



Council on American-Islamic Relations

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**STATEMENT OF  
ALBERT FOX CAHN, ESQ.  
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**BEFORE THE  
COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY WITH THE  
COMMITTEE ON IMMIGRATION  
NEW YORK CITY COUNCIL**

**FOR A HEARING CONCERNING,  
OVERSIGHT - ICE ENFORCEMENT IN NEW YORK CITY COURTS**

**PRESENTED  
June 29, 2017\***

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Good morning, my name is Albert Fox Cahn, and I serve as the Legal Director for the New York Chapter of the Council on American-Islamic Relations (“CAIR-NY”). CAIR-NY is a leading civil rights advocacy organization for the Muslim community here in New York City and across New York State. New York must take immediate action to make sure our courthouses remain open to all, and I applaud Speaker Mark-Viverito, Chairman Lancman, and Chairman Menchaca for calling for action on this vital matter.

U.S. Immigration and Customs Enforcement’s (“ICE’s”) operations in state courthouses have become a nationwide epidemic, and New York is no exception.<sup>1</sup> Public data shows at least thirty-eight courthouse arrests in New York State in 2017,<sup>2</sup> of which nineteen occurred here in New York City.<sup>3</sup> This surge has already resulted in more courthouse arrests under the Trump Administration than in the last two years of the Obama presidency combined.<sup>4</sup>

ICE’s tactics prevent countless immigrant Americans from accessing our courts and seeking justice. ICE targets some of the most vulnerable New Yorkers, including victims of human trafficking.<sup>5</sup> This isn’t theoretical, earlier this month ICE agents stalked the hallways of a courtroom for human trafficking victims here in Queens. Another example is Irvin Gonzalez Torres, who was arrested outside of an El Paso courthouse while trying to seek a restraining order against an abusive husband.<sup>6</sup> Victims of domestic violence and human trafficking should not have to choose between safety and deportation. Many immigrants are now unwilling to report sexual assault or hate crimes, fearing they will be revictimized by ICE.<sup>7</sup>

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<sup>1</sup> Maria Cramer, *ICE Courthouse Arrests Worry Attorneys, Prosecutors*, THE NEW YORK TIMES, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMI8gI/story.html>

James Queally, *ICE Agents Make Arrests at Courthouses, Sparking Backlash From Attorneys and State Supreme Court*, LOS ANGELES TIME, March 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>

<sup>2</sup> Andrew Denney, *NY Courts Track ICE Encounters With Litigants*, THE NEW YORK LAW JOURNAL, March 27, 2017, <http://www.newyorklawjournal.com/id=1202782175943/NY-Courts-Track-ICE-Encounters-With-Litigants?slreturn=20170527114508>

<sup>3</sup> Emma Whitford, *Courthouse ICE Arrests are Making Immigrants ‘Sitting Ducks,’ Lawyers Warn*, GOTHAMIST, June 22, 2017, [http://gothamist.com/2017/06/22/ice-immigrants\\_courts.php](http://gothamist.com/2017/06/22/ice-immigrants_courts.php)

<sup>4</sup> *Id.* at 15-16

<sup>5</sup> Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC, June 16, 2017 <https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>

<sup>6</sup> Jonathan Blitzer, *The Woman Arrested By ICE in a Courthouse Speaks Out*, THE NEW YORKER, February 23, 2017, <http://www.newyorker.com/news/news-desk/the-woman-arrested-by-ice-in-a-courthouse-speaks-out>

<sup>7</sup> Jennifer Medina, *Too Scared to Report Sexual Abuse. The Fear: Deportation*, THE NEW YORK TIMES, April 30, 2017, <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>

ICE compounds this harm through unethical and potentially illegal tactics, such as portraying themselves as state or municipal police.<sup>8</sup> This behavior causes panic and confusion, eroding trust between citizens and local police.<sup>9</sup>

Prohibiting courthouse enforcement will protect all New Yorkers, but it will particularly aid undocumented Muslim New Yorkers. For years, the New York City Police Department (“NYPD”) has targeted the Muslim community with unlawful and unconstitutional surveillance. The NYPD engaged in surveillance of entire mosques,<sup>10</sup> while undercover officers and confidential informants infiltrated Muslim student groups on local university campuses.<sup>11</sup> These surveillance practices are detrimental to the health of the community—leading some Muslim New Yorkers to self-censor both their religious practices<sup>12</sup> and their political engagement.<sup>13</sup> Although most Muslim New Yorkers continue to unapologetically practice their faith in the face of police harassment, some have even stopped attending their places of worship.<sup>14</sup> Muslim New Yorkers know that NYPD surveillance data is routinely shared with federal counterparts, with no protections to block its use by ICE in immigration enforcement. For this reason, Muslim New Yorkers are even more likely than other immigrant populations to be fearful of courthouse arrests.

