Stephen and Sandra SHELLER | CENTER *for* SOCIAL JUSTICE
Temple University Beasley School of Law

OBSTRUCTING JUSTICE

THE CHILLING EFFECT OF ICE'S ARRESTS OF IMMIGRANTS AT PENNSYLVANIA COURTHOUSES

The Social Justice Lawyering Clinic

This report was produced by Patrick Gordon (’19), Kelley Grady (’19), and Shaqueil Stephenson (’19), law students in the Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice at Temple University Beasley School of Law, supervised by Professor Jennifer J. Lee. Students at the clinic work first hand on social justice issues that directly impact local communities, through legal representation, community education, and policy advocacy.

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Executive Summary

> *In Philadelphia, an undocumented immigrant worker was killed in a workplace accident due to the unsafe conditions that went unaddressed by management. His wife and family struggled to fill the void left by his absence. There were witnesses to the accident and a strong case for wrongful death benefits. Despite this, his wife and the witnesses to the accident decided not to pursue any claims against the employer because they were all too fearful of ICE to appear in court.*
>
> –Reported by a Philadelphia Attorney[1]

Since the election of President Trump, the priorities and tactics surrounding immigration enforcement have changed.[2] The categories of immigrants that are a priority for removal have expanded and Immigration and Customs Enforcement ("ICE") has told its officers to take action against all undocumented immigrants encountered on duty, regardless of their criminal history.[3] ICE's tactics have also become more varied in that immigrants are being arrested at their homes, on the way to school, or at their workplace.[4] In Pennsylvania, ICE arrests have increased by 34% in fiscal year 2017 as compared to 2016.[5]

The aggressive targeting of immigrants at the courthouse is one of ICE's latest enforcement tactics.[6] These arrests are happening nationwide, creating an outcry from judges, prosecutors, and advocacy organizations.[7] Because of these enforcement activities at the courthouse, immigrant communities are fearful of going to court, with the result that they are effectively denied access to the courts. Courts too cannot properly adjudicate cases, which undermines the integrity of the judicial system.

This report specifically studies the issue of ICE enforcement in Pennsylvania courts. We surveyed and interviewed lawyers, legal services organizations, victim services advocates, and community based service providers across Pennsylvania. We also reviewed written materials obtained and collected by advocacy organizations. A more detailed explanation of our methodology is in the Appendix.

We found that the problems related to ICE enforcement at courthouses are widespread across Pennsylvania. In particular, we found that in Pennsylvania: (1) ICE is effecting arrests in and around courthouses; (2) courthouse personnel are collaborating with ICE by asking about immigration status, providing information, or assisting with ICE arrests; and (3) immigrants fear going to court because of these ICE enforcement activities.

We found instances of ICE arrests or court collaboration in 13 counties across Pennsylvania (Figure 1). Unsurprisingly, 11 of these counties correspond to the top 12 counties with the highest number of immigrants in Pennsylvania.[8] Such arrests occurred on the way to court and inside the courthouse. Court personnel, particularly probation officials, collaborated with ICE at the courthouse. Further, we confirmed that ICE enforcement activities at the courthouse are creating fear in immigrant communities. Seventy-seven percent of respondents who worked on court related matters with immigrants either noted that clients "expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE."

Figure 1. Counties with Incidents of ICE Arrests or Court Collaboration

Allegheny
Beaver
Berks
Bucks
Chester
Cumberland
Delaware
Lackawanna
Lancaster
Lehigh
Montgomery
Northampton
Philadelphia

We also analyzed the ways in which ICE enforcement activities at the courthouse, which obstruct access to justice, are legally problematic. The Pennsylvania and US Constitutions guarantee that individuals have the right to access the courts under principles of due process, equal protection, and open courts. Under the Tenth Amendment, ICE cannot coerce the states to do its enforcement work. To the extent that court personnel are participating in such ICE enforcement activities, Title VI of the Civil Rights Act of 1964 also prohibits discrimination against individuals based on their national origin.

The Supreme Court of Pennsylvania has both the authority and responsibility to address ICE enforcement at the courthouse. At the end of this Report, we request that the Supreme Court create a special task force to develop model policies for adoption by the courts. We recommend that such policies incorporate the following principles:

- A protocol that limits ICE enforcement activities at the courthouse
- Limiting court personnel from using court resources to cooperate with ICE
- Prohibiting the collection of immigration status information by the courts
- Requiring ICE agents to register when entering the court
- Requiring training of judges, administrators, and court personnel

The adoption of appropriate policies, therefore, can not only mitigate the chilling effect of ICE arrests at the courthouse but also preserve the independence of the Pennsylvania courts from federal interference.

Introduction

ICE is a law enforcement agency housed in the US Department of Homeland Security (DHS) that is tasked with removing immigrants present in violation of civil immigration laws. Arrests by ICE are "administrative arrests" for violations of the civil immigration laws.[9] In this non-criminal context, ICE issues its own warrants that need not be reviewed by a judicial officer.[10]

Currently, ICE is engaging in a range of tactics to target immigrants, including arresting immigrants at the courthouse.[11] In North Carolina, a mother and her son, victims of domestic abuse, were arrested by ICE after appearing at a hearing.[12] In Pennsylvania, ICE detained a man on his wedding day at the behest of the judge presiding over the wedding.[13] The Immigration Defense Project reported that courthouse arrests and attempted arrests by ICE in New York increased by 1200% in 2017.[14] Because the arrests are often highly publicized, undocumented immigrants are expressing a "profound fear of going to court," essentially blocking their access to the courthouse.[15]

In response to the public outcry over these arrests, ICE issued a directive in early 2018 clarifying how it would make arrests in courthouses.[16] While the directive notes that agents should try to steer clear of civil proceedings and refrain from arresting accompanying "family members or friends," much discretion was left in the hands of the ICE agents.[17] The directive allows arrests to continue in civil courts, such as family courts, when "operationally necessary." It also directs ICE to make arrests in non-public areas of the courthouse "in collaboration with court security staff." Such secrecy and collaboration with courthouse personnel do little to appease fears within the immigrant community about their ability to safely access the courts. Rather than declare the courts a "sensitive" location, like schools, hospitals, and places of worship, where enforcement should not occur, this directive simply reaffirms that ICE will continue to target immigrants at the courthouse.[18]

To combat this phenomenon of ICE arrests, states and localities are responding. Various judges, attorney generals, and district attorneys from around the country have spoken against the practice (Figure 2).[19] As a result, some states and localities have begun to respond. California's Attorney General has issued guidance and model policies for California courts to address immigration enforcement actions at or near state court facilities.[20] Washington's Attorney General has also suggested that courts adopt best practices to address the issue.[21] The Office of Court Administration (OCA) of New York has also issued a protocol for how courthouse personnel should handle ICE enforcement at the courthouses.[22] Other courts have similarly delineated policies that seek to prohibit disruption to court business by ICE unless necessary to secure immediate public safety.[23]

