. That's now
12 how I spell my last name. That's not my birthday."
13 But it links to however the matching happens. It
14 would be linked to this person. A real sort of
15 problem for us is that DCJS, the State, has agreed
16 with the Federal Government to now no longer give
17 defense counsel the MCIC. So we can't actually
18 verify and vet whether or not the person who might--
19 it might show that they're wanted for immigration, is
20 in fact the person. In the case in the Bronx where
21 our lawyer to save our client from being put into
22 taken from ICE asked for bail and bail was set, after
23 several weeks of looking into that issue they
24 realized that the information that ICE had was wrong.

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2 COUNCIL MEMBER GRODENCHIK: So, that
3 seems that-- that something that we-- that's a
4 concrete step we could take to ask the State to make
5 sure that people are being, you know, at the very
6 least identified properly. We certainly don't want
7 anybody to be in trouble because they got the wrong
8 name or the wrong identity.

9 JUSTINE LUONGO: We have sent a demand
10 letter to DCJS asking for a meeting to change this
11 policy.

12 COUNCIL MEMBER GRODENCHIK: Thank you all
13 very much. Thank you, Mr. Chair and Mr. Chairman.

14 CHAIRPERSON MENCHACA: I have one last
15 question. And, as you know, the City is trying to do
16 everything we can to figure out how to limit ICE not
17 just from the detainer laws but on our schools.
18 They're on public city-owned property. What can we
19 be asking the State to do under this larger question
20 about ICE in our courthouses? What can we be pushing
21 the Governor and the State Legislators to do to join
22 us in this effort?

23 ANDREW WACHTENHEIM: Well, one suggestion
24 is that with respect to the rules that we have been
25 suggesting over and over again, in the course of this

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2 conversation, the legislator and the judiciary, they
3 share authority to promulgate rules that bind the
4 court system. We have chosen to engage in this
5 advocacy with the judge herself, because we think
6 that would be effective, but an alternative would be
7 for the legislature to pass a law that would direct
8 the judge to promulgate the rules that we suggested,
9 and that kind of action would also come in-- could
10 come through cooperation and collaboration with the
11 Governor. The Governor's been extraordinarily
12 supportive of the rights of immigrants in New York,
13 particularly since President Trump was elected, and
14 so we would welcome any leadership you would take on
15 this particular issue.

16 CHAIRPERSON MENCHACA: So, essentially
17 legalize everything we're trying to do here, and
18 waiting for the judge to show leadership, just pass
19 the laws as-- and then insert everything we've been
20 talking about. Great. Okay. Thank you.

21 CHAIRPERSON LANCMAN: Good. Thank you
22 very much. We have our next panel. Terry Lawson
23 from Bronx Legal Services, Carmen Rey from Sanctuary
24 for Families, Hamra Ahmad from Her Justice, Alejandra
25

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2 Caraballo from New York Legal Assistance Group, Sarah
3 Nolan also from New York Legal Assistance Group.

4 CHAIRPERSON LANCMAN: Good afternoon. If
5 you would all raise your right hand so we can get
6 sworn in. Do you swear or affirm the testimony
7 you're about to give is the truth, the whole truth
8 and nothing but the truth? Thank you very much. Who
9 would like to lead off? Thank you. Go ahead.

10 TERRY LAWSON: Okay. Thank you for this
11 opportunity to testify regarding ICE enforcement in
12 New York Unified Court System. My name is Terry
13 Lawson. I am the Director of the Family and
14 Immigration Unit of Bronx Legal Services, which is
15 the Bronx office of Legal Services NYC. I also co-
16 lead the Bronx Immigration Partnership, which is a
17 network of legal and social services providers for to
18 provide a coordinated safety net of services for
19 Bronx immigrants. Last month, we hosted our first
20 emergency preparedness workshop to prepare Bronx
21 families in the event of deportation. The majority
22 of people who came to the workshop were Spanish-
23 speaking immigrants and most had been affected by
24 intimate partner and family violence. As people were
25 leaving the workshops, we asked them to complete a

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2 survey in which we asked them, "How do you feel about
3 ICE working with court officials?" These were what--
4 these were the answers they provided: "I won't be
5 safe in case I need to go to court. I should be able
6 to go to court without having to be scared of getting
7 arrested or deported. As an immigrant, we have
8 rights, and should be safe trying to get help for our
9 kids. [speaking Spanish] That the rights of
10 immigrants are not heard. [speaking Spanish] that
11 there are arrests in the courts. [speaking Spanish]
12 Yes, I am very worried." These sentiments make clear
13 that immigrants do not feel safe anywhere. NYC court
14 officials have stated that there is little they can
15 do to change the national anti-immigrant rhetoric.
16 This may be true, but to do nothing to stop ICE from
17 commandeering the New York courts and its resources
18 is to signal that not everyone is entitled to access
19 to justice and allows the rhetoric of fear to oppress
20 people's due process rights. When pushed to do more,
21 court officials and others have said that ICE is only
22 arresting sexual predators and serious felons,
23 repeating a false narrative fed to them by ICE that
24 purports to protect survivors while actually
25 endangering them. If our clients must make the

choice between deportation, even the risk of deportation, and going to court for child support, custody, orders of protection, or to seek redress against their landlord, it should be obvious everyone including OCA that clients will choose to remain with their families than risk deportation. A colleague asked me recently whether someone has to die for us to have court rules that prevent ICE from working with court officials, but we must refuse the temptation to sensationalize tragedy to convince the courts to protect litigants. What happened last week at Queens Trafficking Court was shocking and provided us with an important foothold in our argument that ICE is arresting more than sexual predators, but OCA must act to prohibit its personal from collaborating with ICE in all cases, not just to protect the weakest among us, but because our courts cannot function with ICE patrolling the hallways working with court officers, clerks and judges to zero in on unsuspecting litigants. The courts must remain a place where people can go to exercise their rights under New York law and not be easy targets for a federal immigration enforcement agency that takes

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2 advantage of the hard-won resources of our New York
3 courts. Thank you.

4 CARMEN REY: Good afternoon. My name is
5 Carmen Maria Rey. I'm Deputy Director of the
6 Immigration Intervention Project at Sanctuary for
7 Families. We're one of New York City's leading
8 providers of legal, clinical, housing, and employment
9 services for survivors of human trafficking, domestic
10 violence and other forms of gender-related violence.
11 We are of course grateful to you today for the
12 opportunity to testify. I'd like to first just say
13 that we second everything stated by the Criminal
14 Defenders and the Immigrant Defense Project, and just
15 to further comment on the question of where we're
16 seeing arrests. I second that we're certainly seeing
17 more arrests in the Criminal Courts, but I would
18 pause it that the effects of those arrests are
19 actually ripping much more through the other courts
20 in New York City, because suddenly what we are seeing
21 in our cases is that the threat of calling ICE by the
22 other litigant in the case is now something that our
23 clients have to take into account when trying to take
24 legal decision about how to proceed on their cases.
25 The presence of ICE in New York's courtrooms deeply,

2 of course, concerns us. it has unquestionably
3 creating a chilling effect on victims of domestic
4 violence and trafficking seeking to exercise their
5 legal rights in New York's courts. As a Council
6 Member noted, a recent survey conducted by the
7 Immigrant Defense Project found that of 225 attorneys
8 and advocates that responded to the survey, three-
9 quarters of them reported having worked with
10 immigrants who expressed fear of the courts because
11 of ICE's presence there, and nearly half reported
12 having worked with immigrants who failed to file a
13 petition, who withdrew a petition because they were
14 afraid of encountering ICE in the court. But most
15 concerning for those of who us who are directly
16 working with survivors of domestic violence and
17 trafficking, nearly 70 percent of survey respondents
18 working with survivors reported having had clients
19 who decided to not seek help at all from the courts
20 because they feared encountering ICE. This is not
21 something that the Council doesn't know. I've
22 testified about it before, but the survey results are
23 extremely troubling. Abusers and traffickers share
24 one common trait, they exercise power and control as
25 an instrument of abuse, attacking their victims where

2 they are most vulnerable to keep them under their
3 control. Abusers and traffickers routinely threaten
4 immigrant victims with deportation and permanent
5 separation from their US-born children and other
6 family in the US as a tool to prevent them from
7 calling authorities and ending the abuse. For
8 decades, organizations like Sanctuary have worked
9 tirelessly to gain the trust of immigrant victims and
10 to assure them that if they come forward to report
11 the crimes committed against them, we can keep them
12 safe from their abusers and their traffickers, that
13 ICE will not be able to just find them and take them
14 away, and that most importantly they will be safe
15 with our law enforcement officers and with our judges
16 in our courts. That trust that we worked for decades
17 to develop has been severely damaged since January of
18 this year. Routinely now, the news report incidents
19 of ICE arresting litigants in our courts, even
20 attempting the arrest of a survivor of human
21 trafficking in the Queens trafficking part two weeks
22 ago, this lends credence to the threats victims have
23 heard for years, sometimes decades, from their
24 abusers and traffickers. Over the past several
25 months, our immigrant clients have been particularly

2 apprehensive about going to Family Court to seek
3 orders of protection of custody and of child support.
4 They've even expressed concern about protecting their
5 property rights in divorces. If I make my husband
6 mad, he'll call ICE to come and get me in the
7 courtroom. Of the hundreds of our clients that have
8 been too afraid to proceed with litigation in the
9 courts, one of the most heart-breaking stories is
10 that of one of my long-time clients, and I apologize
11 if I get emotional about this. This feels very
12 personal to me. Maria is too afraid to seek an Order
13 of Protection, I'm sorry, of custody and visitation
14 in Family Court against her daughter's father, a man
15 who beat her brutally for over a decade and who
16 recently kidnapped their daughter, who I held in my
17 arms when she was born. Maria's abuser knows that
18 she entered the country unlawfully and that in 1998
19 at the age of 17 she was convicted of a minor drug-
20 related crime. This means that despite having lived
21 in the United States for nearly 30 years and having a
22 young US citizen daughter, Maria is a priority for
23 deportation. Her abuser knows this and has
24 threatened her that if she tries to get her daughter
25 back, he'll call immigration and have her deported.

