

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK and ERIC
GONZALEZ, *in his official capacity as the*
District Attorney of Kings County
(Brooklyn),

Plaintiffs,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT;
MATTHEW T. ALBENCE, *in his*
official capacity as Acting Director of
United States Immigration and
Customs Enforcement; UNITED
STATES DEPARTMENT OF
HOMELAND SECURITY; and
KEVIN K. MCALEENAN, *in his*
official capacity as Acting Secretary of
Homeland Security,

Defendants.

Civ. Action No. 1:19-cv-08876 (JSR)

**BRIEF OF FORMER JUDGES AS AMICI CURIAE IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Debo P. Adegbile
Jarret A. Zafran
WILMER CUTLER PICKERING HALE
AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: (212) 230-8800
Fax: (212) 230-8888

TABLE OF CONTENTS

	Page
INTEREST OF AMICI CURIAE	1
ARGUMENT	2
CONCLUSION.....	6
APPENDIX: LIST OF AMICI	7

TABLE OF AUTHORITIES

	Page(s)
News Coverage	
Brigitte Hamadey, <i>Opinion: ‘And Justice For All’ Means Barring ICE from NYS Courthouses, City Limits</i> (June 19, 2019), https://citylimits.org/2019/06/19/ice-nys-courthouse-justice/	3
Jake Offenhartz, <i>Report: ICE Still Making Arrests In And Around NY Courthouses, Despite State Directive</i> , Gothamist (Jan. 15, 2020, 10:25 a.m.), https://gothamist.com/news/report-ice-still-making-arrests-and-around-ny-courthouses-despite-state-directive	4
Leonard Greene, <i>ICE ignoring courthouse guidelines to make arrests: report</i> , NY Daily News (Jan. 14, 2020, 7:00 a.m.), https://www.nydailynews.com/new-york/ny-ice-rally-courthouse-arrests-20200114-pck7bxjhmbdrfpefwerh53b3fm-story.html	5
Max Siegelbaum & Mazin Sidahmed, <i>ICE Agents Appear at a Westchester Court the Day After New York State Restricts Access</i> , Documented (Apr. 24, 2019, 6:17 a.m.), https://documentedny.com/2019/04/24/ice-agents-appear-at-a-westchester-court-the-day-after-new-york-state-restricts-access/	5
William Glaberson, <i>In Tiny Courts of N.Y., Abuses of Law and Power</i> , N.Y. Times (Sept. 25, 2006), https://www.nytimes.com/2006/09/25/nyregion/25courts.html	5
Other Authorities	
Complaint, <i>State of New York et al. v. U.S. Immigration & Customs Enforcement</i> , No. 1:19-cv-8876 (JSR) (S.D.N.Y. Sept. 25, 2019)	passim
Directive from Office of Chief Administrative Judge, N.Y. Unified Court System, to All Uniformed Personnel regarding Protocol Governing Activities in Courthouses by Law Enforcement Agencies (Apr. 17, 2019), http://nycourts.gov/whatsnew/pdf/2017_law_enforcement_activities.pdf	3
ICE Out of Courts Coalition, <i>Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State</i> (March 2019), https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf	passim
Immigrant Defense Project, <i>Denied, Disappeared, and Deported: The Toll of ICE Operations at New York’s Courts in 2019</i> (Jan. 2020), https://www.immigrantdefenseproject.org/wp-content/uploads/Denied-Disappeared-Deported-FINAL.pdf	passim

Interactive Map, ICEwatch, https://raidsmap.immdefense.org/	3
U.S. Immigration and Customs Enforcement, Directive No. 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses,” (Jan. 10, 2018), https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf	1

INTEREST OF AMICI CURIAE

Amici curiae (listed in the Appendix) are former state and federal judges who have a strong interest in ensuring that courts remain open and accessible to the people and that the public continues to perceive courts in that way. Our state courts play an essential role in upholding the rule of law in New York. The courts touch every facet of life, and the justice they administer every day depends upon the claimants, defendants, victims, witnesses, and other important stakeholders who appear before them just as certainly as it depends upon judges and judicial personnel. Amici know firsthand that in order for the courts to function properly and do justice, ensure public safety, and serve their communities, all of these stakeholders must regard courthouses as safe and open spaces.