Figure 2. State and Local Authorities Responding to ICE Enforcement

Supreme Court Chief Justice	Attorney General	District Attorney
California	Maine	Alameda County, CA
Connecticut	Maryland	Burbank, CA
New Jersey	New York	Brooklyn, NY
Oregon		Bronx, NY
Rhode Island		Denver, CO
Washington		Hawthorne, CA
		Long Beach, CA
		Los Angeles, CA
		New York, NY
		San Diego, CA
		San Francisco, CA
		Santa Barbara, CA
		Santa Monica, CA
		Sonoma County, CA

This report explores the issue of ICE enforcement at the courthouses in Pennsylvania. Part I reports the results of our investigation across Pennsylvania after talking and surveying advocates across the state. Part II discusses why ICE enforcement in the courthouses in Pennsylvania is legally problematic. Part III concludes with recommendations for how Pennsylvania can better protect access to justice at its courthouses.

Part I: Widespread ICE Presence in Pennsylvania Courthouses

Following national trends, ICE enforcement has grown in Pennsylvania.[24] The Philadelphia ICE office, which covers Pennsylvania, Delaware, and West Virginia, surpassed all 23 other regional offices in the country in making more "at-large" arrests of immigrants without criminal convictions in 2017.[25] This figure is particularly striking as Pennsylvania is home to the 16th largest undocumented population, with Delaware and West Virginia ranked far behind Pennsylvania.[26]

Enforcement at courthouses in Pennsylvania is a significant tactic in ICE's arsenal. A few well publicized instances of ICE arrests at courthouses in Pennsylvania were reported in the news, such as the stories about high school sweethearts getting married or a father addressing a messy divorce.[27] Other stories quickly circulated through word of mouth in immigrant communities.[28]

Our study was an attempt to more systematically gather these stories from across the state. We did so by surveying lawyers, legal services organizations, victim services advocates, and community-based service providers across Pennsylvania. Further, we were able to examine recent information about ICE operations at courthouses based on information from the Immigrant Legal Resource Center (ILRC) pursuant to their Freedom of Information Act (FOIA) request to DHS. Finally, we collected information from media stories and spoke directly with individuals who work at courthouses across the state. Our study, however, did not easily lend itself to any quantification of data (see Methodology in the Appendix).

Our findings reveal that ICE enforcement at the courts is widespread in Pennsylvania. We found three themes: (1) ICE arrests in and around courthouses; (2) courthouse personnel collaborating with ICE; and (3) immigrants who feared going to court. In particular, we found instances of ICE arrests or court collaboration in 13 counties across Pennsylvania (Figure 1). Further, those responding to the survey overwhelmingly reported that clients either expressed a fear of going to court or chose not to go to court because of ICE enforcement activities.

A. ICE Arrests

Our research has uncovered multiple instances of ICE apprehending individuals at Pennsylvania courthouses. There have been reports of ICE agents entering courtrooms, apprehending people in courthouse hallways and common areas, and waiting outside courthouses until people arrive or leave. Sometimes agents wait across the street from the building, usually with a photograph of their target.

People are being arrested in the area surrounding courthouses. In Bucks County, a community-based organization reported that a Mexican national showed up to Ottsville Magisterial District Court to pay for his ticket and he was "detained by ICE on his way into the courthouse." His ticket was for driving without a license after being pulled over for an obstructed window. The Bucks County group reported a similar incident of a Guatemalan national being "apprehended by ICE in the parking lot" after appearing at the New Britain Magisterial District Court. A person who works in the court system in Chester County recounts seeing ICE, in "unmarked cars" and "civilian clothing," arresting individuals on their way into magisterial district courts.

In Montgomery County, one attorney reported that ICE waits outside of the courthouse with "police photo[s]" and arrests people "before they go into the building." Because the immigrants never make it to their court hearing, judges issue "bench warrants" that are then held against the immigrant during their hearing before the immigration judge. Another community advocate from Montgomery County recounted an incident where she was outside the courthouse and ICE arrested the immigrant she was assisting, even though "the picture they [had] was not the person arrested." These reports were further confirmed by a news report of multiple incidents at the Montgomery County Courthouse with one observer stating "[t]he ICE agents are careful about how they're dressed . . . [t]hey seem inconspicuous when they're here."[29]

Less frequent but even more alarming are times when ICE enters courthouses to arrest people. In Berks County, an attorney reported that her client was arrested after appearing at a Protection from Abuse hearing. She stated "ICE agents sat through his hearing and arrested and detained him after." A community advocate in Berks County recounted how an immigrant was arrested when making his child support payments at the courthouse. In Allegheny County, a community-based organization stated that arrests usually take place outside of the courtroom. An advocate from this organization also reported seeing ICE agents or vehicles in or around the Pittsburgh family and criminal courthouses. In Chester County, a person who works with the court system recounted how ICE was waiting to arrest an immigrant in the basement as the sheriff accompanied the immigrant down to the holding cells. In Lehigh County, a court interpreter recounted how an

immigrant who appeared for her criminal hearing was "shivering outside a courtroom" because ICE had found her, taken her passport, and given her deportation papers. In Northampton County, a person who works with the court system confirms that ICE takes immigrants into custody at the courthouse and that the district attorneys or deputy sheriffs delay individuals from leaving so ICE has time to appear. As further detailed below in the section relating to courthouse personnel, attorneys and community advocates in several counties have also had clients arrested in the courthouse when they appeared for their appointments with probation.

In Philadelphia County, lawyers reported having witnessed people being arrested around and inside both the Family Court and the Criminal Justice Center (CJC). One lawyer reported that her clients are regularly "arrested by ICE on their way to criminal court." She stated "the most recent case is from today, one of my clients, who is in a diversionary program (no criminal conviction, and no previous criminal history) was detained by ICE when he went to court to report." Another lawyer provided us with the ICE record of arrest (Form I-213) of a client on his way out of CJC after having appeared in his DUI case and having received Accelerated Rehabilitative Disposition (ARD) instead of a conviction (Figure 3).[30] The arrest record confirmed that he had no other previous criminal history except being "charged with [a] DUI" and that the charge was "still pending." For his family history, it detailed that he has a "USC spouse" and "USC children." WHYY reported on an immigrant, without any sort of criminal record, being nabbed by ICE on his way to family court.[31] Another attorney from Philadelphia County reported that she received notification from ICE that her juvenile client, who had been adjudicated delinquent but was doing well in foster care, would be arrested at the child's next hearing.