New York State courts must be free from this intimidation, and we must join the nationwide movement of states who close their doors to ICE. We must follow the lead of states like California, whose Chief Justice rightfully objected that ICE compromised “the judiciary’s ability to provide equal

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<sup>8</sup> *Id.* at 72-74; Macy Corica, *Hartford Officials: ICE Agents Pose as Local Police, Try to Detain Undocumented Woman*, NEWS8, March 20, 2017, <http://wtnh.com/2017/03/20/hartford-officials-ice-agents-pose-as-local-police-try-to-detain-undocumented-woman/>

<sup>9</sup> Joel Rubin, *It’s Legal for an Immigration Agent to Pretend to be a Police Officer Outside Someone’s Door. But Should it Be?*, THE LOS ANGELES TIMES, February 21, 2017, <http://www.latimes.com/local/lanow/la-me-immigration-deportation-ruses-20170219-story.html>

<sup>10</sup> Matt Apuzzo & Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, N.Y. TIMES, Apr. 15, 2014, [https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?\\_r=0](https://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0); see also Diala Shamas & Nermeen Arastu, *Mapping Muslims: NYPD Spying and its Impact on American Muslims*, MUSLIM AM. CIVIL LIBERTIES COAL., CREATING LAW ENF’T ACCOUNTABILITY & RESPONSIBILITY & ASIAN AM. LEGAL DEF. & EDUC. FUND, 10-14 (2013), <https://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>.

<sup>11</sup> Shamas & Arastu, *supra* note 8, at 39.

<sup>12</sup> Shamas & Arastu, *supra* note 8, at 12-14.

<sup>13</sup> Shamas & Arastu, *supra* note 8, at 20.

<sup>14</sup> SHAMAS & ARASTU, *supra* note 8, at 12-14.

access to justice.”<sup>15</sup> Closer to home, officials in both Connecticut<sup>16</sup> and New Jersey<sup>17</sup> demanded that ICE treat courts as “sensitive locations,” as is done with schools and houses of worship.<sup>18</sup>

While judges and elected officials across the country take a stand against the presence of ICE officers in state and local courtrooms, the voices of New York State leaders remain largely absent. Our state court leadership has failed to protect vulnerable New Yorkers or stand up to the Trump Administration.<sup>19</sup> A public statement (as in California) is just a first step. Today we are asking for more than a public stand, we are asking for more than symbolic action, we are calling on city and state officials to go to federal court to assert our state’s interest in the unobstructed operation of our justice system.

ICE’s courthouse arrests are not merely unjust, they may be unconstitutional. As the Supreme Court has repeatedly stated, the 10<sup>th</sup> amendment prohibits the federal government from commandeering any state to enforce federal laws or regulatory programs.<sup>20</sup> To put it simply, ICE cannot force New York officials to do ICE’s job.<sup>21</sup> Just as the federal government cannot compel the NYPD to conduct immigration raids, and just as it cannot compel this council to enact immigration bans, it cannot transform our courts and prosecutors into instrumentalities of immigration enforcement.

This constitutional concern is clearest when ICE arrests those who have been subpoenaed by prosecutors, arresting New Yorkers who have been compelled by our state to be present at a time/place where ICE can detain them. This tactic turns executive branch officials into an indispensable component of ICE’s immigration enforcement strategy. Such a co-option of state

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<sup>15</sup> Chief Justice Tani G. Cantil- Sakauye, *Letter to Attorney General Sessions and Secretary Kelly*, March 16, 2017, <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>