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2 He doesn't know where she lives, because we made--
3 Sanctuary has kind of invalid [sic] pertinent [sic]
4 services and put her in shelter, but he knows that if
5 she files for custody he can tell ICE where she'll be
6 on the date of her court hearing, and they'll come to
7 arrest her. She's a priority. Maria is now too
8 afraid to seek the one legal remedy that would be
9 available to her, suing for custody and visitation
10 over her daughter in Family Court, because she's too
11 afraid to come forward to the attention of
12 immigration authorities and be deported from the US
13 and never see her daughter again. As her advocates,
14 as the situation currently stands, we cannot assure
15 her of her safety in our courts. Thank you very
16 much.

17 CHAIRPERSON LANCMAN: Thank you. Ma'am?

18 HAMRA AHMAD: Good afternoon. I want to
19 thank the City Council and the Committee on
20 Immigration and the Courts for the opportunity to
21 testify today. My name is Hamra Ahmad. I'm the
22 Director of Legal Services at Her Justice. We are a
23 nonprofit organization that takes a pro-bono first
24 approach to provide free legal services to women
25 living in poverty throughout New York City. We train

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2 and mentor volunteer lawyers who enable our clients
3 to access the legal system and obtain the justice
4 they deserve. Our clients come from all five
5 boroughs in New York City. Half are Latina, a
6 quarter are African-American, and 16 percent are
7 Asian or from another minority group. Approximately
8 80 percent of our clients are domestic violence
9 survivors and three-quarters of our clients are
10 mothers. Our staff of 18 lawyers and legal support
11 staff ensures that over 3,000 women every year
12 receive legal assistance in family, divorce and
13 immigration matters. The majority of our cases, 80
14 percent, are handled by our volunteer lawyers from
15 the City's premier law firms with rich assessment,
16 mentoring, training, and support from our staff. The
17 remaining 20 percent of the cases are handled in-
18 house to ensure that we retain the necessary
19 flexibility to respond to emergency situations,
20 navigate particularly complex legal issues, and stay
21 fully engaged in the matters on which we train and
22 provide support. As you are well aware, recent
23 activity of immigration and customs enforcement in
24 the Family and Trafficking Courts as well as the
25 current reality of charged language and changing

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2 federal policy has created a dreadful climate of fear
3 among families who have foreign-born members. As 70
4 percent of our clients were born abroad, we have been
5 working to address these fears with even more focus
6 and dedication than before. We are working hard to
7 ensure that Civil Court is a safe place for our
8 clients to assess remedies crucial to their and their
9 families' well-being. Immigrants are hesitant to
10 seek custody of their children, financial support to
11 raise their children or to assert their rights to a
12 fair share of any assets accumulated in the marriage
13 in a Supreme Court divorce litigation. Immigrant
14 victims of domestic violence are more afraid than
15 ever to call law enforcement to access the courts or
16 to even contact a lawyer for advice. This may be the
17 first time that they come into contact with the legal
18 system to directly address the violence they have
19 suffered by participating in the criminal justice
20 system as a witness or seeking a civil court order of
21 protection. The volunteer lawyers that we train and
22 mentor are also concerned for their clients. Before,
23 attorneys would encourage their clients to seek help
24 in the courts no matter what their immigration
25 status. We have had to shift our advice to volunteer

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2 attorneys who are now taking calculated risks
3 counseling their clients to seek relief in the
4 courts. We conduct special trainings with our
5 partners to help them counsel clients in this new
6 climate of uncertainty. Here are two recent examples
7 of what our clients are experiencing. At the Bronx
8 Family Justice Center, a client came seeking a
9 divorce from her husband and orders of paternity and
10 child support from an abusive former partner.
11 Following the consultation, the client decided not to
12 file for paternity and child support, not file those
13 petitions, because she fears that Family Court
14 litigation will lead to her former partner's
15 deportation. The client cited recent reports to ICE
16 officials near and in courthouses. Her former
17 partner told her not to file because he didn't have
18 legal status and doesn't want to be in the court
19 system. Without those paternity and child support
20 orders, the client's divorce against her husband will
21 likely require hearing on notice to the abusive
22 partner, which could put the client in danger because
23 of the history of abuse. Another case, a client with
24 a pending application for U-non-immigrant status came
25 home and found a notice from the New York City

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2 Sheriff's Office stating that service was attempted
3 and requesting that the client contact the Sheriff's
4 Office. The client, who was 34 weeks pregnant at the
5 time became so panicked that the notice concerned her
6 immigration status that she went into early labor and
7 gave birth to the baby. The Sheriff's notice
8 concerned service of a visitation petition that the
9 abuses-- the baby's abusive father had filed in
10 Family Court. The presence of ICE in the court has a
11 chilling and rippling effect on the most vulnerable
12 of our clients. Many of our foreign-born clients are
13 scared to go to court. The courts stand for the rule
14 of law and has historically served as a safe place
15 for where rights are protected. We want to work with
16 the court system to develop protocols and rules that
17 will make the courts a safer place for survivors and
18 their family members. We ask that the court
19 employees not assist or cooperate federal law
20 enforcement activities in the course of their
21 employment, and any courthouse of the unified court
22 system including providing information to immigration
23 enforcement officers regarding persons appearing
24 before their court. The fear of ICE impacts all
25 client, domestic violence victims and non-victims.

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2 We are gravely concerned about all the impacts that
3 are not always measurable and not seen on immigrants
4 and their families. Thank you.

5 CHAIRPERSON LANCMAN: Thank you.

6 SARAH NOLAN: Chairs Lancman and
7 Menchaca, Council Members and staff, good afternoon
8 and thank you for the opportunity to speak to the
9 Courts and Legal Services and Immigration Committees
10 regarding the impact of new immigration enforcement
11 and tactics on access to justice. My name is Sarah
12 Nolan, and I'm a Supervising Attorney in the Legal
13 Health Division of the New York Legal Assistance
14 Group, also known as NYLAG, and I'm joined here by my
15 colleague, Alejandra Caraballo from the LGBTQ Law
16 Project. NYLAG is a nonprofit law office dedicated
17 to providing free legal services in civil law matters
18 to low income New Yorkers. NYLAG serves a wide range
19 of individuals including immigrants, seniors, low-
20 income members of the LGBTQ community, the HomeBound,
21 families facing foreclosure, low-income consumers,
22 children in need of special education, domestic
23 violence victims, persons with disabilities, patients
24 with chronic illness or disease, low-wage workers,
25 Holocaust survivors, veterans, and as well as many

others in need of free legal services. Because of the variety of work that we do, we have a perspective on the wide-ranging effects of ICE's increased presence in courtrooms. We'd like to share with you today just a few example, concrete examples, of how that's played out for us. The recent report of ICE's presence in the Human Trafficking Intervention Court that we've been talking about this afternoon has caused panic among many of our immigrant clients who are victims of domestic violence as we just heard. Likewise, many of these clients have already asked to withdraw criminal cases against abusers because they are afraid that ICE will arrest them when they go to testify about this abuse in court. Other clients have told NYLAG that they do not want to file cases at all in Family Court or file for immigration relief or even public benefits for fear that it will lead to detention and deportation. The palpable fear of ICE's presence in courtrooms also has a very real impact on our client's willingness and desire to move forward with their immigration cases. For example, NYLAG represents a couple in a pending case for asylum. Our client was driving his brother's car to work unaware that the vehicle's registration had been

expired. He was pulled over and issued a summons. Our client called us extremely concerned about appearing in court to resolve his case because of the report of ICE's presence in courtrooms. He was so afraid of being detained he seriously considered not going to court at all and would have thereby potentially jeopardized his very strong claim for asylum. Another client, a veteran of the US military delayed going to court to obtain a disposition on a very minor traffic violation for months due to her fear of immigration enforcement which delayed her application for citizenship. This fear of enforcement in courtrooms is having a very real chilling effect on our ability to assist our clients and obtain legal immigration status or citizenship. I will now turn it over to my colleague, Alejandra Caraballo, to discuss the impact of ICE's presence in New York City courts has had on our transgender clients.