Figure 3. Record of Encounter Excerpt (I-213)

On [redacted] 2018, DO Wallace, DO Medina, DO Slatwoski, and SA Mitnick of the Philadelphia At-large unit conducted an operation at 1301 Filbert Street Philadelphia, PA [address of the CJC]. The target of the operation was [redacted]. At approximately 1330 the above mentioned officers observed the subject near 13th and Filbert Street and identified themselves as immigration. [redacted] was positively identified as the target of the operation through a prior arrest photo. At the time of the encounter target confirmed that he was "[redacted]," target of the operation. The subject was informed he was under arrest by Immigration and Customs Enforcement for violating the laws of the Immigration and Naturalization Act and then placed into handcuffs. The subject was transported without incident, to the Philadelphia ICE/ERO Office for processing.

B. Courthouse Personnel

In Pennsylvania, a related issue is the extent to which court personnel collaborate with ICE to apprehend immigrants while in court or on their way to the courthouse. This issue

ranges from probation officers routinely collaborating with ICE to judges asking about immigration status or asking other court personnel or attorneys to contact ICE.

Probation officials appear to be regularly collaborating with ICE to arrest immigrants.[32] In Philadelphia County, a victim witness advocate witnessed a parole officer ask a client if "they were in the country legally" and warned the client that "if [the client] tried any funny business" the officer would call ICE. Other attorneys in Philadelphia confirm that individuals are arrested by ICE when they come for their "check in" with probation. In Allegheny and Chester Counties, community advocates and attorneys similarly state that people are regularly arrested at probation appointments. FOIA results obtained by ILRC establish that ICE and probation officials in the courts are reaching out to each other.

Emails between probation officials in Beaver, Bucks, Chester, Delaware, and Lehigh Counties, and ICE demonstrate how the collaboration occurs.[33] Probation officials may affirmatively reach out to ICE about individuals. In Bucks County, for example, probation would contact ICE upon the sentencing of an individual. In one instance of an individual with a DUI, probation stated that on "running his rap sheet" they noted indications that he was a "deportable alien." Probation contacted ICE offering the individual's phone number, home address, place of employment, and uncle's phone number for apprehension.[34] ICE too will initiate contact with probation officials in the courts. Apart from providing information about such individuals, probation officers will help coordinate with ICE to come and arrest such individuals. They might do so by coordinating with ICE to appear at the next regularly scheduled probation appointment or requiring that such individuals come and report "in person" (Figure 4).[35]

Figure 4. E-mail Excerpt between Beaver County Probation and ICE

Probation (3:11 pm): He has been processed and placed in the ARD program with me. He is required to report once per month by phone. I have not heard from him yet. I can attempt to get him to report in person if he needs to be taken into custody. The address we have on file is [redacted]. Let me know how I can assist you further.

ICE (3:17 pm): Sounds good. I'll touch base with the case officer and see how he wants to handle it. Appreciate your willingness to assist. I believe that is the address he has as well so if he isn't picked up I will let you know and we'll see if we can get something worked out. Thank you[.]

Probation (3:24 pm): He was just sentenced only a week ago, so chances are good that I can get him in here without suspicion. I can tell him he has to sign supervision papers, etc. Just let me know . . . .

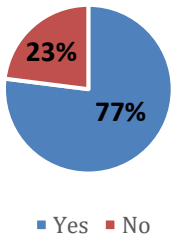
Court personnel are also involved in asking about immigration status, as well as contacting ICE and assisting ICE. There is the well-publicized story about the Magisterial District Judge (MDJ) in Cumberland County who called ICE because she believed that the groom appearing in front of her was an undocumented immigrant.[36] ICE arrived at the

courtroom, fingerprinted the immigrant, and determined he was lawfully in the country. In Philadelphia County, an attorney reported that a Court of Common Pleas Judge "ordered the DA to notify ICE about a defendant." In Montgomery County, a criminal defense attorney reported that a sheriff at the courthouse helped ICE to detain a man appearing for a DUI proceeding. In Lancaster County, an attorney reported that a MDJ repeatedly asked a defendant about his immigration status during a traffic hearing.[37] When the defendant admitted that he was undocumented, the MDJ asked the police officer whether he had notified ICE and ordered that the defendant be taken to Lancaster County Prison on a $750 bond.[38] In Chester County, several people who work in the court system confirmed that judges in criminal cases are asking in open court those with "Spanish surnames" or "Latinos" about their immigration status.

C. Fear of Clients

The National Immigrant Women's Advocacy Project (NIWAP), in collaboration with the American Civil Liberties Union (ACLU), conducted a national survey to analyze how the fear of arrest and deportation has impacted immigrants' decisions to report crimes and participate in court proceedings.[39] Police officers surveyed reported that crimes are becoming more difficult to investigate. Among police officer respondents, 69% said domestic violence was harder to investigate in 2017 compared to 2016 (with similar percentages for investigations of human trafficking (64%) and sexual assault (59%)).[40] Judges too reported an increase in disruption of court cases due to immigrant victims being afraid to come to court.[41] Legal services and victim advocates reported that their offices had filed 40% fewer cases for immigrants in 2017 than in 2016.[42]

Figure 5. Sheller Center Survey: Have Clients Either Expressed Fear or Chosen Not to Pursue a Case?



In our own survey with lawyers, legal services agencies, and community based organizations across Pennsylvania, we also found that fear was the most widely reported effect of ICE enforcement at courthouses (Figure 5). Seventy-seven percent of respondents who worked on court related matters with immigrants either noted that clients "expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE".[43] In Allegheny County, a community-based organization reported that immigrants are "deathly afraid to go to court." An attorney with a Bucks County client recounted how she "was afraid to attend a state civil court hearing related to a personal injury case on behalf of her minor (US Citizen) son . . . [s]he wanted me to go with her in case ICE tried

to arrest her." A community-based organization in Philadelphia reported that "[o]ne client's family member did not appear for the client's mother's murder trial out of fear."

Advocates who work with victims across the state reported that victims feared the consequences of seeking protection from abuse in the courts. A domestic violence services agency in Western Pennsylvania, for example, stated that some immigrant victims "have expressed fear of filing a protection order (PFA) due to incorrect information their intimate partners have told them about being deported if they go to court." Attorneys recounted how clients have declined to move forward with cases concerning family law or workplace exploitation, or to report human trafficking. Witnesses fear coming to testify in court (Figure 6).[44] The issue of fear is particularly problematic for immigrants who are trying to comply with the requirements to resolve their criminal case. As one criminal defense attorney deftly summarized "unfortunately they either go to court and risk to be picked up by ICE or they may end up with a bench warrant," concluding "there is no middle ground here."

Figure 6. Victim Services Agency Story

A brother and a cousin witnessed a racially-motivated attack on their relative. Neither of them wanted to come back to court as witnesses after the very first preliminary hearing got continued. Every time agency staff asked the victim why his brother and cousin were not coming to court anymore, his answer was the same: they fear that ICE will be there and will pick them up because they are undocumented.

