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Hon. Janet DeFiore
Chief Judge
New York Court of Appeals
20 Eagle Street
Albany, NY 12207

Re: Protecting Immigrants' Access to the Courts

Dear Honorable Chief Judge DeFiore:

Ensuring the public's access to the courts has always been a critical part of the success of our nation's system of justice, one that our judiciary has zealously sought to protect. "Access to Justice" has long been a rallying cry across the country. As barriers have arisen, the judiciary has stepped in to protect the public's access.

Unfortunately, a very substantial barrier has arisen in the past two months. The federal agency charged with enforcing this country's immigration laws, the United States Immigration and Customs Enforcement ("ICE"), changed its practices and begun to, in or around this State's courthouses, seize and arrest individuals who were going to court to appear in both civil and criminal matters.

A revealing article on this new practice in the March 27, 2017, issue of the New York Law Journal detailed several such arrests and noted that a representative for ICE confirmed that these arrests were occurring. Concerned about the impact of these new practices, the New York City courts began keeping track of these incidents, at least the ones they are aware of:

Since February, when officials with the New York City court system began tracking ICE's interactions with litigants at city courthouses, there have been six encounters, of which three have resulted in arrests, said court system spokesman Lucian Chalfen.¹

¹ New York Law Journal, "NY Courts Track ICE Encounters With Litigants" March 27, 2017, available at www.newyorklawjournal.com/id=1202782175943/NY-Courts-Track-ICE-Encounters-With-Litigants?mcode=0&curindex=0&curpage=1

One of the encounters described in the article occurred March 17 in Brooklyn Family Court where ICE agents seized and arrested someone who had appeared in court with respect to a child support matter. That three of the six encounters did not result in arrests could be troubling if they were the result of misidentifications. In none of these cases did it appear ICE had obtained a judicial warrant to conduct the arrest.

The consequences of these arrests can be horrific, separating children from parents, breaking up families who have lived together here for decades, sending them to countries that may be less than welcoming to their return.

If this practice is allowed to continue, a large segment of the State's immigrant population will simply refuse to go to court if they believe there is any chance they could be seized by ICE agents, effectively excluding them from the judicial system. If they have a family member, a coworker, a classmate, or just a good friend who is undocumented, an immigrant is likely to refuse to go to court, irrespective of whether the matter was a civil or criminal matter.²

Police chiefs agree. The Major Cities Chiefs Association (MCCA), which represents the 68 largest law enforcement agencies in the United States, has voiced the same concern, concluding that local agencies enforcing federal immigration law “undermines the trust and cooperation with immigrant communities,”³ which “result[s] in increased crime against immigrants and in the broader community, creat[ing] a class of silent victims and eliminat[ing] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”⁴

For the same reason, the federal government's *21st Century Policing Task Force* took an even stronger stance against localities getting involved in enforcing federal immigration law, concluding that DHS “should terminate the use of the state and local criminal justice system, including through detention, notification, and transfer requests, to enforce civil immigration laws against civil and non-serious criminal offenders” (emphasis added).⁵ A very recent study confirms that conclusion, revealing that crime is statistically significantly lower in counties that do not hold people on the basis of immigration detainees, when compared to counties that do:⁶

² Aggravating the situation is the simultaneous expansion of ICE's "expedited removal" zone, an area previously limited to 100 miles from the border, to encompass the entire country. This designation empowers ICE agents to call for immediate removal of someone without court review. In sum, ICE now has the ability to seize someone without judicial authority and then deport them without judicial authority.

³ MCCA Immigration Position (Oct 2011) https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

⁴ Craig E. Ferrell, Jr. et al., “M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Policy Agencies,” at 6 (June 2006), https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf

⁵ President's Task Force on 21st Century Policing, *Final Report* 18 (Washington D.C. May 2015), http://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁶ Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-policies-on-crime-and-the-economy/>.

Altogether, the data suggest that when local law enforcement focuses on keeping communities safe, rather than becoming entangled in federal immigration enforcement efforts, communities are safer and community members stay more engaged in the local economy. This in turn brings benefits to individual households, communities, counties, and the economy as a whole.

The justice system only works if all the parties have unfettered access to the courts, be it a civil or a criminal matter. Police chiefs and law enforcement experts agree that this practice of ICE agents arresting immigrants in local courts must be brought to an end, that the continued use of the local justice system by ICE agents will result in higher crime rates, both with respect to local crimes as well as to future terrorist acts. In short, allowing this practice to continue is not only inhumane to those directly impacted but presents a danger to us all.

For the reasons cited above, we urge you to request that ICE halt its practice of seizing and arresting immigrants in or around local New York State courthouses.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Juan Cartagena', with a large, sweeping flourish extending to the right.

Juan Cartagena