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February 24, 2014

Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, D.C. 20536

Re: ICE Courthouse Arrests throughout Wisconsin

To Whom It May Concern:

We write with urgency regarding the conduct of Immigration and Customs Enforcement (“ICE”) agents in courthouses throughout Wisconsin.

ICE agents have interrogated and detained people present at courthouses attending misdemeanor and family court hearings, escorting family members to hearings, and even paying traffic fines. ICE officers appear to be detaining people for whom they do not have warrants. By deterring both litigants and victims of crime from utilizing court services and contacting law enforcement, ICE has created a culture of fear that has undermined public safety and the ability of local law enforcement and the state’s judicial system to carry out essential functions in Wisconsin.

Documented reports from lawyers, courthouse officials, community members, and journalists demonstrate that ICE agents have routinely come to courthouses in Milwaukee, Racine, Dane, Ozaukee, Waukesha, Kenosha, Walworth, Winnebago, Washington, and Rock Counties. Agents appear to have racially profiled Latino and non-English speaking individuals.

These practices undercut local law enforcement priorities and go against ICE policy.

ICE’s enforcement actions at courthouses have prevented residents from complying with their obligations to pay citations and appear for court hearings, disrupting the state’s judicial processes. Agents have prevented hearings from taking place. These practices interfere with the state’s ability to enforce its laws and carry out justice in its courthouses.

Moreover, ICE’s actions have created a culture of fear surrounding courts and law enforcement, deterring residents from exercising their constitutional right and civic duty to report crimes, appear for court hearings, obtain restraining orders or marriage licenses, attend family court, testify, or otherwise seek court services. As the Supreme Court has recognized, the First and Fifth Amendments of the Constitution protect access to the courts. See *Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2494 (2011) (First Amendment “protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes”); *Christopher v. Harbury*, 536 U.S. 403, 413 (2002) (Due Process Clause of Fifth Amendment protects against “systemic official action [that] frustrates a plaintiff or plaintiff class in preparing and filing suits at the present time”).

ICE’s actions not only undermine these important public policies, but are also contrary to ICE’s own written policies. On October 24, 2011, then-director of ICE John Morton issued a memorandum

entitled “Enforcement Actions at or Focused on Sensitive Locations” (“the Sensitive Locations Memo”). The Memo instructed ICE agents to avoid conducting enforcement actions in areas deemed “sensitive locations” except in certain discrete and limited circumstances. The Memo lists as “sensitive locations” schools, hospitals, places of worship, funeral and wedding sites, and sites of public demonstrations, and emphasizes that this “is not an exclusive list.” The Memo continues, “Particular care should be exercised with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities.” Courthouses provide essential services to all these people, especially victims of crime or abuse.

Like the other locations expressly listed in the Sensitive Locations Memo, courthouses should be considered a “sensitive location” where enforcement actions should be avoided absent exigent circumstances. It is clear that the Sensitive Locations Memo’s purpose is to ensure that ICE enforcement actions do not impede residents from taking their children to school, practicing their religion, or exercising other constitutional rights. Attending court hearings is not only a constitutionally protected right, but it is vital to public safety that residents can appear in court, comply with law enforcement citations and court orders, and seek other court services without fear of reprisal from ICE.

Arrests have occurred that are in tension with ICE’s stated priorities for immigration enforcement. On June 17, 2011, Mr. Morton adopted a memo regarding the exercise of prosecutorial discretion in the “apprehension, detention, and removal of aliens.” The memo outlines the factors to be considered in taking immigration enforcement actions, and prioritizes the arrest and removal of people with serious criminal histories, prior deportation orders and limited ties in the United States. In a separate memo issued the same date, Mr. Morton addressed cases involving “the victims and witnesses of crime, including domestic violence,” and civil rights complainants. In such cases, “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”

ICE’s enforcement actions at Wisconsin courthouses not only have resulted in the arrest and deportation of people who do not appear to meet ICE’s priorities for immigration enforcement, but also of people who have gone to court to seek protection, including through family court. The arrests are contrary to ICE’s stated policies, and undermine the important interests the policies are designed to protect.

Racial Profiling

According to lawyers, courthouse officials, community members, and media reports, courthouses in Racine and other counties have made it a standard practice to schedule all people who require Spanish interpreters on the same days of the week. ICE agents have systematically come to the courthouses on these days to question and detain people in the court who do not speak English or look Latino. This is racial profiling, and may violate the Fourth Amendment which protects against unreasonable searches and seizures. Additionally, ICE’s practice of mass arrests based on perceived language ability or national origin potentially may violate the Fifth Amendment, which prohibits unequal protection under the law based on race or national origin.

Recommendations

First, we request a meeting with the Acting Director of ICE as soon as one is appointed, Chicago Field Office Director Ricardo Wong, and Deputy Secretary of DHS Alejandro Mayorkas. This meeting should take place in Milwaukee and include concerned local public officials, community leaders, affected community members, and signatories of this letter.

Second, ICE should investigate the courthouse arrest and interrogation practices of its agents in Wisconsin, including allegations of racial profiling. ICE should also investigate the nature of any tips received from county personnel and the apparent violations of agents’ warrantless arrest and interrogation

authority under 8 U.S.C. § 1357. ICE should take steps to ensure that its officers are properly trained on governing ICE enforcement policy and the statutory and constitutional limitations on its arrest and interrogation authority.

Third, we urge ICE to revise its policies and trainings to ensure that courthouse arrests do not occur in Wisconsin or any other location, and to ensure that ICE agents do not arrest or detain people based on information they learn because the people have mandatory court appearances or otherwise access court services. ICE should update its Sensitive Locations Memo to explicitly include courthouses as a “sensitive location” site, and ensure that its agents are properly trained not to conduct enforcement actions at courthouses absent extraordinary circumstances. ICE should institute measures to hold agents accountable to this agreement.

ICE has taken similar action recently

We urge ICE to take similar actions as it did recently in response to similar arguments made by advocates from Kern County, California. In a letter dated January 10, 2014, Executive Associate Director of Enforcement and Removal Operations Thomas Homan wrote, “ERO has decided to refrain from taking enforcement actions at [Kern County Superior Courthouse], except in exigent circumstances.” While this is an encouraging first step, ***we urge ICE to halt enforcement actions at all courthouses in Wisconsin and throughout the country.***

Since January 10, ICE officers in Kern County have at least twice arrested people at their homes after learning about them because they had court hearings concerning traffic violations. ICE should halt this sort of enforcement action.

We appreciate your attention to this important matter and look forward to hearing what steps the agency will take to address these problems. Please contact Christine Neumann-Ortiz regarding next steps.

Regards,

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