Legal services organizations have mostly reported a decline in immigrants seeking their services.[45] Community Legal Services in Philadelphia reports "a 35% drop in undocumented immigrants coming in to get help with wage theft cases."[46] Philadelphia Legal Assistance has similarly seen "a significant drop in immigrant domestic violence survivors filing Protection from Abuse orders due to articulated fears regarding ICE presence in courts."[47] In Franklin County, a legal services provider reported that they have generally "hear[d] from the community that undocumented individuals don't seek their services from us (or similar agencies/organizations) based on this fear [of going to court]."

Finally, organizations have had to figure out how to help immigrants who need to access the courts. Many recounted how they try their best to counsel clients about their fears to encourage them to go to court or that they now will accompany clients to court. One community-based organization explained how they accompanied an immigrant who, despite the risk, was fighting for full custody of his two daughters. Staff, neighbors, and clergy flooded the courthouse. After winning custody at the hearing, they helped to whisk the father away to avoid the ICE agents across the street from the courthouse. Not all immigrants, however, will have access to such extensive support. Many more unfortunately will make the decision on their own that they cannot risk going to court.

Part II: ICE Enforcement in the Courts Is Legally Problematic

The presence of ICE in Pennsylvania courthouses is problematic. ICE's activities interfere with the legal rights of immigrants to access the courts and to be free from discrimination. This part explains why the Pennsylvania courts should be concerned about the ways in which ICE enforcement disrupts a well-functioning court system.

A. Judicial Efficacy and Integrity

The fair administration of justice requires that all individuals should have access to the courts. Because of ICE's arrests of immigrants both on the way to and inside the courthouses, many immigrants, whether as plaintiffs, defendants, victims, witnesses, or simply supportive family members, now fear attending court. This chilling effect means that courts are in turn less able to effectively adjudicate cases, because the necessary parties are not present.[48] This situation interferes with the fundamental responsibilities and obligations of the courts to vindicate the legal rights of parties. When individuals—such as witnesses testifying about crimes, defendants complying with the criminal court or probation process, or victims pursuing protection from abuse—become less willing to testify, comply with, or pursue their case in court, the safety of the entire community is placed in jeopardy.[49]

Further, the judiciary must remain free from any outside influence to ensure fairness in the judicial process. Judicial integrity is the cornerstone of the court system. Collaboration by court personnel with ICE interferes with the role of the judiciary and undermines confidence in judicial independence. This problem is made especially acute by the fact that immigrants are being arrested at the courts without any indication that they are a threat to public safety. As the Chief Justice of California's Supreme Court has stated, these activities "not only compromise our core value of fairness but they [also] undermine the judiciary's ability to provide equal access to justice."[50]

B. Constitutional Rights to Access Pennsylvania Courts

Access to the court system is a fundamental right under the First, Fifth, Sixth, and Fourteenth Amendments to the US Constitution. The First Amendment includes the right of immigrants to petition the government to address grievances.[51] The Due Process Clauses of the Fifth and Fourteenth Amendments ensure the right and opportunity to be heard by the courts while the Sixth Amendment ensures in all criminal cases that "the accused shall enjoy the right . . . to be confronted with the witnesses against him."[52] Finally, the Equal Protection Clause mandates that no class of individuals, such as immigrants, be blocked from their ability to exercise their rights in a courtroom.[53]

Further, the Pennsylvania Constitution's Remedies Clause specifically states that "[a]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay."[54] Interpreting this Clause, the Pennsylvania Supreme Court has stated that "it is the constitutional right of every person" who finds it necessary to access the courts for legal protection to do so without "denial or delay."[55] The Pennsylvania Remedies Clause has been invoked for multiple purposes, including to strike down laws that block a wronged person's access to the courts.[56] The Pennsylvania Supreme Court has stated that "it does prevent the Legislature from denying an injured party the right to seek relief from the courts for a legal injury."[57] By analogy, ICE's arrests of immigrants at the courthouse and courthouse personnel's collaboration with ICE create "denial or delay" for litigants to access the courts for a remedy. These actions, therefore, are problematic as they could violate the Remedies Clause in the Pennsylvania Constitution.

C. Title VI

In Pennsylvania, courthouse personnel are assisting ICE with limiting or blocking immigrants' access to the courts, although such immigrants are using the courts for matters completely unrelated to their immigration status. Courts, however, may not treat individuals differently simply because of the way someone looks or speaks. Title VI states, "No person in the United States shall, on the ground of . . . national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[58] Pennsylvania courts are required to follow Title VI because they receive federal funds.

The Administrative Office of Pennsylvania Courts (AOPC) has already directed courthouse personnel not to use the fact that an individual needs language assistance as a basis for inquiring into the individual's immigration status.[59] Targeting individuals based on actual or perceived citizenship or residency for differential treatment, such as inquiring into an individual's immigration status based on the way they look, can be discriminatory under Title VI.[60] When judges or court personnel are taking actions that result in refusing, excluding, or intimidating individuals from court services based on their perceived race or national origin, such actions may constitute direct evidence of discrimination in violation of Title VI.[61]

D. Tenth Amendment

State courts must be free to perform their traditional duties of administering justice without interference from the federal government.[62] The federal government is not permitted to enlist local government, against their wishes, to carry out the federal government's bidding.[63] The Tenth Amendment reads, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[64] This amendment is the root of many battles between the federal government and state governments, most often when the federal government oversteps its bounds and infringes on those powers that are "reserved to the States respectively." In the late 1990s, the Supreme Court "revived the importance of protecting state police power and insuring that it remains free of federal interference."[65]

When federal immigration enforcement interferes with the operation of the state court system, there exists a serious federalism problem. There has long been a "'fundamental policy against federal interference with the functioning and administration of state courts, particularly in the context of state criminal prosecutions."[66] Immigrants are present at courthouses because they are either compelled to be there pursuant to state or local prosecutions or are seeking justice from the state judicial system. These systems, which often address issues of public safety and well-being, do not function properly when ICE agents threaten those who seek justice. As Professor George Bach noted, "[t]his affront to federalism is worsened by the reality that ICE presence at state and local courthouses undermines the ability of states to enforce their laws at those courthouses."[67] Further, ICE agents using state courthouses (and state courthouse personnel) to round up undocumented immigrants is "tantamount to commandeering the state police power to do the bidding of federal law."[68] Using the state's judicial resources to enforce federal immigration law or interfering with the function of Pennsylvania courthouses, therefore, is legally problematic as it disrupts state control over public safety and the integrity of the courts.

Part III: Recommendations

The Pennsylvania courts must act to protect the rights of immigrants to access courthouses free from ICE interference.[69] This part outlines the legal basis for the courts to intervene. It also recommends that the Supreme Court specifically create a special task force comprised of various stakeholders to develop model policies for adoption by the Pennsylvania courts.