ALEJANDRA CARABALLO: My name is Alejandra Caraballo. I work as a Legal Fellow in the LGBTQ Law Project at the New York Legal Assistance Group, and I wanted to speak particularly about the effect that this has had on our transgender, gender non-conforming and LGBTQI clients. New York City's

2 transgender community has been disproportionately
3 affected by threats of ICE in courts, particularly
4 the Trans-Latina community. NYLAG's transgender
5 clients, many of whom are served through its LGBTQ
6 Law Project are understandably terrified of ending up
7 in detention. The only detention facility designated
8 for transgender persons in the country is in
9 California. All other transgender persons are put
10 into detention with the general population, and
11 according to a human rights watch, transgender women
12 held in ICE detention facilities are often subjected
13 to violence, sexual assault and harassment because of
14 their gender identity. Transgender women are often
15 held in man's facilities which creates an
16 exceptionally high risk of sexual assault, trauma and
17 abuse. ICE resorts to the extended and unreasonable
18 use of solitary confinement of transgender women
19 because authorities cannot and will not devise any
20 safe and humane way to keep transgender women in
21 detention. Worse than the conditions in the ICE
22 detention centers, many transgender individuals face
23 deportation back to countries where they face
24 violence, harassment, rape, and sexual assault. They
25 often fled to United States in the first place due to

2 horrendous conditions they faced in their home
3 countries. Knowing this risk, NYLAG's immigrant
4 transgender clients are doing what they can to reduce
5 the risk of detention including not showing up in
6 court or filing for protections that would require
7 court appearances. For example, we represented two
8 transgender clients in their name-change petitions,
9 which are to make them safer through ensuring that
10 their documents match their gender identities and
11 would have reduced the chance that they would have
12 received harassment based on their gender identity.
13 We conducted screenings and consultations and drafted
14 these name-change petitions, and prior to filing in
15 Civil Court, the clients called and said that they
16 did not want to file because they were so scared and
17 fearful of ICE presence in the courts. So, they
18 continued to this day without identity documents that
19 match their gender identity. The chilling effect
20 that the presence of ICE is having in New York City
21 courts is truly dangerous to this population that is
22 already vulnerable. For them, the situation is truly
23 life or death. While we were pleased with the Chief
24 Judge Janet DiFiore's statement following the arrest
25 in the Human Trafficking Intervention Court

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2 requesting that ICE treat courthouses as sensitive
3 locations similar to hospitals, schools and places of
4 worship, we believe that further steps must be taken
5 to prevent immigration enforcement inside of New York
6 City courts. We support the proposal that the Office
7 of Court Administration issue a directive that
8 judicial warrants are required for civil arrests in
9 courthouses unrelated to the proceeding at-hand.
10 This will ensure that ICE is executing targeted
11 enforcement rather than raiding courthouses to round
12 up as many immigrants as possible. Further, the
13 Office of Court Administration must train its
14 employees, including judges and court officers on
15 interactions with ICE. We believe that all unified
16 court system employees should be directed not to
17 cooperate with ICE or provide any information that
18 not legally required to federal enforcement agents,
19 including pointing out specific individuals when ICE
20 cannot identify them. We urge the Council to
21 advocate with the Office of Court Administration to
22 put these two rules in place to help protect
23 immigrants in courts. I want to thank Chairs Lancman
24 and Menchaca and the Committees for holding this
25 important hearing and shining a much-needed light on

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2 the issues of ICE in New York City courts, and
3 particularly the effects that it has on the
4 transgender immigrant community.

5 CHAIRPERSON LANCMAN: Thank you all very
6 much, obviously for what you do, but also for your
7 testimony. It's very, very important that people
8 understand that this is not just an issue, you know,
9 our Criminal Courts, but affects legal proceedings
10 and other things that are connected to our judicial
11 system in every courthouse. Do you have questions,
12 Council Member?

13 CHAIRPERSON MENCHACA: No, just a thank
14 you as well for being here, for bringing those
15 voices. The continued connection to those voices is
16 what's going to push this forward, and I know how
17 hard it is to carry these cases with you, both
18 through your personal connection to them and your
19 commitment to them, but these are things that are
20 going to be able to melt the difficulty that right
21 now we're experiencing. So, just thank you for your
22 courage and your commitment to this, and we're with
23 you. Thank you.

24 COUNCIL MEMBER LANCMAN: And let me just
25 add, specific ideas-- we're taking notes, but

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2 specific ideas that you would like to see OCA
3 implement in addition to completing barring ICE from
4 any of the courthouses in New York State and New York
5 City, please share them with Racheal Kagan. Like I
6 said, we're taking notes, but I want to make sure
7 that nothing gets lost in cracks.

8 TERRY LAWSON: We, I think we're all part
9 of the same kind of working groups that have all been
10 thinking about it. Defenders were able to elucidate
11 those ideas, but I think we're all in agreement that
12 that's what we have to offer.

13 CHAIRPERSON LANCMAN: Got it. Thank you
14 very much. Our next panel is Nyasa Hickey from
15 Brooklyn Defender Services, Perla Lopez from Make the
16 Road, Yvonne Chen from Sanctuary for Families, Allen
17 Keller, Doctor Allen Keller, from Health and Human
18 Rights Bellevue Program for Survivors, and Theo
19 Liebmann, the Hofstra University Law Clinic. Come on
20 down. I hate to do this to you. I know that we told
21 people five minutes. If you could do three minutes,
22 that would be great. If you feel that you can't,
23 that's okay, too, but we have two more panels, I
24 think, and yeah. So, let's all raise our right
25 hands. Do you swear or affirm the testimony you're

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2 about to give is the truth, the whole truth and
3 nothing but the truth? Terrific. Who would like to
4 go first?

5 THEO LIEBMANN: Is that on? I'm Theo
6 Liebmann. I work at the Hofstra Law Clinic in
7 Hampstead Long Island, and I run a legal clinic
8 there. For the past 18 years I've directed this
9 clinic. We advocate for immigrant children who are
10 escaping violence, poverty and neglect. We worked on
11 behalf of Haitian children who have been orphaned
12 after the devastating 2010 earthquake, LGBTQ youth
13 who are escaping countries where their sexuality is a
14 crime, and we've represented countless survivors of
15 physical and sexual abuse we advocate for our young
16 clients in New York City and Long Island's Family
17 Courts, Appellate Courts, and Federal Immigration
18 Courts to achieve two overarching goals promoting our
19 client's safety, stability and permanency by
20 establishing formal legal guardianship arrangements
21 between them and their primary care takers that, of
22 course, happens in the City Family Courts, and by
23 pursuing special immigrant juvenile status and lawful
24 permanent residence to ensure that our clients don't
25 have to return to countries where they've endured

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2 violence, abject poverty, and other traumatic
3 experiences. Guardianship proceedings and key
4 elements of the special immigrant juvenile process
5 require our young clients and their families to
6 initiate matters in the state Family Court, to attend
7 court appearances and hearing in family courts and to
8 provide extensive personal information to Family
9 Court judges and administrators. In the 21 years
10 that I've worked in New York's Family Courts,
11 including the City Family Courts, as well as Long
12 Island, I had never ever seen or heard of a single
13 instance of ICE enforcement or presence in Family
14 Court buildings, nor ICE involvement in any aspect of
15 Family Court proceedings. That changed in November
16 of 2016. Recent activities of ICE in Family Courts
17 that had been reported and confirmed by the Immigrant
18 Defense Project and others include the following: On
19 November 22nd, ICE agents arrested a mother who
20 appeared in Albany Family Court for a Pins [sic]
21 Petition that she'd field after her teenage daughter
22 had run away. While attorneys for the mother and the
23 daughter were conferencing the case attempting to
24 resolve it, ICE agents stood outside the courtroom
25 for a number of hours, and at the conclusion of the

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2 proceeding, the ICE agents took the mother away,
3 detained her at the Albany County Jail, and her
4 daughter and son were both placed in foster care
5 while she was detained for over a month and a half.
6 On March 16th, ICE agents arrested the father of a
7 five-year-old as he waited to appear for a child
8 support matter in Brooklyn Family Court. He's the
9 lawful permanent resident and he was making his
10 second court appearance. And as you referenced,
11 Councilman, on April 19th, plain clothed ICE agents
12 arrested a father who was appearing for a visitation
13 matter in Suffolk County Family Court. Even before
14 ICE started to have a presence in Family Courts, it
15 had often been a challenge to convince our young
16 clients and their families that access in courts, the
17 Family Courts, is a viable method of achieving their
18 goals of safety and stability. Security screening at
19 the courthouses, the formality of the courtrooms
20 themselves, the presence of uniformed court officers
21 and the practice of requiring fingerprints are among
22 the common aspect of court involvement that many
23 might take for granted, but can be especially
24 anxiety-producing for young immigrant clients. If
25 you give me just oen minute, I'm almost done. Yeah.

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2 CHAIRPERSON MENCHACA: You can wrap up.
3 Thank you so much.

4 THEO LIEBMANN: Yep. For the first time,
5 weighing ICE and making the decision not to pursue
6 relief to which they are entitled is something that's
7 happening with our clients, and frankly, unless we
8 can say to immigrant clients honestly that New York
9 Family Courts are taking action to keep ICE out of
10 them, we'll continue to make it harder for them to
11 achieve basic human goals of safety and civility.

