

**The Bronx  
Defenders**

**Redefining  
public  
defense**

**New York City Council  
Committee on Immigration Jointly with the Committee on Justice System  
Hearing re: Oversight - ICE out of New York Courts  
April 10, 2019  
Written Testimony of The Bronx Defenders  
By Rosa Cohen-Cruz**

Good afternoon, my name is Rosa Cohen-Cruz and I am a *Padilla* Supervisor in the Immigration Practice at The Bronx Defenders. In this role I oversee the practice of advising non-citizen defendants on the immigration consequences of their criminal cases. The Bronx Defenders pioneered the model of immigration services embedded in a public defender office over fifteen years ago. Today, our robust immigration practice is comprised of over forty attorneys, social workers, advocates and administrators. We provide deportation defense in both detained and non-detained court settings. Our *Padilla* practice provides advice and counsel to nearly 1,000 non-citizen clients each year throughout the pendency of their cases in both Criminal and Family Court to avoid or mitigate negative immigration consequences and we are sometimes able to improve our clients' immigration statuses, and help them become lawful permanent residents or U.S. citizens. I am testifying today to voice our support for the resolution calling on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect the due process rights of all New Yorkers, regardless of immigration status.

**Introduction**

Over the past two years, we have seen a disturbing trend of our clients being arrested by ICE in and around New York courts. In the Bronx we witness ICE agents using the court house as a venue to surveil New York's immigrant residents. ICE agents sit in court rooms and listen to private attorney/client conversations in the hallways to identify targets. As defenders, we have watched, often helplessly, as ICE agents use scheduled court appearances to arrest and detain our clients who have come to court to defend themselves. The rampant arrests of New Yorkers who are responsibly attending court hearings damage the fair delivery of due process to our immigrant community members, creating an unwelcoming and indeed terrifying environment for non-citizens accused of crimes.

The practice of arresting non-citizens in court creates fear and distrust in the criminal justice system and inhibits public defenders ability to zealously represent their clients in criminal court. The resulting fear of courts undermines the legal system in the following ways: 1) clients accept

unfavorable plea deals to avoid coming to court; 2) ICE uses excessive force and disregards due process and right to counsel; and 3) open cases create delay and disruption to the immigration court process. The Protect our Courts Act provides important measures to maintain courts as safe spaces for all New Yorkers, regardless of immigration status, thus equally protecting everyone's right to fairly access the court system.

### **ICE Arrests in Court Leads to Bad Case Resolutions**

Overwhelmingly, our non-citizen clients fear ICE arrests at each scheduled court date and feel an urgency for hasty resolution. The inordinate pressure this causes interferes with the criminal court process and undermines the proper administration of justice. As *Padilla* attorneys, we must incorporate the risk of an ICE arrest in court when advising a client who is considering whether to accept a plea or take a case to trial. Many clients choose to accept pleas so they will not need to return to court even if that plea is likely to get better overtime or they are likely to be successful in winning their case at trial, because pursuing a case to trial will require multiple court appearances over a longer period of time.

Clients who choose to quickly resolve their case with a plea to avoid having to come back to court often have to accept unfavorable dispositions. Our office has represented clients who were likely to win at trial but instead plead guilty to avoid having to return to court. We have had clients with no criminal record resolve their case with a misdemeanor at arraignments when a non-criminal violation would have been likely at a later court date. At times clients have even accepted plea offers that result in the loss of future eligibility for lawful status or relief from deportation. Some clients have chosen to accept a plea offer with an incarceration sentence instead of a program or class because they did not want to have come back to court to demonstrate compliance. These clients knew that a jail sentence meant they would be returned to their families after a time-limited period of incarceration, rather than facing the risk that at their compliance dates in court they would be arrested by ICE officers who could detain them indefinitely until deportation. What does it say about our city that our jails provide more sanctuary to immigrants at risk of deportation than our courthouses?