A. Legal Basis for Action

In Pennsylvania, "every court shall have power to make such rules and orders of court as the interest of justice or the business of the court may require."[70] The courts have previously issued rules that deal with security, public safety, and judicial integrity in the courts. Rule 1954 requires the president judge in each judicial district to establish a court security committee, which makes recommendations on protocols, policies, and procedures to protect the public.[71] Rule 110 allows the court to exclude news media if the media's presence would interfere with the rights of the accused to a fair trial.[72] Rule 223 allows the court to regulate or exclude "the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals."[73]

Further, Professor Chris Lasch has argued that the common law privilege against civil arrest provides legal support for the concept that the Pennsylvania courts should protect people from being subject to civil arrest by ICE at the courthouse.[74] The common law privilege from civil arrest stems from pre-Revolution England, as described by William Blackstone:

> Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting.[75]

While Blackstone's context is dated, his message is clear: there is a privilege from arrest while people are handling business in court and while they are simply in a court in the vicinity of a judge.[76] The American courts construed the privilege to apply to "any matter pending before a lawful tribunal," giving the rule a wide breadth to extend to people both on the way to court and leaving court.[77] In *Long v. Ansell*, the United States Supreme Court recognized "the common-law rule that witnesses, suitors, and their attorneys, while in

attendance in connection with the conduct of one suit, are immune from service in another."[78]

Pennsylvania has specifically recognized this common law privilege. In 1803, the Pennsylvania Supreme Court in *Miles v. M'Cullough* brought the common law privilege from civil arrest from England to Pennsylvania.[79] All people in the court are protected from arrest and service of process both while in court and for a reasonable amount of time to allow them to come and go from court.[80] In *Cusco v. Strunk Steel Co.*, however, the Pennsylvania Supreme Court declined to exercise immunity from service from a civil lawsuit when it was on a defendant appearing for a criminal case.[81] The court rationalized that "[t]he criminal defendant has no choice in the matter of attendance. . . [n]o further interest of the court is to be served by insuring immunity from service to a criminal defendant."[82] Other courts have similarly found that immunity is inapplicable when it is not necessary to ensure a person's "presence in court."[83] Yet ICE arrests are distinguishable because they do impact whether or not an immigrant will be present in court. Such arrests may not only physically prevent individuals from appearing at court hearings (resulting in the issuance of bench warrants) but also discourage immigrants from using the courts by creating widespread fear.

Pennsylvania court decisions have firmly established that the common law privilege is about "whether immunity will expedite the business of the courts and insure justice."[84] As our findings show, ICE's civil arrests disrupt the functioning of the court system in Pennsylvania. Pennsylvania courts have the general authority to invoke the privilege and require, for example, that any ICE arrests be backed by judicial warrants verifying that the arrest is truly necessary for public safety. A court policy enforcing the common law privilege, therefore, would help to solve this problem by protecting people as they seek justice. In fact, New York has a proposed state law to codify the common law privilege against civil arrest.[85]

B. Advocating for Change in Pennsylvania

Here in Pennsylvania, we respectfully request that the Supreme Court of Pennsylvania create a special task force to develop model policies for adoption by the courts. The task force should be comprised of various stakeholders, such as court representatives, defense attorneys, immigration attorneys, prosecutors, interpreters, and community advocates. The task force could consult with the Interbranch Commission for Gender, Racial, and Ethnic Fairness ("Interbranch Commission"), the AOPC, and other relevant Supreme Court Committees, Boards, or Advisory Groups. Further, the Supreme Court should request a meeting with the Philadelphia ICE Office to underline the severity of the implications that their statewide presence in courthouses presents.[86]

The Interbranch Commission has already alerted the Pennsylvania Supreme Court about critical immigration issues in Pennsylvania courthouses. In response, the AOPC issued a Title VI advisory that provided guidance to courts about the potential problem with inquiring into an individual's federal immigration status.[87] The Supreme Court has not issued any further statements, guidance, or policies to address the issue of either ICE arrests at the courthouse or the collaboration of courthouse personnel with ICE enforcement activities.

In Philadelphia, the ICE Out of Courts coalition has also been actively advocating with the First Judicial District ("FJD") in Philadelphia County for the development of proposed policies.[88] FJD's Probation and Parole Department has taken some steps to change practices by limiting or prohibiting contact with ICE and the request for information about immigration status.[89] The FJD courts, however, have not made comparable changes, although discussions are ongoing.[90]

Further, Pennsylvania can look to several states that are actively discussing or have adopted rules or protocols to address both the issue of ICE enforcement and court collaboration with ICE. In California, the Attorney General has issued proposed guidelines for the courts. This guidance was issued pursuant to California's law that mandated the AG to publish model court policies that "limit[] assistance with immigration enforcement to the fullest extent possible consistent with federal and state law."[91] These proposed polices include: (1) protocols for handling ICE's appearance at the courts for enforcement activity including notification to the presiding judicial officer and guidelines for responding to different kinds of warrants; (2) prohibiting court personnel from cooperating with ICE in enforcement activities; (3) prohibiting the disclosure of or inquiry about immigration status to the extent permitted by law; and (4) training court personnel about these policies.[92] Washington's Attorney General has similarly made best practice recommendations for the court system.[93]

In New York, the Office of Courts Administration (OCA) has issued guidance, which includes requiring ICE to identify themselves upon entry to the courthouse (including providing information about whether they have a judicial warrant for arrest) and notification by court staff to the judge about intended enforcement activities.[94] In Washington, the Supreme Court adopted a rule of evidence making a party's or witness's immigration status inadmissible unless immigration status is an essential fact to prove an element of, or a defense to, a criminal offense, or to show bias or prejudice of a witness.[95]

Some local courts too have created rules to regulate ICE arrests. In New Mexico, Bernalillo County Metropolitan Court has a rule that law enforcement officers "shall not detain,

arrest, or question any person" in the courthouse unless it is required by on-site law enforcement, public safety, or a judicial warrant.[96] In Washington, the King County Superior Court has adopted a rule to prohibit arrests in the courtrooms unless "directly ordered by the presiding judicial officer" and discourages any such activity within the courthouse "unless the public's safety is at immediate risk."[97]

We believe that the Pennsylvania courts can likewise address the problem of ICE enforcement by developing and adopting policies that set forth specific rules, guidance, or protocols for addressing immigrants at the courthouse. We would recommend that such rules, guidance, or protocols consider the following policy principles:

1. **Developing a protocol that limits ICE enforcement activities at the courthouse.** Such a policy would require judicial, not administrative warrants for making arrests inside the courthouse unless the arrest is necessary to secure immediate public safety. It would also prohibit ICE from any nonpublic areas of the courthouse. The rule should also formally recognize the common law privilege against civil arrest.[98]

2. **Limiting court personnel from using court resources to cooperate with ICE.** Such a policy would prohibit court personnel, including probation, from assisting in immigration enforcement actions and from providing ICE with access to nonpublic databases.

