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* Firm names provided for
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July 6, 2017

Via Overnight Delivery
Chief Judge Janet DiFiore
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Re: ICE Incursions in New York State Courthouses

Dear Judge DiFiore:

I write, as President of the Association of Pro Bono Counsel (“APBCo”), to express the deep concern of our membership over increasing incursions of United States Immigration and Customs Enforcement (“ICE”) into the courthouses of New York State. ICE arrests of immigrants availing themselves of our courts profoundly undermines the true administration of justice that we all rely upon. APBCo’s 211 individual members, on whose behalf this letter is written, direct the pro bono programs in 107 of the world’s leading law firms, most of which have offices in New York. We represent vulnerable persons in New York courts literally every day. We represent thousands of immigrants every year. Allowing ICE to vitiate the public trust that the courts work so hard to maintain will have long-lasting negative consequences. We urge you to take immediate action to restore immigrants’ faith in the safety of our courts and our justice system. ICE’s courthouse arrests must be restrained.

ICE agents have moved into our courts and the predictable surge in arrests of individuals participating in our justice system not only threatens the perception of our courts as repositories of justice where participation is encouraged without fear of reprisal, which is itself critical, but interferes with the actual operation of the courts and disrupts fair administration of justice, not only for immigrants but for anyone participating in a court proceeding and feeling the direct or indirect fallout of court-based arrests. The picture is a chilling one -- and has no place in New York, which in so many ways has been a leader in court-based reform, community outreach, progressive thinking, and social justice. APBCo members have seen firsthand the many benefits of efforts to make the system more accessible and lament the undoing of that progress.

As New York courthouses become less safe, immigrants will become unwilling participants. Fewer, for example, will report crimes or testify at criminal trials. Many who rely on our courts for protection against family violence will be reluctant to seek it, further jeopardizing adult and child victims. Undocumented persons who could provide legal guardianship of vulnerable relatives will forego formalizing their relationships, potentially resulting in placement of their charges in foster care or with state agencies. Immigrant workers, often abused and exploited, will not seek recourse through the legal system, further emboldening unscrupulous and unpunished employers. Informants in insular immigrant communities, often essential to crime investigations, will turn away from law enforcement for fear of deportation. Hate crimes will go unreported; perpetrators will walk.

The rising ICE presence in our courts says to New York's huge immigrant community -- and those that represent, work with, employ and rely upon them -- that the removal of a few is more important than safety for all, that even our courts will step back and allow spot arrests to trump even-handed justice for all.

According to The Legal Aid Society of New York, ICE agents have arrested or attempted to arrest at least 38 people this year in our courts, including Criminal Court, Family Court, and recently, in the Queens Human Trafficking Intervention Court, a court established by former Chief Judge Lippman specifically to help protect victims of the horrific crime of sex trafficking, including immigrant victims. Because these dramatic ICE courthouse arrests have garnered plentiful press coverage and widespread attention in immigrant communities, these arrests have a broad impact, and the adverse effect on immigrant participation in our justice system is already being felt. For example, the New York Times reported in April that there had been an acute and otherwise unexplained downturn in reporting of sexual assault and domestic violence among Latinos throughout the country, including as much as a 40% decrease in reports of rape in Houston, Texas. APBCo's legal service organization partners and member attorneys are reporting firsthand instances of clients who are refusing to report crimes to the police and others who are resisting necessary court appearances, all due to fear of arrest. Given this diminished crime reporting among immigrants, if court arrests are not stopped, it is only a matter of time before there is a reduction in the number of informants and witnesses and a decrease in the apprehension of criminals.

It is worth noting two additional results of ICE arrests in courtrooms. First, it is now easier for alleged criminals to inform ICE agents as to the immigration status of their accusers in order to gain a litigation advantage, or simply for revenge. A recent example of this occurred in El Paso, Texas, when a victim of domestic violence was arrested only minutes after obtaining an order of protection against her abusive boyfriend. It is suspected that the alleged abuser (a U.S. citizen) reported the victim's undocumented status to ICE, something he had been threatening to do if the victim ever went to the police about his violent behavior, and alerted ICE to the time and date of her court appearance, which he knew because he had been served with an order to appear at the hearing himself. Using the courts as a trap for vulnerable witnesses in society is not only a calculated abuse of resources, it is a de facto form of witness intimidation, abetted by ICE.

Second, lawyers are now faced with the difficult choice of being obligated to encourage our immigrant clients to attend court appearances, while knowing that doing so may result in their arrest and deportation. Lawyers cannot confidently advise clients that they will be able to leave the courthouse as freely as they entered. This places attorneys in an untenable position as advocates and officers of the court, suspended between the importance of litigating minor crimes and civil matters against the possibility of arrest, detention, and deportation.

It is essential, therefore, that our courthouses return to being safe locations for the administration of all law. We beseech you to exercise your authority pursuant to the State Constitution to issue protections for immigrants in New York courts. These actions could include:

- Instructing court officers, police, and other law enforcement officials, typically present in courts, that they are not permitted to inquire, nor should they take initiative to inform others, regarding the immigration status of litigants, witnesses, or other court users.
- Limiting arrests in courthouses to exigent circumstances involving public safety, similar to those required for arrests being conducted in schools, churches, hospitals, and other sensitive locations.
- Requiring ICE agents to obtain the approval of a designated supervisory official in each courthouse prior to arrests of specific individuals inside the courthouse.
- Barring from courtrooms ICE agents who are there for the purpose of arresting court participants, to prevent disturbances of proceedings and intimidation of vulnerable persons therein.

These steps, all of which you have the power to take, would preserve the professionalism and dignity of the courtroom while safeguarding immigrants' access to justice. It would avoid the use of our courtrooms for purposes that conflict with the open and equitable administration of the law, in keeping with New York's courts finest traditions. ICE has ample opportunity and means to arrest immigrant New Yorkers, but they will have to do it elsewhere.

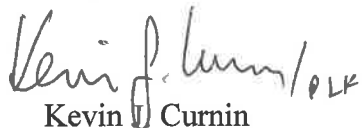
APBCo is a mission-driven, membership organization in which the private bar, usually in tandem with legal services and other community-based organizations, dedicates itself to the effective, efficient, compassionate delivery of pro bono legal services to our communities across the state, the nation, and the globe. We urge you to right the wrong of an incursion by ICE that prevents immigrant New Yorkers from participating in our justice system without fear of arrest and deportation. To ensure public safety in our state, immigrants need the courts, and the courts need immigrants.

Chief Judge DiFiore

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This letter is offered with the highest respect for your commitment to serving all of the people of the State of New York, and to the full and fair administration of justice in all of our courts.

Respectfully,

Handwritten signature of Kevin J. Curnin in cursive, with initials 'KJ' and 'PLK' at the end.

Kevin J. Curnin

President, Association of Pro Bono Counsel