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# Freezing Out Immigrants: The Denial of Due Process in New York State Courts

August 17, 2018

**Claire R. Thomas**

Op-Ed Contributor

Frequent raids on immigrant communities and deaths in immigration detention centers have galvanized an “Abolish ICE” movement nationwide.

In part, the movement is informed by the situations in state courthouses, where the presence of U.S. Immigrations and Customs Enforcement agents can instill fear in noncitizens and discourage them from seeking legal services they are entitled to or even notifying the police when they are in danger.

At the local level, advocates in New York have sounded the alarm for years on the presence of ICE agents inside New York State Courts. Following the 2016 election, ICE enforcement of civil immigration law in state courthouses increased.

In fact, the Immigrant Defense Project, a New York City-based non-profit, reported that there was a 1200% increase in ICE arrests and attempted arrests in New York State Courts in 2017.

Arrests occurred not only in the New York State Criminal Courts, but also at Family Courts, Traffic Courts, Community Courts, and the Human Trafficking Intervention Courts. Many of those arrested did not have a criminal history, and the majority of those charged with crimes had allegedly committed low-level offenses such as traffic violations.

ICE, which was created by the passage of the Homeland Security Act in 2002, has as part of its mission statement to “promote homeland security and public safety.” While the ICE website promotes sensational stories about the arrests and deportations of child predators, sex offenders, and even traffickers, the agency neglects to mention the thousands of civil immigration arrests that also ensnare the victims and witnesses of these crimes.

Instead, by instilling fear of deportation in all non-U.S. citizens, ICE is freezing out any semblance of justice in New York State Courts.

One of our New York Law School Asylum Clinic clients, who was in an abusive relationship, refused to report her abuser to the police or obtain an order of protection against him for fear of jeopardizing her own immigration case.

Despite the fact that she has a pending asylum case and does not have a criminal record, she said she is afraid of being separated from her children and deported. As such, her abuser's criminal actions remain unchecked. She and her children remain unsafe.

She is not alone. The ACLU's 2018 report entitled "Freezing Out Justice" provides a nationwide account of how courthouse arrests by ICE have discouraged immigrants from accessing the judicial system. Domestic violence advocacy organizations report fewer immigrants seeking services — and that's not because of a decline in intimate partner violence. Noncitizens are scared to report abuse.

Attorneys for children also describe immigrant guardians being afraid to become legal caretakers for vulnerable minors. District Attorney's offices complain of immigrant witnesses no longer cooperating with the prosecution. State Court judges report delays and disruptions in their proceedings.

On another troubling note, some law students who are not U.S. citizens are even wary of entering New York State Courts to observe judicial proceedings or to advocate for clients as part of clinical learning or internships because they fear being caught up in an ICE enforcement action. The results of ICE arrests in state courts have already had a chilling effect on access to the judicial system for immigrants. Fears are now further impacting the professional training of future lawyers.

It is not possible for New York to administer its own state laws and ensure public safety as long as ICE enforces civil immigration laws in state courtrooms.

The New York City Bar Association's "Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses" acknowledges an ongoing dialogue on this topic between the Chief Administrative Judge Janet DiFiore and the Office of Court Administration.

Despite a January 2018 ICE memo purporting to limit courthouse arrests, as well as an OCA directive, advocates assert that more action is needed in order for state courts to truly be open to all New Yorkers. Such recommendations include training for court personnel on ICE arrests and how these differ from criminal arrests, increasing transparency among court personnel regarding ICE enforcement actions in state courts, and finally requiring judicial warrants for civil arrests at state courthouses.

Adopting these recommendations, among others, would hopefully begin to melt away the denial of due process for all New Yorkers and ensure that state courts operate to ensure justice promote public safety.