3. **Prohibiting court personnel from collecting the immigration status information of individuals.** Such a policy would include precluding court personnel from inquiring into a person's immigration status, and would make immigration status inadmissible as an evidentiary matter (with an exception for when immigration status is an essential fact for proving or defending against a criminal offense).

4. **Creating a system for requiring ICE law enforcement officers to register when entering the court.** Such a policy would include a public registry of all law enforcement officers entering the courthouse for purposes of transparency and oversight.

5. **Requiring training of judges, administrators, and court personnel about immigrants and access to the courts.** Such trainings should cover the above policies and include topics such as information about nonpublic areas of the courthouse, the difference between administrative and judicial warrants, and Title VI compliance.

Conclusion

> *A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow.*
>
> –Chief Justice Stuart Rabner of New Jersey[99]

We have gathered information on ICE arrests, courthouse personnel assisting ICE, and the widespread fear that exists within the immigrant community. The collective picture is one of crisis. If people are unable to access the court system, they will be unable to vindicate their rights, as plaintiffs, victims, and criminal defendants. The consequences of this problem reach beyond just the immigrant community and implicate the safety of all communities.

There are solutions to this problem. Both legally and as a matter of sound public policy, the Pennsylvania Supreme Court must exercise the leadership required to protect the rights of individuals to access the courts, and the obligation of courts to fairly resolve cases. Fortunately, Pennsylvania can look to other states and localities for excellent models of policies that help address ICE enforcement at the courthouse.

Appendix

Methodology

In order to collect information for this report, we used several methods. Starting in August 2018, we reached out to various groups, including private attorneys, government attorneys, legal and social services agencies, and community based organizations. We collected information through a questionnaire resulting in a total of 56 responses (Figure 6) and more than a dozen direct interviews. Further, we relied on other information that had already been collected by third parties, such as Community Legal Services of Philadelphia and the Interbranch Commission. Finally, we relied on the Freedom of Information Act responses obtained from ICE by the Immigrant Legal Resource Center.

Figure 6. Questionnaire

Name:
Organization:
Email Address:

What services does your organization offer to immigrants?

Do you assist or represent victims of crime or violence? Yes or No.

Since 2017, have you seen ICE agents or vehicles in or around courthouses? If yes, please specify which courthouses.

Have you witnessed any courthouse personnel (e.g. sheriffs, parole officers, judges, clerks) inquire into the immigration status of anyone at the courthouse or contact ICE for any reason? Yes or No. If yes, please describe in detail.

Please describe any incidents you know of where immigrants have been arrested or detained by ICE at a courthouse. Be sure to include as much detail as you can (e.g. where the arrest took place, the type of case, the individual's immigration status).

Please describe any conversations you have had with immigrants where they expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE.

Since 2017, the number of immigrants you have seen coming to you for services has:
Increased, decreased, or stayed the same.

Please provide us with the contact information of anyone you know who we should talk to about this topic.

Any additional thoughts or comments?

We found that it was impossible to accurately quantify most of the information that we received. While some respondents personally witnessed incidents, others had learned of incidents from clients or other people, creating potential overlap. Further, there is simply no realistic method to reach every private attorney, legal and social services organization, or community based organization that would have information about ICE enforcement in Pennsylvania. Any numerical quantification, therefore, would likely underrepresent the actual problem in the state.

Our final results came from 20 different counties across Pennsylvania: Allegheny, Berks, Bucks, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Franklin, Lackawanna, Lehigh, Monroe, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Washington, and York counties.

Endnotes

[1] Community Legal Services (CLS), Impact of ICE Presence in Courts (2018) (on file with authors).
[2] On January 25, 2017, President Trump signed an executive order stating that ICE would now also target those who had solely been charged, rather than convicted, with any criminal offense. Exec. Order No. 13,768 (Jan. 25, 2017).
[3] John Kelly, Secretary of DHS, Memo on Enforcement of the Immigration Laws to Serve the National Interest (Feb. 17, 2017); Matthew T. Albence, Executive Associate Director, ICE, Memo on Implementing the President's Border Security and Interior Immigration Enforcement Policies (Feb. 21, 2017).
[4] *See, e.g.,* Tanvi Misra, *Lessons from New York's Immigration Raids*, CITY LAB (Jul. 23, 2018), https://www.citylab.com/equity/2018/07/lessons-from-new-yorks-immigration-raids/565847/.
[5] Kristin Bialik, *ICE arrests Went Up in 2017, With Biggest Increases in Florida, Northern Texas, Oklahoma*, Pew Research Center (Feb. 8, 2018), http://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/.
[6] Arrests at the courthouse did occur under the Obama Administration but were supposed to be limited to immigrants who had been convicted of specific crimes or suspected of "terrorism or espionage." *See, e.g.,* ILRC v. DHS, ILRC (Jul. 24, 2018), https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security (last visited Jan. 19, 2019) (email from ERO Taskings to Field Office Directors and Deputy Field Office Directors re Reminder: Enforcement Actions at or Near Courthouses (Oct. 21, 2015)).
[7] *See infra* note 19.
[8] U.S. Immigrant Population by State and County, Migration Policy Institute, https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county (last visited Dec. 11, 2018) (select Pennsylvania and "(Total)" under Country/Region of Origin from the drop down menu).
[9] 8 C.F.R. § 287.5(c)(1); *Fiscal Year 2017 ICE Enforcement & Removal Operations Report*, U.S. ICE https://www.ice.gov/removal-statistics/2017 (last visited Dec. 29, 2018).
[10] 8 C.F.R. § 287.5(e).
[11] The Obama Administration also engaged in courthouse arrests but their priorities were more limited. Message from John Gurule, Assistant Director for Field Operations, ICE to Field Office Directors and Deputy Field Office Directors entitled Reminder: Enforcement Actions At or Near Courthouses (Oct. 21, 2015), available at *Immigrant Legal Resource Center v. Department of Homeland Security* 183 (Jul. 24, 2018), https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security.
[12] Kaelyn Forde, *'Where Can Anyone Seek Justice?': Experts Warn ICE Courthouse Arrests May Mean Witnesses, Victims Won't Show Up*, ABC NEWS (Jul. 27, 2018), https://abcnews.go.com/US/seek-justice-experts-warn-ice-courthouse-arrests-witnesses/story?id=56756506.
[13] Chantal Da Silva, *Pennsylvania Judge Calls ICE to Arrest Couples on their Wedding Day*, NEWSWEEK (Apr. 20, 2018), https://www.newsweek.com/judge-calls-ice-arrest-couples-their-wedding-days-895116
[14] *ICE Out of Courts*, IMMIGRATION DEFENSE PROJECT (last visited DEC. 11, 2018), https://www.immigrantdefenseproject.org /ice-courts/.
[15] *ICE in NYS Courts: Legal Service and Advocates Survey*, IMMIGRATION DEFENSE PROJECT (last visited Dec. 11, 2018), https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf.
[16] ICE Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018).
[17] *Id.*

