

Courthouse Immigration Enforcement: Steps State Courts Are Taking

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The Department of Homeland Security has established a single policy government Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CPB) precluding immigration enforcement at courthouses and protected areas¹ including schools, places of worship, hospitals.² The following is a list of steps that state and local courts are taking with regard to immigration enforcement at courthouses.³ Many of these actions implemented at state courts and in judges' courtrooms are based on and supported in the joint ICE and CBP April 27, 2021 memorandum on courthouse immigration enforcement and the October 27, 2021 memorandum on enforcement actions in protected areas.⁴

- ICE and CBP policy restricts all enforcement actions in or near courthouses,⁵ and other protected areas,⁶ unless certain limited circumstances are present.⁷
 - “Near” the courthouse includes adjoining or related areas, such as the parking lot or bus stop and does not include jails connected with or that are part of courthouses⁸
 - “Protected areas” covered by the policy include but are not limited to:⁹
 - Schools
 - Hospitals
 - Institutions and places of worship
 - Places where children gather, such as a playground or childcare center
 - A social services establishment
 - Place where disaster or emergency aid is provided
 - Site of a funeral, wedding, or other public religious ceremony
 - Site of public demonstration, parade or rally
 - Only in the following limited exigent circumstances¹⁰ might an immigration enforcement action take place in or near courthouse and other protected area:¹¹
 - Action involves a national security threat
 - Imminent risk of death, violence, or harm to a person
 - Involves the hot pursuit of an individual who poses a public safety threat
 - Imminent risk that evidence material to the criminal case will be destroyed
 - A safe alternative location for immigration officials to take the enforcement action does not exist
- Since DHS policy requires Headquarters approval for an enforcement action to occur at a courthouse, judges and court security should ask any immigration enforcement official who comes to a courthouse for documentation of Headquarters approval.¹²

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- Any Agent or Officer must seek approval from their Agency’s headquarters before taking action at or near a protected area.¹³
- Immigration officials are required to report enforcement actions in or near courthouses through the relevant ICE or CBP electronic system of record.¹⁴ Immigration officials must provide monthly reports to the Secretary of the Department of Homeland Security (DHS) and, upon request, to the DHS Office for Civil Rights and Civil Liberties.¹⁵
- Courts restrict any activity that interferes with the courtroom operations.¹⁶
- No interruptions are allowed during court proceedings—including arrests by an officer or law enforcement agency—until the proceeding is complete.¹⁷
- The courtroom judge makes the determination (not ICE), as to whether ICE can take an action in the event of a serious public safety issue.
- When an immigration enforcement action is authorized by DHS at a courthouse or when it occurs due to exigent circumstances, judge can require that the enforcement action not occur in non-public areas of the courthouse and not in courtrooms.¹⁸
- ICE officials are unable to enter courtrooms to conduct official business or enforcement.¹⁹
 - If ICE officials conduct official business in courtrooms, the Judges will ask them to leave and the Marshall will escort them out.²⁰
 - Judges and court staff may contact court security to remove immigration officials from the courtroom or courthouse.²¹
 - The judge will determine if contempt proceedings should be initiated against the officer if an ICE agent fails to comply with a judicial order.
- Consistent with DHS, ICE and CBP policy, courts restrict immigration enforcement actions to non-public areas of the courthouse, outside public view, and utilize non-public entrances and exits.²²
 - Enforcement actions taken in a protected area should occur in a non-public area to avoid restricting access to the protected location.²³
- Courts ask immigration enforcement officials to coordinate with court security staff on any courthouse enforcement actions.²⁴
 - This facilitates immigration enforcement officials using a courthouse’s non-public entrances and exits.
- Based on ICE and CBP policy, courts may refuse to allow immigration enforcement actions against witnesses, family members, or friends accompanying individuals to court.²⁵
- Courts may require immigration officials to have a judicial warrant or judicial order authorizing them to take the subject of the warrant into custody.²⁶
 - Court staff should receive training on the fact that DHS administrative subpoenas and federal court subpoenas do not require immediate compliance despite warning language that may be included on the subpoena form.²⁷
- Courts can prohibit court staff from assisting in immigration enforcement actions.²⁸

¹ The Department of Homeland Security (DHS) in 2021 changed the term used to describe a larger group of areas that are protected from immigration enforcement actions as “protected areas.” Prior Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) policies referred to “protected areas” as “sensitive locations.” *FAQ on Sensitive Locations and Courthouse Arrests*, p. 3 U.S. IMMIGR. & CUSTOMS ENF’T (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests>.