12 CHAIRPERSON MENCHACA: Thank you for
13 that.

14 NYASA HICKEY: Hi, good afternoon. My
15 name is Nyasa Hickey. I'm a Supervising Attorney at
16 Brooklyn Defender Services, which is another public
17 defender office. So, I hope to sort of, in my
18 testimony, answer a few of the questions that came up
19 in the first panel. So, as we heard, there are many
20 problems with ICE's courthouse arrests, problems that
21 include non-citizens feeling pressured to take pleas
22 when they would have otherwise gone to trial, as is
23 in our written testimony. People being-- clients
24 being deterred from probation sentences because of
25 concerns with probation and immigration enforcement

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2 interaction, as well as people being deterred from--
3 excuse me-- judicial diversion programs. So, ICE
4 courthouse arrests interfere with efficacy of
5 diversion and treatment program for vulnerable
6 populations. We've heard a lot of testimony about
7 the human trafficking intervention part. I have
8 another example for you. We have a client who was
9 arrested while appearing in mental health treatment
10 part. He was complying under the mental health
11 treatment program and doing very well for about nine
12 months. He was arrested and detained in immigration
13 custody based on just a 22003, which is a simple
14 misdemeanor controlled substance possession charge.
15 He's an LPR, and he was detained for seven months
16 facing seizures and other med-- severe medical
17 problems in immigration detention. His story also
18 highlights the necessity for having immigration
19 lawyers in immigration custody and highlights some of
20 the problems in immigration detention, including lack
21 of healthcare. He was actually released today under
22 a second circuit case that said that the conviction
23 that he was being held on is not actually a
24 deportable conviction. So, right, once-- and there's
25 also a recent example of Rolonda Mesa-Espinosa [sp?],

in Hudson County Jail who died while he was in immigration custody, and he was arrested actually not based on Immigration and Customs Enforcement looking for him, but they were looking for somebody else. So, to go to the question of what-- so whether there's mistaken identities, there absolutely is. Ultimately, the surest way for local policy makers to protect immigrant New Yorkers is to reduce court appearances, period, and the idea of decreasing the number of court appearances by waiving clients' presence in courts is thoughtful, but it also presents problems when our clients are not there present for the criminal proceedings which have grave consequences. Ultimately, the best response would be to end Broken Windows policing and to stop low-level arrests. We have to ask ourselves why people who are victims of human trafficking or who are-- have mental health issues or even appearing in court proceedings to begin with and to decrease those vulnerabilities for non-citizens, we should just look at alternative ways to resolve those issues. just very briefly, three-- Council Member, you asked about what the state can do, and there are three active reform campaigns that the City Council could advocate for,

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2 including ending arrests of human trafficking victims
3 and sex workers. There's state legislation awaiting
4 Governor Cuomo's signature that would end the unjust
5 arrest of working New Yorkers for carrying tools such
6 as gravity knives, and there's state legislation to
7 legalize and regulate sensible marijuana access. So,
8 there's much more that I could say, but one example
9 of a policy that the court could implement is the one
10 that was implemented in King County in Seattle, which
11 is neutral on its face, does not necessarily target
12 Immigration and Customs Enforcement officers, but
13 basically says that arrests based solely on
14 immigration status will not happen in the court, and
15 from what we've heard so far, those arrests have
16 been-- have decreased. So, that's one idea.

17 CHAIRPERSON MENCHACA: Thank you. And
18 for anyone else that wants to kind of pre-empt some
19 of that work as well to list ideas on the state,
20 where the state can do that would be very helpful.
21 Thank you.

22 YVONNE CHEN: Good afternoon. My name is
23 Yvonne Chen. I'm the Manager of Outreach at Sanctuary
24 for Families. We are grateful for the New York City
25 Council and for the opportunity to testify today and

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2 to Council Member Lancman for calling this urgent
3 hearing to discuss the crisis triggered by US
4 Immigration and Customs Enforcement appearances in
5 our city courtrooms. As we have heard today, less
6 than two weeks ago ICE agents entered the Queens
7 Human Trafficking Intervention Court, a problem-
8 solving court whose goal is to identify trafficking
9 victims and other-- and offer comprehensive services
10 to assist them in escaping their abuse not only from
11 the massage parlor owners and brothel keepers who
12 hold them captive, but from the thousands of sex
13 buyers who rape them with impunity. As such, many of
14 the defendants are themselves victims of horrific
15 crimes and feel hopeless about their prospects of
16 getting help. The terrifying appearance of three
17 male ICE agents to detain them rather than to
18 investigate the abuses against them not only fail to
19 protect public safety by eviscerating the trust the
20 courts have carefully nurtured. ICE aided
21 traffickers in instilling the kind of fear in victims
22 that discourages them from seeking justice.
23 Sanctuary was closely involved in creation of New
24 York's Human Trafficking Intervention Courts, also
25 known as HTICs, which identify trafficking victims

and offer them social and legal services as an alternative to criminal conviction. Since the launch of the HTICs, Sanctuary has provided immigration consultations and counseling services to increasing numbers of victims in Queens and in Brooklyn annually, from 57 in 2014 to 370 in 2016. Among service providers working in the City's trafficking courts, Sanctuary has elicited the highest rates of victim disclosure due to the culturally and linguistically sensitive trauma-informed interviewing techniques utilized by our staff and our pro-bono partners. The outcomes reveal a brutal industry that preys upon some of the most defenseless members of society, many of them Chinese and Korean women, most of them mothers, and in some cases, grandmothers who come from impoverished rural communities with little education hoping to escape abuse in a land they believed valued human dignity. These women instead have been coerced into providing sexual services through debt bondage and under threats of arrest and deportation. On June 16th, ICE sought to detain one defendant, a Chinese woman believed to be a trafficking victim who like many of the East-Asian defendants seen by Sanctuary had been arrested for

unlicensed massage. This young woman was on a track to have the charges against her dismissed after completing her mandated services. Instead, by complying with the legal requirement to appear in court as scheduled, she suddenly risked detention and deportation. All of this occurred in front of dozens of other immigrant defendants in the same situations, and many surely resolved at that moment never to return or complete their services. After court broke for lunch, two Chinese women approached me anxiously why ICE was there and if they were going to be deported next. They were terrified to even exit the courtroom and asked me escort them outside so they could get some food as they had been waiting since early morning for their case to be heard. They panicked and decided to remain huddled inside the courthouse rather than risk arrest. I could tell they were famished, but because they could not bring themselves to step outdoors, the best I could do was bring them some stale bagels. As I sat with them for a few minutes, they wondered how they could possibly finish their session and return to court given the risk that doing so could cause them from being deported. The mental health ramifications on a

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2 population of immigrants such as those in Queens,
3 scores of whom fled traumatic experiences of the
4 State control in China is chilling. Coming from
5 places where corruption runs rampant, our clients
6 experiences overwhelming anxiety and paralyzing fear
7 in public systems, especially the justice system.
8 however, having been betrayed by supposed friends who
9 trap them into illicit massage parlors where customers
10 are often permitted to beat, rape, stab, or strangle
11 them for sexual pleasure, fear and suspicion remain
12 high. Unfortunately, the challenge of identifying
13 victims and gaining their trust is getting more
14 difficult, not less. Given the anti-immigrant
15 sentiment expressed by the current federal
16 Administration, non-citizen victims are so terrified
17 of the risk of being deported just for reporting
18 their abuse, they choose not to come forward at all.
19 This only makes our city less safe. Immigrant crime
20 victims are driven into the shadows, less likely to
21 report crimes of fear of arrest and deportation while
22 their exploiters flourish, emboldened with this
23 knowledge and extra layer of fear that they can use
24 to coerce their victims into submission, and it
25 weakens the efforts of service providers who can no

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2 longer reassure clients they will be safe in the
3 courts, and where victims must not be allowed to
4 believe that their traffickers-- what their
5 traffickers tell them is true. If you try to escape
6 and seek help, the American government will arrest
7 you and lock you up instead. Our courtrooms must
8 remain a sanctuary for victims and crime-- victims of
9 crime seeking justice. Thank you for listening to
10 this testimony, and thank you for your work on behalf
11 of our most vulnerable clients.

12 CHAIRPERSON LANCMAN: Thank you.

13 PERLA LOPEZ: Good afternoon. My name is
14 Perla Lopez. I am an organizer at Make the Road New
15 York. Thank you to the City Council for creating
16 this opportunity for testimony on the harmful impact
17 of the recent ICE enforcement in New York State
18 courts. Make the Road New York is the largest
19 immigrant root-- grassroots immigrant organization in
20 New York City working to build a power [sic]
21 [inaudible] working class community to achieve
22 dignity and justice to organizing policy innovation
23 to family education and survival services. We tackle
24 the critical issues facing our community including
25 workers' rights, tenants' rights, language access,

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2 LGBTQ justice, healthcare access, youth development,
3 and immigrant civil rights. As we are all aware,
4 immigrant communities are under attack. The fear
5 felt by our members and clients are palpable when
6 they enter offices and ask whether if they have to
7 travel to go to work, to drive or show up to the
8 court date, a question we are receiving more and more
9 often. New York City has been a national leader in
10 championing policies to solve the separation of
11 immigrant families by ending [sic] the collaboration
12 with ICE's inhuman enforcement activities. We must
13 do everything we can as a city to stop ICE from
14 entering our courthouses and creating a culture of
15 fear in our justice system. Recently, one of our
16 members who spoke at the Immigration Committee at the
17 City Hall, City Council, about her story. Her
18 husband partner and father of her children was picked
19 up by ICE in front of their eyes outside of the
20 courthouse after a court appearance. He was recently
21 denied bond and was deported. Their family is
22 suffering endless pain and hardship. Also, another
23 [inaudible] an unaccompanied minor fleeing violence
24 in Guatemala with a pending application for special
25 immigrant juvenile status was arrested in Criminal

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2 Court reporting on probation and is now in detention.
3 Many of our clients and members are now scared to go
4 to Family Court as well as Criminal Court. ICE
5 presence in our court is terrible public policy and
6 creates clear disincentive to show up to court
7 appearance. News travels fast in this days and age.
8 Our communities know about Ms. Gonzales, a
9 transgender woman who from Texas who was detained by
10 courthouse while attempting to obtain an Order of
11 Protection against her abuser. ICE presence in our
12 halls of justice sends the message that immigrants
13 [inaudible] of crime are not even safe of reporting
14 crimes. The City must explore all options within its
15 power to prevent ICE from making arrest in any
16 courthouse. Meanwhile, New Yorkers are living in
17 constant fear. New York City must continue to lead
18 the nation and stand up for inhumane and injustice
19 immigration presence in our courthouse. Thank you
20 for your leadership and continued dedication for
21 these issues.

