

ICE Directive 11072.1: Civil Immigration Enforcement Inside Courthouses

Annotations by the Immigrant Defense Project and the NYU Immigrant Rights Clinic

On January 10, 2018, ICE issued its first formal, public policy [memo](#) on immigration enforcement actions inside courthouses and subsequently updated its [FAQ on Sensitive Locations and Courthouse Arrests](#). The Immigrant Defense Project and NYU Immigrant Rights Clinic have published this annotated document in order to provide legal and factual context for ICE's new directive. [Several chief justices](#) and the [American Bar Association](#) called on ICE to add courthouses to its list of "[sensitive locations](#)." This directive indicates that ICE is ignoring those requests and will continue to target immigrants in courthouses regardless of their impact on access to justice, public safety, or the operation of state courts.

For additional resources, including a sample amicus brief that can be used to defend immigrants in deportation proceedings see [IDP's ICE Out of the Courts page](#).

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses.

"Civil immigration enforcement" presumably refers to courthouse arrests by ICE agents to begin deportation proceedings. This unlawful practice has been on the rise under the Trump administration. [Several jurisdictions](#) have reported spikes in courthouse arrests, including New York, which saw an [1100% increase from 2016 to 2017](#).

[As legal scholars have noted](#), these arrests are not only bad policy, they are against the law. ICE's courthouse arrests interfere with the [constitutional right to access courts](#), and encroach on state courthouses in [violation of the 10th Amendment](#). These courthouse arrests also violate a [long-standing common law tradition](#) against civil arrests in courthouses. For more on why these arrests are unlawful, visit [IDP's Legal Resources page](#).

Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents.

ICE's view of safety is self-serving. [Under the Trump administration, the vast majority of noncitizens are viewed as a potential threat to public safety](#). Courthouse arrests do not increase safety, but clearly increase fear and confusion, and interfere with the effective administration of state courts. Findings from a [national survey](#), as well as surveys in [New York](#), [New Jersey](#), and [California](#), demonstrate that these arrests make victims of violence feel less safe and cut them off from the protections they need from courts. As numerous [District Attorneys](#) and [State Attorneys General](#) have warned, when noncitizens are afraid to attend court, the entire community is less safe.

When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Multiple accounts, including [videos of ICE courthouse arrests](#), often reflect excessive force and a clear lack of discretion. Moreover, what ICE describes as “discreet” contrasts with commonly held understandings of that term. ICE officers secretly patrol courthouses [in plain clothes, hide their badges, and often refuse to answer questions from attorneys or press about who they are or why they’re there](#). This only magnifies the impact on court proceedings by creating widespread confusion and fear.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE’s enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide.

ICE’s civil arrests are entirely different from arrests carried out by criminal law enforcement agencies. It is not routine for civil arrests to be made in courthouses. In fact, they violate a [centuries old common law tradition against civil arrests in courthouses](#). It is particularly unusual for a federal civil enforcement agency to encroach on the administration of state courts—a core state function. This ICE practice violates the [basic principle of federalism](#).

In addition, [ICE operates pursuant to “administrative warrants”](#) which can be issued by a wide range of ICE officers, in comparison to criminal warrants which are reviewed or issued by a judge. [Administrative warrants do not satisfy the requirements of the 4th Amendment](#).

And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

ICE openly frames this issue as [retaliation against localities](#) which have opposed the entanglement between immigration and local law enforcement. The Trump administration’s intention to undermine efforts to protect immigrant rights must not impede the functioning of state courthouses. ICE’s reasoning also falls flat because [ICE makes courthouse arrests in jurisdictions that fully cooperate with ICE detainees](#).

Courthouse arrests are not “necessary” – they just make it easier for ICE to arrest immigrants. ICE can easily track individuals to their court appearances through the [many databases they have access to](#). Even though doing so endangers the administration of justice, ICE is taking advantage of the fact that immigrants are either required to go to court or are seeking protection from the court.

- 2. Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety

threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

ICE makes this policy vague and open-ended by using the term “include,” leaving the door open to actions against a much bigger group of immigrants. A few of the “specific, targeted aliens” that ICE has gone after in courts include a [U.S. citizen who is a county employee](#), a [DACA recipient with no criminal charges](#) who was in traffic court, [victims of human trafficking](#), a [father asking for custody of his three children](#), and a [woman seeking a protective order](#) against her abusive ex-boyfriend.