The Protect our Courts Act will provide immigrant defendants with the security to focus on the trajectory of their criminal cases without the additional fear of ICE detention by declaring unlawful the civil arrest of an individual attending a court proceeding while going to, remaining at, and returning from court, absent a judicial warrant. This resolution messages that all New Yorkers deserve to feel that the courthouse is a safe space where they can experience the same freedom as U.S. Citizens to make these potentially life-altering decisions.

### **ICE Arrests in Court Disregard Clients' Rights**

The fear of an ICE arrest is justified. The Bronx Defenders has witnessed our clients arrested by ICE at the Bronx Hall of Justice. We have had clients arrested with excessive force. I have watched as four or five ICE officers converged upon a client inside the court and violently

pinned him against the glass doors of the entrance despite the fact that he was complying with officer orders.

ICE officers demonstrate no respect for the right to counsel. ICE does not alert attorneys when they have arrested a client in court. ICE has arrested clients mid-conversation with attorneys, forcing our clients into cars and driving off. ICE officers then attempt to question our clients outside of attorney presence -- even after their *Padilla* counsel has invoked their rights to silence and counsel -- then introduces any statements obtained against our clients in immigration court.

ICE uses our courts to detain our clients, but then demonstrates no regard for our justice system by routinely failing to produce them to their court appearances. At The Bronx Defenders, the majority of immigration attorneys who represent clients detained by ICE who have open criminal cases report that ICE has not produced their clients for criminal court hearings.

Essentially, ICE officers treat our clients as less than human during court house arrests. They have arrested our clients and taken them away from their young children who had accompanied them to court. For one client, after recognizing an ICE officer following us in the hallways of court, I had to facilitate an opportunity for my client to hug his children goodbye in the courtroom before being arrested, thrown into a vehicle outside the courthouse, and placed in immigration detention, where he remains today, seven months later.

Importantly, The Protect our Courts Act prohibits entry into state courthouses for purposes of civil immigration enforcement absent a judicial warrant or court order, and carefully defines the process by which the state courts must execute this provision and review the requisite warrants and order. By providing more process and scrutiny for civil arrests in court, the Protect our Courts Act messages that the protection of individual's rights in accessing court is critical, and violation of this process can result in penalties to ICE.

### **Courthouse Arrests Disrupt Immigration Proceedings**

When a client is arrested by ICE it begins a kafkaesque cycle of denials to their due process. As already mentioned, after an arrest in court, ICE keeps our clients in detention and the criminal case remains open while ICE rarely brings our client to court to resolve it. Then, after weeks or months of detention the client has a bond hearing in immigration court. At this hearing, bond is denied because the client is perceived to be a danger because of their open criminal case that they were never produced to resolve.

This has happened where clients were offered disorderly conduct violations that they were never produced to court to take. The clients denial of access to the court resulted in denial of bond and lengthy separation from their family.

The Protect our Courts Act authorizes judges to issue appropriate orders to ensure individuals' access to the courts, ensuring that individuals will be available to resolve their case and not be forced to continue in immigration proceedings with unresolved but relevant criminal cases.

Moreover, If ICE agents violate the rules laid out in The Protect our Courts Act and executes a courthouse arrest without a judicial warrant it will create a stronger basis termination of the immigration case.

### **Conclusion**

In sum, ICE's arrest practices pit the fear of deportation against the desire to exercise one's rights in the criminal justice system. Then, when our clients are swept up in courthouse raids before they have the opportunity to resolve their criminal matters they languish in ICE detention with open criminal charges, which often prolong the amount of time they spend in deportation proceedings. The Protect our Courts Act addresses this problem by ensuring that courts are safe spaces for all New Yorkers, and creating measures that allow for judges to exercise more control over their cases in the face of an ICE arrest.

Accordingly, we call on the State Legislature to pass, and the Governor to sign, the "Protect Our Courts Act" (A.2176 / S.425), in order to protect the due process rights of all New Yorkers, regardless of immigration status.