22 CHAIRPERSON LANCMAN: Thank you.

23 ALLEN KELLER: Thank you. I'm Doctor
24 Allen Keller, an Associate Professor at NYU School of
25 Medicine, NYU Gallatin School of Individualized

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2 Study, and I direct the Bellevue NYU Program for
3 Survivors of Torture in the NYU Center for Health and
4 Human Rights. So, thank you so much for holding
5 these hearings at a time when it seems we really need
6 to be reminded that we are a society, a city, a
7 nation based on the rule of law, the fairly applied
8 and fundamental tenants of decency and humanity, and
9 we seem to have forgotten that. President Trump has
10 added a new level of vitriol and hatred. You know,
11 to paraphrase Mark Twain's statement, you know,
12 "There are lies, damned lies, and then there are
13 President Trump's tweets." And among those tweets
14 are the lies that undocumented immigrants are a harm
15 or danger, which it just isn't borne out by the
16 facts, that all individuals are axe murders or
17 pedophiles waiting to happen. We must use the
18 detention and the ICE system to protect ourselves and
19 appropriately detain, but the way it is being applied
20 is like using a sledgehammer to open up an egg, and
21 this has harmful effects, devastatingly harmful
22 health consequences for the individual, the community
23 and the society. For the individual, that trauma
24 that some of my colleagues here described being
25 detained and that fear, and also as has been

mentioned, and I actually was one of the co-authors of Human Rights Watch Report on Deaths in Detention. So I can tell you, not only is the healthcare or lack thereof in ICE facilities potentially harmful to one's health, it's potentially fatal. So, both for trauma and healthcare or lack thereof, it's really problematic. For the community, this ripple effect of fear and terror-- as somebody who's cared for torture victims, I've learned that when one individual in the community is tortured-- and frankly what's happening in these cruel and inhuman round-ups and assaults our places of safety in the courts, is tantamount if not to torture to cruel and inhuman and degrading treatment, and it has to stop. So, it's harmful to our community. How can you be-- have a safe community when people don't feel safe to report crimes, when people don't feel safe to participate in the legal system, when people don't feel safe to go for healthcare? And that has impact both for the individual and for the community. And then as a society, we're wasting our resources. We need our resources spent where there's really bang for the buck. Our resources are being spent on swapping out the war on drugs for the war on immigrants. This is

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2 about feeding the seven-headed immigration detention
3 hydra and nothing less. The situation I fear is
4 getting worse is Al Jolsen [sp?], the son, or
5 immigrant himself, had said, "We ain't seen nothing
6 yet." What we're seeing where individuals when they
7 go for their asylum hearings are taken into custody
8 is just going to escalate. So what can we do? What
9 can you do? So, number one, I would plead with you
10 just as there is a presumed right to representation
11 in criminal proceedings, there must be maintained
12 [sic]. You must fight tooth and nail including any
13 proposals by the Mayor or anybody else to undermine
14 that core value. Because I'll tell you, I'm not sure
15 how many heroes there are in this whole thing, but
16 some of the heroes are my attorney colleagues who've
17 represented these folks. And the other thing I'd
18 like to see which I'm spearheading with colleagues is
19 to make sure that all undocumented immigrants not
20 only have access to healthcare, which Bellevue where
21 I've spent my career and public hospitals are
22 dedicated to, but through a system of the immigrant
23 health advocacy program, which I'm spearheading, that
24 anyone in immigration proceedings has access to a
25 health professional to document the harmful effects

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2 of wearing an ankle bracelet, the harmful effects of
3 not getting your medications as was described, and
4 the trauma to that individual and the family of this
5 detention. So, I must ask you to stand strong to
6 those in Washington, and perhaps even those here in
7 New York City. Thank you.

8 CHAIRPERSON LANCMAN: Thank you all very
9 much. So you were in the Human Trafficking Court the
10 day that ICE showed up?

11 UNIDENTIFIED: I was.

12 CHAIRPERSON LANCMAN: Yeah. You know, it
13 has to be mentioned, I don't think it has been, but
14 how fortunate I think that woman was that she was in
15 the courtroom with a judge as sympathetic and
16 empathetic and courageous as Judge Serita who did what
17 needed to be done to protect her, and one of the
18 things that we are hoping to see from OCA and hoping
19 to see to come out of this process is that the rights
20 of people in our courts are not dependent on landing
21 the right judge and the right day when ICE shows up.
22 Thank you all very much for your testimony and for
23 everything that you do.

24 UNIDENTIFIED: Thank you.

25 UNIDENTIFIED: Thank you.

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2 CHAIRPERSON LANCMAN: Our next panel:
3 Karina Alomar from the Latino Lawyers Association of
4 Queens, Fryda Guedes, the Hispanic Federation, Jose
5 Perez, Latino Justice, Albert Cahn from CAIR New
6 York, and Michael Snow from the Anti-Defamation
7 League. We have seats for everyone? Same guidance,
8 if you can do it within three minutes, we would
9 appreciate it, but if you got to do five minutes, we
10 understand. You all raise your right hand. Do you
11 swear or affirm the testimony you're about to give is
12 the truth, the whole truth and nothing but the truth?
13 Thank you all very much. Would you like to lead off?
14 You have to hit the button.

15 KARINA ALOMAR: Good afternoon Chairs
16 Menchaca, Lancman and distinguished Council Members.
17 My name is Karina Alomar. I am the immediate past
18 President of the Latino Lawyers Association of Queens
19 County. I'm a private defense attorney, and I'm here
20 to testify on behalf of our members and our current
21 President, Catalina Cruz. The Latino Lawyers
22 Association of Queens County was formed in 1996. The
23 purpose was to promote the general welfare and legal
24 rights of the Latino community and advance the
25 opportunities that exist for Latino legal

2 professionals. Our organization is made up of more
3 than 100 attorneys, including private practitioners,
4 members of legal service agencies, judges,
5 professors, and students. We support our members
6 through continuing education courses and networking
7 and community through our Street Law in Espanol
8 Outreach Programs as well as referrals. A
9 significant number of our members work within the
10 criminal justices as defense attorneys, assistants,
11 District Attorneys, and judges. Under past
12 Administrations, ICE's presence inside the courthouse
13 was infrequent and often limited to the lodging of
14 immigration detainers against our clients until New
15 York City enacted the Detainer Law. Under our current
16 President we have seen a bold and often drastic shift
17 in the enforcement of immigration laws which most
18 recently included ICE's visit to the Queens County
19 Human Trafficking Intervention Court, a courtroom
20 that was created specifically to provide victims of
21 sexual slavery with a real opportunity for a better
22 life. According to the Administration at NICE, their
23 enforcement efforts are meant to remove so-called
24 criminal aliens, but this last incident demonstrates
25 the contrary to their claims, and it raises a number

of public safety and constitutional concerns. As officers of the court, we understand that there are laws and consequences to the violation of the laws. However, violations of civil immigration laws carry consequences at par with the violation of criminal laws, but not with the same constitutional protections. As practitioners, we are afraid for what type of enforcement will mean for our clients and must get creative in order to protect them. For example, both in Criminal and in Family Court, we now go in and do not call our client's names. In Criminal Court, we may ask for bail detention for our clients so that ICE does not come in and pick them up and deport them. Alarming, ICE has also made appearances in Family Court, creating dangerous situations for children and mixed status families. For example, there have been neglect situations where one parent is undocumented, and they are afraid to let the courts know that their child's safety may be at issue with the other parent. I fear for my own clients. I have a client that called me this morning who told me, "My husband said that he's going to call immigration if I continue with my divorce. So, please, do not do anything for my divorce. Let him

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2 take everything." So, she's walking away after a 30-
3 year marriage with none of his retirement benefits.
4 She's walking away from a house that has equity over
5 500,000 with nothing because she is too afraid to go
6 to court because he has threatened her with
7 deportation. It cannot be overstated that ICE's
8 presence in the City's courtrooms will also
9 significantly impact the public safety of our
10 community. We are concerned that the progress made
11 in New York City by detainer laws, municipal
12 identification cards and other Sanctuary City
13 policies will be undermined by the outrageous
14 immigration enforcement tactics. As an association,
15 we are committed to continuing to educate our
16 community and our colleagues about the changes in
17 immigration law and enforcement practices so that we
18 can all be prepared. And although we understand that
19 these are federal principles and the Council's
20 ability here may be limited, we thank you for
21 shedding light on the issue and ask you to continue
22 to creatively think of ways to protect New Yorkers as
23 well as support legal services and organizations that
24 represent and educate our immigrant community. Thank
25 you.

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2 CHAIRPERSON LANCMAN: Thank you.