² U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://niwaplibrary.wcl.american.edu/pubs/ice-2011-sensitive-locations-policy>; see also U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., U.S. Customs and Border Protection Enforcement Actions At Or Near Certain Community Locations (JAN. 18, 2013), <https://niwaplibrary.wcl.american.edu/pubs/cbp-sensitive-locations-policy-2013> ; see also U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., Civil Immigr. Enf’t Actions In Or Near or Inside Courthouses, Directive No 11072.1, 2 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/2021-dhs-enforcement-at-courthouse-press-release>; See also generally, Monica Bates and Leslye E. Orloff, VAWA Confidentiality Protections, Courthouse Enforcement, and Sensitive Locations Policy at a Glance (Dec. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/victims-and-protected-locations-policies-at-a-glance>.

³ Several of the suggestions in this document were reported by judges from across the country who responded to a 2017 state court judges survey. See Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT at p. 4-21 (May 3, 2018), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report/>.

⁴ See U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> ; see also U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., ENFORCEMENT ACTIONS IN OR NEAR PROTECTED AREAS (Oct. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/dhs-enforcement-in-or-near-protected-areas> (Hereinafter Protected Areas Policy)

⁵ This policy applies to all DHS enforcement actions. It applies equally to, does not distinguish between, and covers all court proceedings including criminal, family, juvenile, and civil court proceedings. See generally, U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., Civil Immigr. Enf’t Actions In Or Near or Inside Courthouses, Directive No 11072.1, (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement>; see also *FAQ on Sensitive Locations and Courthouse Arrests*, 5 U.S. IMMIGR. & CUSTOMS ENF’T , at p.9 (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests> “To uphold the rule of law, ICE must ensure that this country’s courthouse doors are open to all people, regardless of their citizenship. There are many reasons why an individual, regardless of citizenship or immigration status, might want or need to visit a courthouse, including but not limited to participating in child custody determinations, obtaining a protective order, serving as a witness, participating in a lawsuit to protect constitutional or legal rights, and paying a fine.”)

⁶ See generally PROTECTED AREAS POLICY.

⁷ Civil immigration enforcement action may only be taken in or near a courthouse when it involves: a national security threat; an imminent risk of death, violence, or physical harm to any person; hot pursuit of an individual who poses a public safety threat; or an imminent risk of destruction of material evidence to a criminal case. U.S. IMMIGR. AND CUSTOMS ENF’T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES, at p. 2 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> Absent hot pursuit, immigration officials may only take enforcement actions toward individuals who pose a public safety threat if: a safe alternative location does not exist or would be too difficult to achieve, and the action has been approved in advance by a Field Office Director, Special agent in Charge, Chief Patrol Agent, or Port Director. *Id.* Though the joint ICE and CBP memorandum on courthouse immigration enforcement does not apply to criminal immigration enforcement actions, the memorandum instructs immigration officials to determine whether a criminal immigration enforcement action “truly needs to be taken in or near the courthouse given its potentially adverse impact upon access to justice.”

⁸ *FAQ on Sensitive Locations and Courthouse Arrests*, 6 U.S. IMMIGR. & CUSTOMS ENF’T, at p. 6 (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests> (“the policy does not apply to arrests that occur in jails connected to courthouses where the individual arrested is being released from the custody of state, local, or federal law enforcement partners at the conclusion of any criminal sentence.”)

⁹ PROTECTED AREAS POLICY at p.2; see also *FAQ on Sensitive Locations and Courthouse Arrests*, at p.3 U.S. IMMIGR. & CUSTOMS ENF’T , at p. 3 (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests> (“The change in name, from “sensitive locations” to “protected areas,” is to provide a more precise

understanding that certain areas are inherently in need of special consideration. Rather than only being "sensitive" they rise to a level of being protected because of the functions performed in such locations and the people those facilities serve, such as children, survivors of domestic violence, and worshippers. This memo provides greater clarity on what types of locations are protected areas and which kinds of enforcement actions should generally be avoided there and guides the workforce in the exercise of judgment to determine what additional areas should be protected.”).

¹⁰ *FAQ on Sensitive Locations and Courthouse Arrests* at p. 3.

¹¹ PROTECTED AREAS POLICY at p.2.

¹² *FAQ on Sensitive Locations and Courthouse Arrests* at p. 3; I.C.E. Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (August 10, 2021) at pp. 2, 5, 9-10, <https://niwaplibrary.wcl.american.edu/pubs/ice-victim-centered-directive-11005-3>.

¹³ PROTECTED AREAS POLICY at p.4.

¹⁴ U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES , at p. 3 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement>.

¹⁵ *FAQ on Sensitive Locations and Courthouse Arrests*, U.S. IMMIGR. & CUSTOMS ENF'T , at p. 6 (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests>.

