



Mayor's Office of
Immigrant Affairs
Bitta Mostofi
Commissioner

April 10, 2019

Testimony of Commissioner Bitta Mostofi
NYC Mayor's Office of Immigrant Affairs

Before a joint hearing of the New York City Council Committees on Immigration and the Justice
System

“Oversight - ICE Out of New York Courts”

Thank you to Speaker Johnson, Chair Menchaca, Chair Lancman, and the members of the Committees on Immigration and the Justice System. My name is Bitta Mostofi, and I am the Commissioner of the Mayor's Office of Immigrant Affairs (MOIA).

My testimony today addresses federal immigration enforcement activity in and around state courthouses in New York City and the City's deep concern about the impact this activity has on New Yorkers' access to justice. Though the City does not have jurisdiction to regulate activities in the courts, which are controlled and operated by the State, we recognize the grave importance of this issue.

A hallmark of the Trump Administration continues to be overbroad immigration enforcement. In New York City and the surrounding region¹, U.S. Immigration and Customs Enforcement (ICE) has dramatically increased arrests of immigrants. In the first full federal fiscal year of the Trump Administration, total ICE arrests in the New York City area increased 88 percent compared to the last full federal fiscal year of the previous administration. Arrests of people with no criminal convictions increased even more sharply between those two time periods, by an alarming 414 percent. By its own statements and the accounts of a range of stakeholders, concurrent with this overall shift, ICE has increased its efforts to conduct enforcement at courthouses in New York City and throughout the state.

This degree of enforcement demonstrates a disturbing lack of concern for the devastating human consequences of immigration arrests – and even the mere threat of encountering an ICE officer in the course of one's daily life – on individuals, families, and communities. So does ICE's willingness to conduct enforcement actions in and around courthouses, which should be designated as "sensitive locations."

Mayor de Blasio has repeatedly called for ICE to cease overbroad immigration enforcement in our communities, including ICE presence and enforcement in and around courthouses. The City does not have jurisdiction to regulate ICE access to the courts, but has and will continue to advocate for ICE to limit enforcement at the courts. We have raised our concerns about this issue to ICE, and remain engaged with a range of stakeholders on this issue. We recognize that New York State Office of Court Administration's (OCA) recent expansion of its courthouse access protocol will help ensure safety and security in courtrooms, and provide for additional data collection and transparency around ICE activity in and around the courts.

We support the goals of the Protect Our Courts Act (New York State Bill A.2176/S.425) to limit civil immigration enforcement in and around State-controlled courthouses and will continue to work with our partners in Council, advocates, and colleagues in state government toward a solution that is as strong and protective of access to the courts for all New Yorkers – regardless

¹ The ICE NYC Area of Responsibility is made up of the five boroughs of New York City, as well as Dutchess, Nassau, Putnam, Suffolk, Orange, Rockland, Ulster, and Westchester counties.

of immigration status – as possible. We also continue to call on the federal government to designate courthouses as “sensitive locations.” If ICE will not act to do so, Congress must.

The motives of the Trump Administration are clear: time and again, this administration pursues anti-immigrant policies. They claim to do so in the name of public safety, but what we know in New York City is that overbroad immigration enforcement, including ICE presence in and around the courts, only increases the risks for many vulnerable New Yorkers by deterring them from accessing the justice system.

The state courts are an essential component of our justice system, and as such, play a critical role in public safety for individuals and the community as a whole. For the criminal courts to perform their function, it is imperative that victims, witnesses, and defendants – regardless of their immigration status – are able to fully and fairly participate in the criminal justice process. Whether a person is coming to court to testify as a witness, seek an order of protection, participate in their own defense, or observe a judgement being issued, they must be able to do so without fear that they will be apprehended by federal immigration authorities. Anything short of this risks undermining due process, squandering the resources of the system, and, critically, jeopardizing the safety and well-being of victims of crime or abuse. Moreover, the criminal justice system must be able to resolve cases in a way that is fair for victims as well as those facing prosecution. For these reasons, we are extremely concerned by reports that vulnerable New Yorkers, including victims and survivors of domestic and gender-based violence and others, are staying away from courts out of fear of encountering ICE.

In addition, beyond the criminal courts, we are deeply concerned that the fear of potential ICE enforcement at state civil and problem-solving courts could similarly deter immigrant New Yorkers from pursuing or defending their rights, or engaging in essential services they may need. Civil courts such as the Family Court, Supreme Court, and Housing Court are important forums for individuals to resolve matters essential to their well-being – for example, to seek custody, obtain an order of protection, or prevent eviction. Problem-solving courts such as the Human Trafficking Intervention Court provide an indispensable opportunity to engage trafficking victims in supportive services, including immigration legal services and culturally appropriate counseling services. It is imperative that these courts be as accessible as possible to New Yorkers who need them, no matter their immigration status. While a 2018 ICE Directive instructs officers to generally avoid conducting enforcement actions in courthouse areas dedicated to non-criminal proceedings, such actions are not strictly prohibited. What is clear is this distinction does little to dispel community fears.