3 JOSE PEREZ: Good afternoon, Council
4 Member. Thank you for inviting Latino Justice
5 PRLDEF. As you know, Latino Justice PRLDEF is a
6 civil rights legal defense fund founded back in 1972.
7 We are unfortunately all too familiar with the
8 Immigrations and Customs Enforcement, and they're at
9 best one could describe rogue immigration enforcement
10 activities as currently manifested by their arrest
11 activities in our court. Back in 2007 we sued ICE
12 for engaging in rogue immigration home raids here in
13 New York, in Long Island and in West Chester and the
14 Hudson Valley. ICE, while attempting to execute
15 administrative immigration warrants, which only
16 permit a consensual entry into a home or residence,
17 would forcibly enter and break into these homes.
18 After protracted litigation, ICE ended up settling
19 that lawsuit paying over-- paying one million dollars
20 in damages to the plaintiffs who suffered this, some
21 of whom were US citizens and legal permanent
22 residents, and also reforming their home raids
23 practices. You now hear ICE say they do not engage
24 in home raids, but in immigration enforcement
25 activities. ICE's current practices of seeking to

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2 arrest immigrant New Yorkers in our courts based upon
3 nothing more than an immigration warrant is equally
4 egregious, offensive, illegal, and similarly violates
5 our nation, state and city's notions of equality and
6 access to justice for all. ICE continues to refuse
7 to recognize courts as a sensitive location as they
8 treat or deem hospitals, schools, churches, and
9 houses of worship where they typically will not seek
10 to engage in immigration enforcement activities,
11 absent exigent circumstances. ICE is, as you know,
12 one of three agencies with Department of Homeland
13 Security whose mandate is primarily to respond-- is
14 responsible for enforcing federal immigration law.
15 Their mandate is to arrest the detention and
16 deportation of individuals the agency believes are
17 subject to the removal from the interior of the US.
18 Part of the problem here and the focus that I would
19 like to bring is, ICE, the court system and the
20 Office of Court Administration's treatment of ICE's
21 law enforcement or police officers, as we know, that
22 is somewhat misleading. Immigration is a civil
23 administrative matter. Immigration warrants are
24 typically civil or administrative or detainers issued
25 by the agency themselves. They are not court orders

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2 or judicial warrants of removals signed by a
3 magistrate. The Fourth Amendment requires that
4 probable cause determinations must be made by a
5 neutral magistrate that is detached from the
6 activities of law enforcement. Although ICE
7 immigration detainers and warrants issued at civil
8 immigration removal proceedings are either signed by
9 ICE's own immigration judges or agency officials who
10 claim to have made a probable cause determination.
11 This is as if the NYPD could say they could issue
12 their own arrest warrants rather than applying to a
13 court of appropriate jurisdiction and having a judge
14 review and determine whether there is in fact
15 probable cause to arrest someone. New York rep--
16 Congresswoman Nydia Velazquez has stated that the
17 ability of ICE to pose as a local police officer is a
18 flaw in our system which keeps our community-- which
19 instead of keeping our community safe fuels fear,
20 undermines trust and ultimately further marginalizes
21 our immigrant neighbors. Congresswoman Velazquez has
22 introduced a bill in April to amend Section 287 of
23 the INA to prohibit DHS, ICE or ICE agents from
24 wearing clothing or other items saying that they are
25 police. In terms of the issue about sensitive

locations, courthouses unfortunately do not fall within this sensitive locations. New York Congressman Adriano Espaillat and Jose Serano also earlier this year introduced legislation that protecting sensitive locations aimed at codifying and expanding ICE's current administrative policies, protecting sensitive locations to include courthouses. Given what has transpired and occurred, as a Latino civil rights organizations, we are very much concerned to learn that the police chiefs of Los Angeles, Houston and other jurisdictions have reported dramatic decreases in the number of Latinos reporting rapes, other violent crimes, of victims of domestic violence, fearful, as my colleague just testified, of attempting to enforce, effectuate their rights. We've seen in El Diario in the Daily News landlords threatening tenants to check on their status and report them. This is not just-- this is an issue affecting all immigrant New Yorkers across the board in all our courts. The suggestions we have are recommendations that we would make. We ask that our Governor and our Attorney General and the Office of Court Administration deem all New York State courthouses sensitive locations, even if ICE or the

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2 Federal Government will not. Secondly, the Chief--
3 the Office of Court Administration must promulgate a
4 policy that will bar ICE agents from going into our
5 courthouses and making immigration arrests unless
6 they have a judicially prescribed arrest warrant
7 dually signed by a magistrate or a judge, a judicial
8 warrant defined as a warrant, issued by a magistrate
9 sitting in the judicial branch of local, state and
10 federal government. Now, as my colleagues testified
11 earlier, third, OCA Chief Administrative Judge should
12 bar court employees from assisting or cooperating
13 with ICE agents unless they have a court order a
14 judicial warrant. Thank you.

15 CHAIRPERSON LANCMAN: Thank you.

16 FRYDA GUEDES: Hi everyone. Good
17 afternoon. My name is Fryda. I'm here with Hispanic
18 Federation. Chair Lancman and Committee Members, we
19 thank you again for this opportunity to testify, not
20 just on behalf of Hispanic Federation but also on the
21 more than 60 Latino-led community-based organizations
22 that we represent. Today, Hispanic Federation
23 actually joins Latino Justice in calling on the City
24 Council to urge Chief Judge DiFiore and Chief
25 Administrative Judge Marks to protect immigrant New

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2 Yorkers and their families and restore trust in the
3 judicial court system, in the state court system.

4 For more than two decades now, the Federation has
5 been working tirelessly to advocate for the passage
6 of humane and fair immigration reform in our nation's
7 capital. So, we all know recent directives from the
8 Federal Government have magnified the scope and
9 impact of immigration enforcement in this nation. We
10 see this everywhere. It's manifesting in what exactly
11 the conversation we're having today. It increases
12 fears and anxieties in the immigrant community,
13 especially regarding the presence of ICE officers in
14 many safe spaces. Among them, state courthouses
15 which have long been spaces for all Americans to
16 claim legal recourse and relief regardless of
17 immigration status. We know that since February 2017
18 ICE officers have been showing up unannounced to
19 courthouses, not just in New York State, but in
20 Texas, Florida and Colorado. In New York State, at
21 least 38 ICE apprehension and attempted apprehensions
22 have occurred near or at a courthouse. Of those, at
23 least 19 apprehensions and nine attempted
24 apprehensions have taken place in New York City. ICE
25 agents have approached individuals, as we've

mentioned before, once they left the courtroom, not only in the hallways, but also outside on the front steps, and possibly as well on their way over to the subway after leaving the courthouse. It's really no surprise that immigrants fear the courthouse, as a building right now and by association that they fear the legal justice system. Hispanic Federation, we have public education campaigns very often. We recently launched one called Know Your Rights. It's a massive public education campaign that reached all of New York City, New York State and beyond. We talked to thousands of immigrants who called in about their rights, and we recorded that over 20 percent of them express apprehension over their safety when traveling to government buildings. That actually manifested in callers saying that they were afraid that they would not be protected from immigration officers in Traffic Court, Family Court. We got questions like, "Should I show up to my next hearing? I have a ticket, but should I go to court?" And we know that the answer isn't you shouldn't go to court, right? But they do have valid fears, and they are up against a lot. So, we're aware that many of the immigrants that have called our hotline have chosen

to miss court dates out of fear of being apprehended by ICE. In fact, the immigrant community has definitely shown increased fear and hesitancy in reporting crimes at all backed by a lot of other testimonies. So, this massive disengagement with the American Justice System we know is a grave matter, especially when affected individuals are victims of domestic violence and victims of assault. Not appearing before the court impairs the effectiveness of our justice system and will undermine the safety of all New Yorkers. So, in our over 25-year history, Hispanic Federation has supported millions of Hispanic children, youth and family be a broad-based coalition. So we know our community well. We know that immigrants in our city and state just want to build better lives, go to school, have work opportunities. So, by permitting ICE presence near and at courthouses we're shedding out some of those-- the most vulnerable members of our society who are very often in need of judicial recourse. As a Sanctuary City, our goal should be to protect immigrants from being detained and deported. We are not doing that by continuing the policies that we have today. We join Latino Justice and all of their

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2 asks. We're asking that the OCA deem all New York
3 State courthouses sensitive locations, that they
4 promulgate a policy barring ICE agents from making
5 arrests in NYS courthouses, and that OCA court
6 employees be prohibited from assisting and
7 cooperating with ICE agents. So, of course, we all
8 need to work together in order to eliminate all these
9 barriers that prevent immigrants in our communities
10 from reporting crime, participating in the courts,
11 and performing their civic duties. Thank you.