The independent judiciary is a pillar of American democracy and our state courts. Unfortunately, a marked increase in arrests and enforcement activity by U.S. Immigration and Customs Enforcement (“ICE”) in and near courthouses in recent years has seriously threatened that vital perception, creating a chilling effect and deterring stakeholders from participating in the justice system. The January 10, 2018 ICE directive concerning “Civil Immigration Enforcement Actions Inside Courthouses,” (the “Civil Arrest Directive” or “the Directive”), which formally permits civil immigration enforcement actions in and near federal, state, and local courthouses,¹ only exacerbates this chilling effect. Amici’s experience presiding over thousands of cases in various courts uniquely qualifies them to explain how the Directive and

¹ U.S. Immigration and Customs Enforcement, Directive No. 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses,” at 1-2, (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (“Directive”).

ICE's policy of conducting civil arrests in and around courthouses jeopardize the administration of justice in New York and beyond.

ARGUMENT

Informed by amici's broad and varied judicial experience, this brief addresses the real-world ramifications of ICE's courthouse arrests and the Directive on the judicial process in New York courts.

Amici incorporate by reference the arguments made in their "Brief of Former Judges as Amici Curiae in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss," filed on November 5, 2019. Dkt. No. 34. That amicus brief argued: (1) the Directive exacerbates a chilling effect that deters noncitizens from participating in the justice system; (2) the chilling effect impedes the administration of justice; and (3) even when individuals are not deterred from accessing the courts, the Directive and policy of conducting civil arrests in and around New York courthouses nonetheless obstruct the judicial process.

This brief provides additional information to support a fourth argument—that despite New York's implementation of policies designed to curb the negative consequences flowing from ICE arrests in or near courthouses, these ramifications persist. Consequently, judicial relief is necessary to create the unequivocal protection needed to restore public confidence in the courts.

As detailed in Plaintiffs' Complaint, the Office of Court Administration ("OCA") has twice updated Unified Court System ("UCS") policy in an attempt to reduce ICE courthouse activity, and Governor Cuomo issued an executive order limiting federal immigration arrests in state facilities within executive control.² According to the UCS policy issued in April 2019

² See Complaint ("Compl.") ¶¶ 53-61.

(“UCS Policy”), ICE must present a judicial warrant for review by a judge or court attorney before making an arrest inside a New York state courthouse.³

Despite these efforts, ICE arrests in New York courthouses continue unabated.⁴ *In fact, courthouse operations in 2019 were 1700% higher than in 2016, with nearly half (47%) of total operations occurring after the April 2019 UCS Policy prohibiting warrantless arrests inside courthouses.*⁵ UCS policy can only go so far, as OCA is powerless to regulate ICE arrests and surveillance occurring near, but not inside, courthouses.⁶ After the UCS Policy was passed, ICE surveilled individuals inside courthouses and arrested them on the courthouse steps or adjacent sidewalks once they exited.⁷ For example, when a man was arrested by ICE outside the back entrance of Queens Criminal Court, the ICE officer told his wife that they “had all entrances

³ Directive from Office of Chief Administrative Judge, N.Y. Unified Court System, to All Uniformed Personnel regarding Protocol Governing Activities in Courthouses by Law Enforcement Agencies (Apr. 17, 2019), http://nycourts.gov/whatsnew/pdf/2017_law_enforcement_activities.pdf

⁴ See Compl. ¶¶ 68-74; see also Brigitte Hamadey, *Opinion: ‘And Justice For All’ Means Barring ICE from NYS Courthouses*, City Limits (June 19, 2019), <https://citylimits.org/2019/06/19/ice-nys-courthouse-justice/> (reporting at least eight incidents of courthouse and courthouse-adjacent arrests in New York, including in all five boroughs of NYC, in the two months following the 2019 Directive); Interactive Map, ICEwatch, <https://raidsmap.immdefense.org/> (documenting eleven ICE arrests inside of courthouses in the first two months after the implementation of the directive).

⁵ *Denied, Disappeared, and Deported: The Toll of ICE Operations at New York’s Courts in 2019*, Immigrant Defense Project (Jan. 2020) at 6 (“Denied, Disappeared, and Deported”), <https://www.immigrantdefenseproject.org/wp-content/uploads/Denied-Disappeared-Deported-FINAL.pdf>. Courthouse “operations” include both ICE arrests and verified sightings of ICE agents or vehicles. *Id.* at 8.

⁶ See Compl. ¶¶ 73-77; ICE Out of Courts Coalition, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* (March 2019) at 47 (“Safeguarding Report”), <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf> (account of ICE stalking target to nearby restaurant).