[18] *Compare id. with* John Morton, ICE Director, Memo on Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011).
[19] Letter from Tani Cantil-Sakauye, Chief Justice of Cal. Supreme Court, to John Kelly, Secretary of Homeland Security, & Jeff Sessions, Attorney General of the U.S. (Mar. 16, 2017); Letter from Stuart Rabner, Chief Justice of N.J. Supreme Court, to John Kelly, Secretary of Homeland Security (Apr. 19, 2017); Letter from Chase T. Rogers, Chief Justice of Ct. Supreme Court, to Hon. Jefferson Sessions III, Attorney General of the U.S. & Hon. John Kelly, Secretary of Homeland Security (May, 15, 2017); Letter from Thomas A Balmer, Chief Justice of Or. Supreme Court, to John Kelly, Secretary of Homeland Security, & Jeff Sessions, Attorney General of the U.S. (Apr. 6, 2017); Letter from Mary E. Fairhurst, Chief Justice of Wash. Supreme Court, to John Kelly, Secretary of Homeland Security (Mar. 22, 2017); News Advisory from R.I. Judiciary, *Court Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges* (Jun. 16, 2017); Letter from Janet T. Mills, Attorney General of Me., to Richard W. Murphy, Acting U.S. Attorney for the State of Me., John Kelly, Secretary of Homeland Security (Apr. 10, 2017); Azi Paybarah, *Law Enforcement, Court Officials Differ on Impact of ICE Courthouse Arrests*, POLITICO (Aug. 3, 2017) (noting critique by Attorney General of N.Y.), https://www.politico.com/states/new-york/albany/story/2017/08/03/law-enforcement-court-officials-differ-on-impact-of-ice-courthouse-arrests-113781; Letter from Brian E. Frosh, Attorney General of Md., to John Kelly, Secretary of Homeland Security et al. (Mar. 2, 2017); Erin Durkin, *City DA's Plead with ICE to Stop Arresting Immigrants at NYC Courthouses: 'It Jeopardizes Public Safety,'* NY DAILY NEWS (Feb. 14, 2018) (noting critique by the Manhattan, Brooklyn, and Bronx D.A.s), https://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798#http://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798; Letter from Office of the City Attorney, City of Los Angeles et al., to Jeffrey Sessions, Attorney General of the U.S. & John Kelly, Secretary of Homeland Security (Apr. 4, 2017) (including coauthors from various counties and cities in California); Letter from Michael B. Hancock, Mayor of Denver, et al., to Jeffrey D. Lynch, Acting Field Office Director, ICE (Apr. 6, 2017) (including requests from Denver D.A.). *See generally Improving Relationships with ICE*, NATIONAL CENTER FOR STATE COURTS, https://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx (last visited Jan. 1, 2019); Immigrant Defense Project, *Statements from Chief Justices, Governors, Prosecutors, Attorney Generals, and Bar Associations*, IMMIGRANT DEFENSE PROJECT, https://www.immigrantdefenseproject.org/wp-content/uploads/CourthouseToolkitSection4.pdf (last visited Jan 1., 2019).
[20] XAVIER BECERRA, CALIFORNIA ATTORNEY GENERAL, SECURING EQUAL ACCESS TO JUSTICE FOR ALL: GUIDANCE AND MODEL POLICIES TO ASSIST CALIFORNIA'S SUPERIOR COURTS IN RESPONDING TO IMMIGRATION ISSUES (Oct. 2018).
[21] WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL BOB FERGUSON, GUIDANCE CONCERNING IMMIGRATION ENFORCEMENT 29-30 (2017).
[22] Michael Magliano, Chief of UCS Department of Public Safety, Memo on Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies (Apr. 26, 2017); New York City Bar, *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* (Jul. 2018) (describing May 2018 instructions issued by OCA).
[23] Bernalillo County, N.M., Courthouse Access Policy (Sept. 25, 2018); King County, Washington, Superior Court Policy (undated).
[24] Bialik, *supra* note 5.
[25] Deborah Sontag and Dale Russakof, *In Pennsylvania, It's Open Season on Undocumented Immigrants*, PROPUBLICA (Apr. 12, 2018), https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement.
[26] *Id.*

[27] Da Silva, *supra* note 13; Bobby Allyn, In Philly Halls of Justice, Feds Seizing More Immigrants with No Criminal Past, WHYY (Dec. 20, 2017), https://whyy.org/segments/philly-halls-justice-feds-seizing-immigrants-no-criminal-past/.
[28] *See* AMERICAN CIVIL LIBERTIES UNION (ACLU), FREEZING OUT JUSTICE: HOW IMMIGRANT ARRESTS AT COURTHOUSES ARE UNDERMINING THE JUSTICE SYSTEM 2 (2018).
[29] Brian Hickey, *ICE Arrests at Montgomery County Courts Spark Fears of Chilling Effect on Crime Victims, Witnesses*, PHILLY VOICE (Mar. 15, 2018), https://www.phillyvoice.com/ice-arrests-montco-courthouses-said-have-chilling-effect-crime-victims-witnesses/.
[30] Form I-213 – Record of Deportable-Inadmissible Alien (Jul. 2018) (on file with authors).
[31] Allyn, *supra* note 27.
[32] ICE has had an interest in arresting individuals who are on probation and parole from the Obama Administration to today. *See, e.g.,* ILRC v. DHS, ILRC (Jul. 24, 2018), https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security (last visited Jan. 19, 2019) (email from ERO Taskings to Field Office Directors, Deputy Field Office Directors, and Local Probation and Parole Points of Contact re Probation and Parole Teleconference (Apr. 14, 2016)).
[33] Such collaboration also occurs with Probation in Montgomery County, which is under the Corrections Department. Corrections, MONTGOMERY COUNTY PENNSYLVANIA, https://montcopa.org/862/Corrections (last visited Dec. 11, 2018).
[34] DHS' Response to ILRC's Freedom of Information Act Request (2018) (on file with authors).
[35] *Id.*
[36] Da Silva, *supra* note 13.
[37] Pennsylvania Interbranch Commission on Gender, Racial and Ethnic Fairness, Memo on Reports of State Court Judicial Officers' Assumption of Jurisdiction Over Immigration Issues and the Impact of the Presence of Immigration Enforcement Agents in Courthouses on Litigants' Constitutional Rights 2 (Apr. 5, 2018), available at http://www.pa-interbranchcommission.com/_pdfs/Memo_re_Immigration_in_State_Courts_Anon.pdf (last visited Jan. 18, 2019).
[38] *Id.*
[39] ACLU, *supra* note 28, at 1.
[40] *Id*.
[41] *Id*. at 2.
[42] *Id*.
[43] This analysis does not include those who failed to respond to the question or wrote "N/A."
[44] CLS, *supra* note 1.
[45] In contrast, one of our survey respondents from a legal services organization felt the opposite "[g]enerally we've had clients who are more willing to come forward/file a complaint despite increased risks. . . [w]e have not seen a decrease in clients' willingness to pursue claims."
[46] CLS, *supra* note 1.
[47] *Id.*
[48] Letter from Community Legal Services, to Sheila Woods-Skipper, President Judge, First Judicial District (Sept. 6, 2018).
[49] ACLU, *supra* note 28, at 2.
[50] Letter from Chief Justice Tani Cantil-Sakauye, *supra* note 19.
[51] Michael Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 684 (2003).
[52] U.S. Const. amend. V; VI; XIV.
[53] New York City Bar, *supra* note 22, at 7 n. 28 (citing Bounds v. Smith, 430 U.S. 817, 828 (1977) (requiring prison authorities to provide prisoners with adequate law libraries and to assist them in