12 CHAIRPERSON LANCMAN: Thank you.

13 ALBERT KAHN: Good afternoon. My name is
14 Albert Kahn. I serve as the Legal Director for CAIR
15 New York, the Council on American Islamic Relations.
16 I'm here to say that New York must take immediate
17 action to make sure our courthouses remain open to
18 all, and I applaud Speaker Mark-Viverito, Chairman
19 Lancman and chairman Menchaca for calling for action
20 on this vital matter. Today, my oral remarks are an
21 excerpt of the longer written statement we have
22 submitted into the record. ICE's courthouse arrests
23 are not merely unjust. They may actually be
24 unconstitutional. And speaking just hours before the
25 resumption of President Trump's Muslim ban, it is

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2 quite obvious why this is of special concern for New
3 York's Muslim community. As the Supreme Court has
4 repeatedly stated, the 10th Amendment prohibits the
5 Federal Government from commandeering any state to
6 enforce federal laws of regulatory programs. To put
7 it simply, ICE cannot force New York to do its job.
8 Just as the Federal Government cannot compel the NYPD
9 to conduct immigration raids and just as it cannot
10 compel this Council to enact immigration bans, it
11 cannot transform our courts and prosecutors into
12 instrumentalities of immigration enforcement. The
13 constitutional concerns are clearest when ICE arrests
14 those who have been subpoenaed by prosecutors,
15 arresting New Yorkers who have been compelled by our
16 state to present at a time and place where ICE can
17 detain them. This tactic turns executive branch
18 officials into an indispensable component of ICE's
19 immigration enforcement strategy. Such a cooption of
20 state subpoena power seriously compromises the
21 integrity of our court system, adding centuries' old
22 experiment with federalism. Congress has not
23 authorized such a tactic. Our Constitution forbids
24 it, and so our state must now put an end to these
25 arrests. ICE's conduct also raises serious issues of

2 public accountability. Immigration enforcement in
3 state courthouses by a federal agency with a history
4 of impersonating state and municipal police forces
5 creates a clear impression of state cooperation with
6 the federal immigration program. Our Constitution
7 prohibits federal programs that mislead the public in
8 this way, since they disrupt democratic
9 accountability. The 10th Amendment forbids programs
10 like this which wrongly lead the public to hold state
11 officials culpable for decisions of federal
12 authorities. ICE's transformation of state
13 courthouses into traps for undocumented immigrants
14 thus places state officials into a situation where
15 the maintenance of a core state function implicitly
16 compels them to submit to cooperation with the
17 federal program. ICE's decision to disregard
18 constitutional boundaries and undermine the state
19 judicial system simply cannot be tolerated. In light
20 of the foregoing, we urge the City and State
21 officials to do everything in their power to block
22 ICE enforcement in New York's courthouses. I thank
23 you for giving me this opportunity to address these
24 urgent issues, and I look forward to working with the
25 Council to safeguard the rights of all Muslim New

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2 Yorkers and all immigrant New Yorkers in the months
3 and years to come.

4 CHAIRPERSON LANCMAN: I should have had
5 you go first. You set a good example. No pressure,
6 please.

7 MICHAEL SNOW: I'll do my best to follow
8 suit. Good afternoon, Chairman Lancman, Chairman
9 Menchaca. My name is Michael Snow. I'm here as the
10 Assistant Director of the Anti-Defamation League in
11 New York. Since 1913, the mission of the Anti-
12 Defamation League has been to stop the defamation of
13 the Jewish people and to secure justice and fair
14 treatment for all. We're dedicated to combating
15 anti-Semitism, prejudice, bigotry of all kinds, as
16 well as defending democratic ideals and civil rights.
17 ADL has also historically fought for just and humane
18 immigration policies. We also have vast experience
19 dealing with law enforcement. We're the largest non-
20 governmental trainer of law enforcement and we've
21 trained over 100,000 federal, state and local law
22 enforcement personnel in just the past 10 years on
23 hate crimes, extremism, terrorism, ethics and core
24 values. This puts us in a unique place to address
25 the relationship between law enforcement and the

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2 community, and it's also why we're here today to
3 discuss our deep concern about ICE enforcement in New
4 York City stemming from the current Administration's
5 aggressive deportation policy which has led to this
6 escalation. Members of the community, regardless of
7 immigration or citizenship status, need to be able to
8 contact local police and authorities and access our
9 justice system without fear of deportation. We're
10 concerned that increased ICE activity in courthouses
11 will deny vulnerable victims and individual's access
12 to justice as they're deterred from contacting
13 authorities and using the justice system when needed,
14 such as an event of a hate crime. ICE's pursuit of
15 domestic violence victims, sexual assault, hate
16 crimes in courts risk sending the message to other
17 victims that they too might be at risk of deportation
18 if they come forward or even witnesses or anyone
19 using the judicial system. Crime increases when
20 members of the community are afraid to turn to police
21 in the justice system for protection, and
22 perpetrators feel emboldened and unafraid of
23 consequences. This is why we also feel that
24 courthouses should be treated as sensitive areas akin
25 to houses of worship and schools. We urge the New

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2 York City Council to ask the Chief Judge and Chief
3 Administrative Judge to take steps to bar ICE
4 enforcement actions at New York State courthouses and
5 preserve equal access to our justice system. As has
6 been said, I think this is going to take a
7 multipronged approach. Just this week we hosted a
8 training for staff members of Latin American
9 consulates on hate crimes and bringing them together
10 with the Hate Crimes Taskforce of the NYPD. I
11 encourage you to consider our written testimony which
12 expands upon these issues, and I thank you very much
13 for your consideration and the time.

14 CHAIRPERSON LANCMAN: Very good. Now,
15 CAIR and ADL, you're both national organizations.
16 Are you aware of other jurisdictions that are maybe
17 being more aggressive in limiting ICE's access to the
18 courts? Any models out there or any jurisdictions
19 that in some way, shape or form are doing something
20 that we could bring into New York?

21 MICHAEL SNOW: It's a good question. I
22 can say that as the local or the New York chapter of
23 a national organization we're also in touch with
24 colleague who can share with us what they're seeing
25 in their parts of the country. And in our written

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2 testimony we mention the effect this has had in
3 places like Los Angeles, Boston and Miami where we
4 are seeing reported decrease in reporting of cases of
5 sexual assault and domestic violence.

6 CHAIRPERSON LANCMAN: I understand. The
7 question is are you aware of any other jurisdictions,
8 any other court systems that are restricting ICE's
9 ability in some way that we can see what they're
10 doing and maybe have New York do that? And if the
11 answer is no, that's okay, but since you're both
12 representatives of national organizations, I thought
13 you might know.

14 ALBERT CAHN: So, I actually reached out
15 to my colleagues nationwide about this, and so far,
16 we have found a lot of symbolic actions taken against
17 ICE enforcement, but we have yet to find
18 jurisdictions that have been willing to take a more
19 concrete stance, and we really think there's an
20 incredible opportunity here for New York to lead the
21 way by taking a more aggressive posture. And I will
22 say, as far as the 10th Amendment arguments, it's
23 something that New York led the way on in the past.
24 We set case law in 1992, went to the Supreme Court as
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2 a way to vindicate our state interest. I think there
3 is an opening for us to really be a model.

4 CHAIRPERSON LANCMAN: Just help us out.
5 What are you referring to there?

6 ALBERT CAHN: It was a case that dealt
7 with a regulatory program created by the Federal
8 Government regarding radioactive waste disposal. It
9 was a highly technical issue, but the question, the
10 core question was whether the state could be
11 compelled to facilitate with federal program, and
12 there the court took a very strong line in favor of
13 New York's rights to refuse to take part in that
14 federal program. And here, it's different. It is a
15 different fact pattern, but I think by going after
16 the cooption of the subpoena power as a quasi-
17 executive governmental function, there is case law
18 that would actually support either the Attorney
19 General taking proactive litigation or as a defensive
20 strategy to protect the OCA if they chose to
21 implement a more restrictive program.

22 JOSE PEREZ: Council Member, I would just
23 say one other thing. As you heard the Speaker say at
24 the press conference outside last Thursday, New York
25 should be in the Vanguard in doing more to protect

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2 its-- and not following the lead. We should be-- if
3 we are truly a state interested in protecting our
4 immigrant residents, we should be taking the
5 initiative and the lead on this.

6 CHAIRPERSON LANCMAN: Amen.

7 CHAIRPERSON MENCHACA: I have a question.
8 Jose, to you specifically on-- in your testimony you
9 allude to a very famous case, suing ICE, and thinking
10 about the kind of future litigation that could be
11 before us, how do you think we can think about case
12 work? How are you all preparing to kind of think
13 about case work, one? And then two, you brought up
14 another case or a point around law enforcement, the
15 definition of law enforcement and where these are
16 civil, essentially civil administrators within ICE as
17 a jurisdiction. Is your case, is there kind of a
18 case that we can build that can further define that
19 to really remove their access as what we can deem as
20 law enforcement? Is that the kind of avenue for
21 work?

22 JOSE PEREZ: As to your first question,
23 and again, I think there was suggestions early in the
24 first panel from Tina and others that why could not
25 New York or the court system or the Attorney

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2 General's Office bring an affirmative lawsuit
3 declaring that in fact that ICE's policy of
4 attempting to engage and effectuate civil immigration
5 arrests seek a declaratory judgment that that
6 violates the state sovereignty in running its own
7 courts, and they cannot compel the court system to
8 comply or assist or facilitate in their immigration
9 enforcement activities. So, there is, I think,
10 fertile ground in terms of trying to bring
11 affirmative litigation, or the other alternative is
12 to pass, as I suggested, declare our courts sensitive
13 locations and bar ICE from coming in, and let the
14 Federal Government sue us. As I think, again, the
15 Constitution is the Constitution irrespective of what
16 the feds believe they can or cannot do, and it is up
17 to our courts again to interrupt the Constitution to
18 protect our rights. In terms of your second
19 question, again, there have been a number of court
20 decision around the country already in terms of this
21 what we call detainers. Detainers are a mere piece
22 of paper issued by an ICE immigration enforcement
23 official that says they have determined that the
24 subject of that detainer, they have probable cause
25 that a person is here without permission or authority

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2 and that he is-- that person is removable. Again,
3 courts have determined that local law enforcements
4 that honor those detainers, those detentions are
5 violative [sic] of Fourth Amendment rights,
6 Constitutional rights to be free from unreasonable
7 searches and seizures. Immigration warrants in the
8 context of the Aguillar [sp?], the home raids case,
9 again, we've heard immigration proceedings are civil
10 and immigration warrants-- immigration judges are
11 part of the Federal Government. They're part of the
12 Executive Office of Immigration Review. They are not
13 necessarily magistrates or judges of record of what
14 we call Article III Judges in the federal courts who
15 would typically do this. So, again, there is I think
16 existing case law, precedent that would, I think--
17 that substantiates the points or the positions that I
18 made and in terms of the questions that you asked,
19 and therefore I think the court system, our Chief
20 Judge should feel comfortable, and if not, perhaps
21 she may want to consult with the Attorney General as
22 the state's chief law enforcement officer and
23 attorney in terms of seeking advisory opinion that in
24 fact New York can under the 10th Amendment resist and
25 refuse and not honor these pieces of paper, detainers

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2 or immigration warrants. It is very different,
3 again, from a police officer coming in with a court
4 order or arrest warrant issued by, signed by a judge,
5 versus an agency attempting to enforce and engage in
6 civil immigration enforcement.