We are proud that in New York City, our office has, in collaboration with partners across government and the community, strongly mobilized to combat Trump Administration actions that stoked fear among our immigrant communities. Our approach is multi-faceted.

We have worked with Council to ensure that our local laws and policies protect the privacy of and access to services for all New Yorkers, and promote public safety for all. In New York City,

we generally do not, and will not, use City resources to do ICE's job for them, especially where it is not in the city's public safety interests to do so. Furthermore, the City has strong confidentiality laws and policies that protect the personal information of all New Yorkers who engage with the City. We continue working to strengthen these protections under the leadership of the Mayor's Office of Information Privacy. To help ensure all our city's residents feel safe accessing City services and benefits, regardless of immigration status, City agencies are generally prohibited from permitting non-local law enforcement personnel to access non-public areas of City property. Exceptions are made for when a judicial warrant is presented, exigent circumstances exist, or access is otherwise required by law or to further the mission or purpose of the agency.

In addition, together with our partners in the City Council, we have increased access to legal help for immigrants by investing at historic levels in immigration legal services and promoting programs such as ActionNYC, NYCitizenship, legal services for immigrant survivors of domestic violence, and the New York Immigrant Family Unity Project (NYIFUP). These programs provide immigrant New Yorkers with access to a continuum of services that help meet a broad spectrum of legal needs, from screening and brief advice to deportation defense and other complex forms of representation.

The City has dedicated special attention to enhancing access to justice and services for immigrant crime victims. In collaboration with the Mayor's Office to End Domestic and Gender-Based Violence (ENDGBV), the Mayor's Office of Criminal Justice, and key City law enforcement agencies, including the New York City Police Department (NYPD), Administration for Children's Services (ACS), New York City Commission on Human Rights (CCHR), Law Department, and Department of Consumer Affairs, we have successfully cut red tape in the process of requesting law enforcement certifications and declarations for U and T visa applicants. As a result, in 2018, the City continued to see historic levels of U visa certification requests and issuances by our law enforcement agencies. In addition, since 2016, the City has partnered with OCA through their Remote Temporary Order of Protection (TOP) project. This project is responsive to state legislation amending the Family Court Act to allow electronic filing and appearance for ex parte family offense petitions, when traveling to or appearing in the courthouse would constitute an undue hardship or create a risk of harm to the petitioner. Currently, ENDGBV has implemented this Remote TOP project, in collaboration with OCA, at four NYC Family Justice Centers, increasing access to Family Court for survivors of domestic and gender-based violence.

Further, in partnership with our sister agencies, community-based organizations, and community leaders throughout the City, we have worked to affirm immigrant communities in the face of ongoing attempts by the federal government to advance anti-immigrant policies. We are committed to empowering New Yorkers with timely, trustworthy information about their rights and important immigration-related developments that affect them. Last year, MOIA engaged approximately 18,000 individuals through Know Your Rights events and other outreach efforts,

and mobilized extensive outreach campaigns around issues of crucial concern to immigrant communities, such as the proposed “public charge” rule change.

These efforts have helped immigrant New Yorkers know they are welcome in our city, and can access City services. Nonetheless, throughout MOIA’s outreach work in immigrant communities, we continue to see high levels of fear related to the threat of ICE enforcement. The harsh reality of increased enforcement is also reflected in our Constituent Services work, where in 2018 we saw an uptick in requests for legal assistance for those who are detained or under order of deportation.² The persistent fear of ICE enforcement serves to undermine this important work.

This threat to the effectiveness of the City’s efforts is further evidenced by the harmful impacts of ICE courthouse enforcement observed by service providers. For example, a City-contracted legal services provider reported that a client, who is a survivor of domestic violence, was too afraid to file her order of protection and visitation petition in Family Court because she believed ICE would find out about the filing and try to apprehend her. The client heard about a rumored episode in the Bronx in which ICE made an arrest in a courtroom, and the client was convinced that this would also happen to her. As is evident in the examples recounted by legal providers throughout their *Safeguarding the Integrity of Our Courts* report, released this morning, this is far from a one-off occurrence.

In closing, we reiterate our deep concern about ICE’s activities in the state courthouses, and the impacts these actions have on New Yorkers’ access to justice. We call on ICE to limit enforcement in the courthouses and designate them as “sensitive locations.” We will continue to work in partnership with Council, advocates, and colleagues in state government to advance a solution that protects access to the courts for all New Yorkers – regardless of immigration status – as robustly as possible.

We look forward to hearing the testimony of others today and continuing to work with our many partners on this important issue.

² New York City Mayor’s Office of Immigrant Affairs, *State of Our Immigrant City: MOIA Annual Report for Calendar Year 2018* at p.34, available at <https://www1.nyc.gov/site/immigrants/about/annual-report.page>.