preparing court papers); Boddie v. Conn., 401 U.S. 371, 377 (1971) (court filing fee could not prevent indigent couple from filing for divorce)).
[54] Pa. Const. art. 1, § 11.
[55] Masloff v. Port Authority of Allegheny Cty., 531 Pa. 416, 424 (1992).
[56] *Id.* at 425; *see also* Ieropoli v. AC&S Corp., 577 Pa. 138, 155-56 (2004).
[57] Masloff, 531 Pa. at 425. While it is problematic to extinguish a cause of action that has already accrued, entire causes of action can be abolished, especially when an administrative mechanism for recovery is supplied.
[58] 42 U.S.C. § 2000d.
[59] Administrative Office of the Pa. Courts (AOPC), *Advisory Re: Title VI of the Civil Rights Act* (2018) (providing an exception for when immigration status is relevant to the matter before the court or agency).
[60] *Id.*
[61] U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, TITLE VI LEGAL MANUAL § 6.
[62] Younger v. Harris, 401 U.S. 37, 44 (1971).
[63] *See, e.g.,* Printz v. United States, 521 U.S. 898, 925 (1997); New York v. United States, 505 U.S. 144, 178 (1992).
[64] U.S. Const. amend. X.
[65] George Bach, *Federalism and the State Police Power: Why Immigration and Customs Enforcement Must Stay Away from State Courthouses*, 54 WILLAMETTE L. REV. 323, 328 (2018).
[66] New York City Bar, *supra* note 22, at 13 n. 60 (citing Younger v. Harris, 401 U.S. 37, 46 (1971)). *See also* Gregory v. Ashcroft, 501 U.S. 452, 460 (1991) (finding that the decision about qualifications of state judges "is a decision of the most fundamental sort of a sovereign entity").
[67] Bach, *supra* note 65, 331.
[68] *Id.*
[69] Pa. Const. art V, § 10(c) ("The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . .")
[70] 42 Pa. C.S.A. § 323.
[71] 201 Pa. Code Rule 1954.
[72] 234 Pa. Code Rule 110. *See also* Rule 2.8 of the Pennsylvania Rules for Magisterial District Judges (MDJs) allows judges to exclude public broadcasting in the courtroom or in the areas immediately adjacent to the courtroom.
[73] 231 Pa. Code Rule 223.
[74] *See generally* Chris Lasch, *A Common Law Privilege to Protect State and Local Courts During the Crimmigration Crisis*, YALE L.J. FORUM 410 (Oct. 24, 2017). Professor Chris Lasch has advocated for reviving the privilege against civil arrest given ICE's enforcement in and around courthouses around the country. The privilege is not used today as it was in the past because we no longer start civil lawsuits through arrest. Massachusetts Supreme Judicial Court, however, has recently denied a petition requesting the privilege against civil arrest for immigration arrests. Alanna Durkin Richer, *Mass. High Court Judge Denies Bid to Block Courthouse Immigration Arrests*, WBUR (Sept. 21, 2018), https://www.wbur.org/news/2018/09/21/judge-rules-against-bid-to-block-courthouse-immigration-arrests.
[75] Lasch, *supra* note 74, at 423.
[76] *Id*.
[77] *Id*. at 425.
[78] Long v. Ansell, 293 U.S. 76, 83 (1934).
[79] Miles v. M'Cullough, 1 Binn. 77 (Pa. 1803).
[80] Baxter v. Conroy, 26 Pa. D. 430 (C.P. Phila. 1917); *see also* Hayes v. Shields, 2 Yeates 222 (Pa. 1797).

[81] Crusco v. Strunk Steel Co., 365 Pa. 326, 327-328 (1950).
[82] *Id.* at 329.
[83] Gekoski v. Starer, 223 Pa. Super. 560, 564 (1973). Another factor appears to be whether service of the civil suit is "a cause of action arising out of the same transaction." *Id.* at 563. With ICE arrests, the civil immigration violation that forms the basis of the arrest is entirely unrelated to reason why an immigrant may be in court.
[84] *Id.* at 563 (citing Crusco, 365 Pa. at 328).
[85] Protect Our Courts Act, A.11013 (N.Y. 2018) (same as S.08925).
[86] WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29.
[87] AOPC, *supra* note 59.
[88] *Getting ICE Out of Courts*, Community Legal Services, https://clsphila.org/learn-about-issues/getting-ice-out-courts (last visited Jan. 16, 2019) (select attachments that include proposed policies for FJD).
[89] Conversation with Nadia Hewka, Senior Attorney, Community Legal Services (Jan. 4, 2018).
[90] *Id.*
[91] California Values Act, S.B. 54 (Cal. 2017).
[92] BECERRA, *supra* note 20.
[93] WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29-30.
[94] New York City Bar, *supra* note 22, at 16.
[95] Wash. R. Evid. 413.
[96] Bernalillo Cty., N.M., Metropolitan Court, Courthouse Access Policy (Sept. 25, 2018).
[97] WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29 (quoting King Cty., Wash., Superior Ct. Policy on Immigration Enforcement in Courtrooms).
[98] The Pennsylvania Courts have "power to issue, under its judicial seal, every lawful writ and process necessary or suitable for the exercise of its jurisdiction." 42 Pa. C.S.A. § 323.
[99] Letter from Chief Justice Stuart Rabner, *supra* note 19.

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STEPHEN AND SANDRA SHELLER CENTER FOR SOCIAL JUSTICE
TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW
1719 N. Broad Street | Philadelphia, PA 19122
(215) 204-8800
www2.law.temple.edu/csj