7 CHAIRPERSON MENCHACA: Thank you.

8 JOSE PEREZ: Thank you, Councilman.

9 CHAIRPERSON LANCMAN: Good. Thank you all
10 very much. That's it? Our closing panel: Katherine
11 Bajuk, NYCDS, Dan Kinsay [sp?] A Womankind. I don't
12 know if that's Dan. I apologize if that's not
13 correct. And Heidi Hoefinger, Red Umbrella Project.
14 Ready? Do you swear or affirm the testimony you're
15 about to give is the truth, the whole truth and
16 nothing but the truth?

17 UNIDENTIFIED: Yes.

18 CHAIRPERSON LANCMAN: Thank you very
19 much. Would you like to lead off?

20 KATHERINE BAJUK: Good afternoon. My
21 name is Katherine Bajuk. I'm the Mental Health
22 Specialist Attorney at New York County Defender
23 Services, but I'm here to talk to you today about a
24 non-citizen client who had very serious mental health
25 and cognitive issues and who suffered needless trauma

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2 because of her arrest by ICE in the courthouse. Her
3 original charges were downgraded because of our
4 system's evolution towards treating rather than
5 punishing those with mental illness, and she received
6 a misdemeanor offer and plea and was sentenced to
7 compliance with mental health treatment. This
8 changed her life. For the first time ever she saw a
9 psychiatrist regularly. She took prescribed
10 medication. She was able to repair relationships
11 with family and friends. She learned a vocation.
12 The person I met in the interview booth who was
13 barking and spitting and cursing had blossomed into
14 someone who was finally well enough and felt safe
15 enough to finally feel hope. I'm going to call her
16 "JP." Her case was pending for about a year and ICE
17 never bothered with her once until last spring, her
18 only court date after the inauguration when ICE came
19 to arrest her in the courthouse. I tried to stop
20 them, the ICE agents, from doing this. I told them
21 about her cognitive issues and how it rendered her
22 like a child. I told them she suffered PTSD from
23 being a rape victim, a victim of multiple sexual
24 assaults, domestic violence, and the trauma of having
25 family murdered in her home country. I told them

about how she tried to kill herself on numerous occasions, that she suffered from depression and anxiety and that she was now being cared for by a psychiatrist and taking medication and doing very well. And so I asked them in light of all that could we voluntarily surrender her instead of having this arrest in the courthouse? No. I basically was begging them, well, how about then instead of taking her to detention, why didn't you take her to a hospital, because this was going to be a traumatic event sufficient enough to risk a psychotic break. They refused. One just shrugged. They wouldn't even tell me their names or show me any paperwork. When we told JP that ICE was there for her she began crying and shaking uncontrollably, and she clutched my hand like she was afraid to let it go. After she saw the judge, we tried to escort her from the courtroom, but ICE stopped us, and they were helped by a court officer, mind you. I had to pry her fingers from my hand, and they pulled her away crying and shaking. Despite her obvious special needs and our saying, "Look, let us just stand here while you cuff her." The excluded us from the double doors where the arrest took place. Before they took her

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2 away we tried to give them the letter we had from her
3 psychiatrist that detailed her trauma and her
4 treatment including the name of the medication she
5 needed. They refused to accept this. I finally
6 tucked it into her pocket as they led her away. When
7 she was taken by ICE that day, people in the
8 courtroom were visibly upset. At least one person
9 was crying. I heard someone say, "Well, I'm going to
10 tell people I know not to come to court, because ICE
11 is going to take them, too." At a time where our
12 criminal justice system is finally evolving to treat
13 rather than punish those with mental illness and
14 offer hope instead of jail, we cannot allow ICE in
15 our courtroom. We cannot allow people like JP to
16 risk interruption of their treatment and medication
17 and risk further needless trauma because of ICE.
18 Thank you.

19 CHAIRPERSON LANCMAN: Thank you.

20 HEIDI HOEFINGER: Thank you for the
21 opportunity to speak. My name is Doctor Heidi
22 Hoefinger, and I'm a post-doctoral researcher at
23 Kingston University in London and also John Jay
24 College of Criminal Justice here in New York City,
25 and we're involved in conducting a large

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2 international study that's looking at the social and
3 legal interventions taking place around migration,
4 trafficking and prostitution. Here in New York City,
5 in order to carry out this research, I'm working with
6 the community-based organization called Red Umbrella
7 Project who serves key populations and that's who I'm
8 here representing today. Red Umbrella Project is an
9 advocacy group for people in the sex trades. They
10 have been conducting research on the Human
11 Trafficking Intervention Court since their inception,
12 and in 2014 they published a peer-led observational
13 report on the first year of the courts, and it was
14 titled Criminal Victim or Worker: The Effects of New
15 York's Human Trafficking Courts on Adults Charged
16 with Prostitution-related Offenses. And I would just
17 like to provide a very brief statement from Red
18 Umbrella Project today. ICE presence outside of the
19 Human Trafficking Intervention Courts only serves to
20 further harm the victims that the courts claim to
21 serve. Often foreign nationals engage in the sex
22 trades to escape abuse, genocide, oppressive regimes,
23 transphobia, and other forms of terror. One of the
24 most valuable services that stem from the Human
25 Trafficking Intervention Court is the obtaining of T-

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2 Visas through social service agencies that survivors
3 of the courts are mandated to. These T-Visas help to
4 ensure that people who may suffer harm or even death
5 in their countries of origin can regularize their
6 immigration status and stay in the United States.
7 For these reasons we implore that New York City and
8 the Human Trafficking Courts ban ICE from being
9 present in or near the courts. Please honor the
10 mission of the Human Trafficking Courts in protecting
11 the most vulnerable and not treating victims as
12 criminals. Thank you.

13 CHAIRPERSON LANCMAN: Do you have a
14 question for them? Sure.

15 CHAIRPERSON MENCHACA: I just, I want to
16 ask-- this is our last panel, and you heard most of
17 what was discussed today. Is there one thing that
18 kind of pops up that, you know, both of you kind of
19 focus on different aspects of the mental health
20 component and how important it is to kind of think
21 about mental health in terms of the impacts and
22 really kind of focused population within the Human
23 Trafficking Courts. Is there anything that popped up
24 today that was specially-- it could be impactful to
25 the communities right now that can begin to show a

2 kind of real effort, not just by the Council,
3 possibly the state, the government and potentially
4 the Chief, the Chief Judge?

5 : I just, I think, you know, one of the
6 key messages that community, those folks who are
7 involved in the sex trades is this idea of stopping
8 treating victims as criminals so that we don't--
9 people who are potential victims of trafficking and
10 violence that they don't have to become court-
11 involved in order to receive services. And for folks
12 who end up in the commercial sex trades for a variety
13 of other reasons, the sex worker communities across
14 the board are fighting for decriminalization, and
15 this is gaining momentum at the global level as well.

16 HEIDI HOEFINGER: If I could just-- I
17 don't know that there's anything right now that gives
18 any hope for my clients who are criminally charged,
19 mentally ill people. Just to add, the judge in the
20 courtroom stopped the action in the entire court for
21 half an hour because she was trying to help, and she
22 called all the judges she knew. She called the
23 administrative judge and she called me up and said,
24 "There's nothing I can do. The case is on for
25 sentencing. She fulfilled every condition. I can't

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2 put her in today." And there is just this
3 helplessness among some of the judges who do want to
4 help our non-citizen clients who are being pursued by
5 ICE. And just to be clear, my client had a record
6 from before, all minor things. She even had a felony
7 conviction, low-level drug felony. The case where
8 she plead guilty to the misdemeanor, it was a
9 misdemeanor. It was petty larceny at that point. I
10 just feel like it's low hanging fruit and these
11 people are being victimized. Thank you.

12 CHAIRPERSON MENCHACA: Well, thank you to
13 both.

14 CHAIRPERSON LANCMAN: Thank you both very
15 much. Thank you for waiting. Thank you for what you
16 do, and thank you for adding that perspective.

17 KATHERINE BAJUK: Thank you for your
18 time. Have a nice day.

19 HEIDI HOEFINGER: Thank you.

20 CHAIRPERSON LANCMAN: With that, our
21 hearing is concluded.

22 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date July 31, 2017