⁷ *Denied, Disappeared* at 9.

covered,” had watched him in the court and followed him out.⁸ In 2019, 80% of ICE operations targeting individuals at courthouses occurred while they were on their way to a court proceeding or as they exited the courthouse.⁹

There is also evidence that ICE agents ignore the mandates of the UCS Policy. In contravention of UCS policy, ICE has arrested individuals inside a courthouse without the supervising judge reviewing their paperwork,¹⁰ and without showing a warrant.¹¹ And, as recently as January 2020, ICE maintained that it has “broad at-large arrest authority by Congress and may lawfully arrest removable aliens in courthouses” despite the UCS Policy.¹² These comments indicate that ICE has no plans to discontinue its courthouse arrest policy.

Because such activity remains chilling for witnesses, victims, and litigants, New York’s noncitizens and those close to them continue to avoid court.¹³ Additionally, UCS policy is of little or no practical effect to protect the tens of thousands of individuals interacting with the approximately 1,300 locally-run town and village courts throughout New York (also known as

⁸ *Id.* at 10.

⁹ *Id.* at 7.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 13.

¹² Jake Offenhartz, *Report: ICE Still Making Arrests In And Around NY Courthouses, Despite State Directive*, Gothamist (Jan. 15, 2020, 10:25 a.m.), <https://gothamist.com/news/report-ice-still-making-arrests-and-around-ny-courthouses-despite-state-directive>.

¹³ Denied, Disappeared at 16.

“justice courts”).¹⁴ Justice courts are often located in or near municipal buildings where other government services are offered, compounding ICE’s interference with local government functions.¹⁵

UCS policy also relies on state court personnel to navigate complex legal distinctions, leading to uneven and imperfect policy implementation.¹⁶ While the policy permits ICE arrests in courthouses based only on *judicial* warrants, ICE officers can arrest people outside of court based on less stringent *administrative* warrants. Information from Unusual Occurrence Reports (“UORs”), which should be filed every time an ICE arrest occurs in court, also shows that court personnel often do not recognize or understand warrant distinctions, resulting in ICE courthouse arrests that UCS policy otherwise would have prohibited.¹⁷

¹⁴ Max Siegelbaum & Mazin Sidahmed, *ICE Agents Appear at a Westchester Court the Day After New York State Restricts Access*, Documented (Apr. 24, 2019, 6:17 a.m.), <https://documentedny.com/2019/04/24/ice-agents-appear-at-a-westchester-court-the-day-after-new-york-state-restricts-access/>; see also William Glaberson, *In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. Times (Sept. 25, 2006), <https://www.nytimes.com/2006/09/25/nyregion/25courts.html>; Leonard Greene, *ICE ignoring courthouse guidelines to make arrests: report*, NY Daily News (Jan. 14, 2020, 7:00 a.m.), <https://www.nydailynews.com/new-york/ny-ice-rally-courthouse-arrests-20200114-pck7bxjhmbdrfpefwerh53b3fm-story.html>.

¹⁵ See Safeguarding Report at 47 (account of ICE stalking target to nearby restaurant).

¹⁶ See *id.* at 63.

¹⁷ See *id.* at 61-62.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment.

Dated: New York, New York
March 13, 2020

Respectfully submitted,

/s/ Debo P. Adegbile

Debo P. Adegbile
Jarret A. Zafran
WILMER CUTLER PICKERING HALE AND
DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: (212) 230-8800
Fax: (212) 230-8888

APPENDIX: LIST OF AMICI

Jonathan Lippman: Former Chief Judge of the New York Court of Appeals; former Chief Administrative Judge of New York; former Presiding Justice of the Appellate Division, First Department

Carmen Beauchamp Ciparick: Former Senior Associate Judge of the New York Court of Appeals; former Justice of the New York Supreme Court; former Judge of the Criminal Court of the City of New York

Fern A. Fisher: Former Deputy Chief Administrative Judge of the New York City Courts; former Administrative Judge of the Civil Court; former Deputy Supervising Judge of the Civil Court; former Justice of the New York Supreme Court, Matrimonial and City Parts; former Judge of the Housing Part of the Civil Court

Howard A. Levine: Former Associate Judge of the New York Court of Appeals; former Associate Justice of the Appellate Division, Third Department; former Justice of the New York Supreme Court; former Family Court Judge, Schenectady County

Wallace B. Jefferson: Former Chief Justice of the Supreme Court of Texas

E. Leo Milonas: Former Associate Justice of the Appellate Division, First Department; former Chief Administrative Judge of New York; former Deputy Chief Administrative Judge of the New York City Courts

A. Gail Prudenti: Former Chief Administrative Judge of New York; former Presiding Justice of the Appellate Division, Second Department

Chase T. Rogers: Former Chief Justice of the Connecticut Supreme Court; former Appellate Court Judge; former Superior Court Judge

Shira A. Scheindlin: Former United States District Judge for the Southern District of New York; former Magistrate Judge for the Eastern District of New York