This policy only addresses ICE arrests inside courthouses – [arrests targeting noncitizens who are entering or leaving courthouses are also common](#), and not addressed by this policy. [As centuries of common law establish](#), these arrests are just as impermissible as those that take place inside the courthouse doors – they do just as much to instill fear in the immigrant community and interfere with the court’s administration of justice.

Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE’s enforcement actions.¹

ICE could have issued a bright line rule protecting witnesses and family members, but instead this policy allows arrests under “special circumstances” which are illustrated by examples but not fully defined. This does not do enough to ensure the safety of witnesses and family and friends attending court. To make matters worse, DHS officials have previously explicitly announced that [victims and witnesses are not safe from arrest](#) in courthouses. The chilling effect on victims and witnesses who are fearful to appear in court has led prosecutors across the country, including [NY’s Attorney General](#), [NYC District Attorneys](#), the [Denver City Attorney](#), and a dozen [California prosecutors](#), to speak out against ICE’s courthouse arrests.

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President’s Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017). *Reliance on these memos contradicts ICE’s purported commitment to avoiding collateral arrests. The cited documents are the Department of Homeland Security’s blueprints for carrying out President Trump’s Executive Orders. Reflecting the President’s commitment to sweeping immigration enforcement, these memos pledge to no longer “exempt classes or categories of removable aliens from potential enforcement.” By citing these broadly worded memos, ICE is giving itself complete discretion in making “case-by-case” determinations about arresting witnesses, family or friends at courthouses.*

ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Under this policy, arrests in family court and other civil courts will be allowed to continue when it is deemed ‘operationally necessary,’ a completely vague standard to be determined at will by ICE. Practically speaking, this policy is also misguided because different courts are often housed in the same or adjacent courthouses. When an immigrant parent seeking child support sees ICE outside of a courthouse housing both family and criminal courts, this Directive isn’t going to quell her fears.

More fundamentally, this provision is based on a troubling misunderstanding of the constitution. The right to access courts applies to both criminal and civil court proceedings – it is not more permissible to target people in criminal court. ICE mischaracterizes people appearing in criminal court as “criminals and fugitives.” In fact, the noncitizens ICE is targeting are those who face criminal charges and choose to appear in court to defend themselves against these charges. They have a constitutional right to be in the courthouse.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building’s non-public entrances and exits.

Using non-public areas of the court allows ICE to hide its actions from the public, interfere with attorney-client communications, and pull a veil over its unlawful practices. In one Brooklyn operation, ICE agents arrested a man in a courthouse and quickly led him to a restricted area where his attorney was denied access.

ICE also affirms that it depends on court staff collusion. This means that ICE is taking advantage of state resources to do their dirty work. This violates the anti-commandeering principle, which says that the federal government cannot force states to enforce its policies. Immigration law does not and cannot authorize this kind of federal overstepping. And when immigrants see court officers helping ICE, it damages the community’s trust in the state court system.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions. This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

Most immigration offenses are civil offenses, but some, such as unlawful reentry, are considered criminal offenses. [The Trump Administration has announced its intention to widely prosecute criminal immigration offenses](#). This directive is focused solely on civil offenses, and makes clear that ICE feels justified in entering courthouses even where the arrest is not based on any violation of criminal law.

3. Definition The following definitions apply for the purposes of this Directive only.

3.1. Civil immigration enforcement action. Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.

4. Responsibilities.

4.1.The **Executive Associate Directors** for **ERO** and **HSI** are responsible for ensuring compliance with the provisions of this Directive within his or her program office.

4.2.**ERO FODs** and **HSI SACs** are responsible for:

- 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
- 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

4.3 ICE Officers and Agents are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.²

5. Procedures/Requirements.

5.1. Reporting Requirements.

² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses. *This memo references the statutory requirement in [8 U.S.C. § 1229\(e\)\(2\)](#) that for certain arrests, including some courthouse arrests, DHS must issue a written certification that it did not rely on a tip from a domestic abuser. [DHS rarely, if ever, complies with this legal requirement.](#)*



- 1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.³
- 2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.

6. Recordkeeping. ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567- 2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.

7. Authorities/References.

7.1. DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.

7.2. DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

8. Attachments. None.

9. No Private Right. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

³ ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.