<sup>16</sup> Roque Planas, *Chief Justice in Connecticut Asks ICE To Stay Out of Courthouses*, HUFFINGTON POST, June 8, 2017, [http://www.huffingtonpost.com/entry/judge-courthouse-immigration-arrests\\_us\\_59398006e4b0c5a35c9d3928](http://www.huffingtonpost.com/entry/judge-courthouse-immigration-arrests_us_59398006e4b0c5a35c9d3928)

<sup>17</sup> Chief Justice Stuart Rabner, *Letter to Secretary of U.S. Department of Homeland Security John F. Kelly*, April 19, 2017, <https://drive.google.com/viewerng/viewer?url=https://assets.documentcloud.org/documents/3673693/Kelly-ICE-Ltr-041917.pdf>

<sup>18</sup> John Morton, Memorandum on Enforcement Actions at or Focused on Sensitive Locations, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY, October 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; *see also* Chief Justice Stuart Rabner, Letter to Secretary of U.S. Department of Homeland Security John F. Kelly, at line 22-23 (“the same sensible approach that bars ICE enforcement [in sensitive locations] ... should apply to courthouses.”).

<sup>19</sup> Kristine Philips, *California Chief Justice to ICE: Stop ‘Stalking’ Immigrants at Courthouses*, THE WASHINGTON POST, March 17, 2017, [https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm\\_term=.d93f4e341db7](https://www.washingtonpost.com/news/post-nation/wp/2017/03/17/california-chief-justice-to-ice-stop-stalking-immigrants-at-courthouses/?utm_term=.d93f4e341db7) *see also* Ryan Haas and Conrad Wilson, *Oregon Supreme Court Chief Justice Tells ICE to Stay Out Of Courthouses*, OREGON PUBLIC BROADCASTING, April 7, 2017 <http://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>

<sup>20</sup> *See* *Printz v. United States*, 521 U.S. 898, 935 (1997); *New York v. United States*, 505 U.S. 144, 161 (1992).

<sup>21</sup> *See* *Galarza v. Szalcyk*, 745 F.3d 634, 644-45 (2014).

subpoena power seriously compromises the integrity of our court system and our centuries old experiment with federalism. ICE has the power to arrest individuals, it has the power to use the federal courts, but is simply may not turn our City into an unwilling accomplice in the Trump Administration's attack on undocumented New Yorkers.<sup>22</sup> Congress has not authorized such a tactic, and our constitution forbids it, so our state must now put an end to these arrests.

ICE's unlawful commandeering of state instrumentalities does not end here. The Supreme Court has explicitly deemed immigration an area that the federal government has reserved for itself.<sup>23</sup> The broad preemption of state law in this field cuts both ways; just as state governments cannot make their own law in this field, they cannot be compelled to serve as agents of federal policy. The fact that Congress has statutorily allocated review of the immigration process to federal immigration courts and *not* to state courts further reflects this.

ICE's conduct subverts this regulatory scheme by turning the state judiciary into an implicit arm of the federal immigration system. This is not merely a matter of a state court applying federal law. State judicial officers are being compelled to become an extension of a federal program, and not just any federal program, but one that embodies a strongly and distinctly *federal* interest.<sup>24</sup>

ICE's conduct also raises serious issues of public accountability. Immigration enforcement in state courthouses by a federal agency with a history of impersonating state and municipal police forces creates the clear impression of state cooperation with the federal immigration program. Our constitution prohibits federal programs that mislead the public in this way, since they disrupt democratic accountability. The Supreme Court has previously invalidated programs that are carried out in such a way that the public might erroneously hold state officials culpable for the decisions of federal authorities.<sup>25</sup>

ICE's transformation of state courthouses into traps for undocumented immigrants thus places state officials in a situation in which the maintenance of a core state function implicitly compels them to submit to cooperation with a federal program. ICE's decision to disregard constitutional boundaries and undermine the state judicial system simply cannot be tolerated.

In light of the foregoing, we urge this city and state officials to do everything in their power to block ICE enforcement in New York's courthouses. I thank you for giving me the opportunity to address these urgent issues, and I look forward to working with the Council to safeguard the rights of Muslim New Yorkers in the months and years to come.

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<sup>22</sup> See *Printz*, 521 U.S. at 915.

<sup>23</sup> See *Arizona v. United States*, 567 U.S. 387, 402 (2012).

<sup>24</sup> *Id.*

<sup>25</sup> See *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 578 (2012); *Printz*, 521 U.S. at 929.