¹⁶ Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT , at p. 20 (May 3, 2018), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

¹⁷ See U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES , at p. 3 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> (instructing that any immigration enforcement action that must be taken in a courthouse should be conducted “at the conclusion of the judicial proceeding that brought the individual to the courthouse”); see also Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT , at p. 20–21 (May 3, 2018), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report> (describing existing court policies that prohibit immigration officials from interrupting court proceedings or taking enforcement actions in courtrooms).

¹⁸ Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, Nat'l Immigrant Women's Advocacy Project, at p.21 (May 3, 2018) <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

¹⁹ U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES , at p. 3 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> (“To the fullest extent possible, an enforcement action in the courthouse will be taken in a non-public area of the courthouse, outside of public view, be conducted in collaboration with courthouse security personnel, utilize the courthouse’s non-public entrances and exits, and be conducted at the conclusion of the judicial proceeding that brought the individual to the courthouse.”)

²⁰ Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT , at p. 21 (May 3, 2018), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

²¹ Rafaela Rodrigues, Alina Husain, Amanda Couture-Carron, Leslye E. Orloff & Nawal H. Ammar, *Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT , at p. 20 (May 3, 2018), <http://niwaplibrary.wcl.american.edu/pubs/immigrant-access-to-justice-national-report>.

²² See U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES , at p. 3 (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courthouse-enforcement> “To the fullest extent possible, an enforcement action in the courthouse will be taken in a non-public area of the courthouse, outside of public view, be conducted with courthouse security personnel, [and] utilize the courthouse’s non-public entrances and exits”); see also U.S. IMMIGR. & CUSTOMS ENF'T, U.S. DEP'T OF HOMELAND SEC., POLICY NO. 10029.2, ENFORCEMENT ACTIONS AT OR FOCUSED ON SENSITIVE LOCATIONS , at p.3 (Oct. 24, 2011), <http://niwaplibrary.wcl.american.edu/pubs/ice-2011-sensitive-locations-policy> (instructing immigration officials acting under exigent circumstances to “conduct themselves as discretely as possible” and to “make every effort to limit the time at or focused on the sensitive location”).

²³ PROTECTED AREAS POLICY at p.4.

²⁴ See U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courtthouse-enforcement>.

²⁵ See U.S. IMMIGR. AND CUSTOMS ENF'T & U.S. CUSTOMS AND BORDER PROT., CIVIL IMMIGRATION ENFORCEMENT ACTIONS IN OR NEAR COURTHOUSES (Apr. 27, 2021), <https://niwaplibrary.wcl.american.edu/pubs/ice-and-cbp-courtthouse-enforcement>; see also *FAQ on Sensitive Locations and Courthouse Arrests*, U.S. IMMIGR. & CUSTOMS ENF'T, at p.4 (May 19, 2021), <https://niwaplibrary.wcl.american.edu/pubs/faqs-protected-areas-and-courthouse-arrests> (stating that enforcement actions at courthouses will only be executed in limited circumstances against individuals falling within the public safety priorities of DH S's civil immigration enforcement priorities. Such enforcement actions will, absent exigent circumstances, not lead to arrest of non-targeted individuals.”)

²⁶ See, e.g., N.Y. Exec. Order No. 170.1, N.Y. COMP. CODES R. & REGS. tit. 9, § 8.170.1 (2018); CAL. OFF. OF THE ATT'Y GEN., SECURING EQUAL ACCESS TO JUSTICE FOR ALL: GUIDANCE AND MODEL POLICIES TO ASSIST CALIFORNIA'S SUPERIOR COURTS IN RESPONDING TO IMMIGRATION ISSUES 18–20 (2018); see also U.S. IMMIGR. & CUSTOMS ENF'T, U.S. DEP'T OF HOMELAND SEC., POLICY NO. 11090.1, INTERIM GUIDANCE: CIVIL IMMIGRATION ENFORCEMENT AND REMOVAL PRIORITIES, at p. 6 (Feb. 18, 2021) https://niwaplibrary.wcl.american.edu/pubs/021821_civil-immigration-enforcement_interim-guidance-tae-johnson (“The approval to carry out an enforcement action against a particular noncitizen will not authorize enforcement actions against other noncitizens encountered during an operation if those noncitizens fall outside the presumption criteria . . .”).

²⁷ CAL. OFF. OF THE ATT'Y GEN., SECURING EQUAL ACCESS TO JUSTICE FOR ALL: GUIDANCE AND MODEL POLICIES TO ASSIST CALIFORNIA'S SUPERIOR COURTS IN RESPONDING TO IMMIGRATION ISSUES 21 (2018)

²⁸ CAL. OFF. OF THE ATT'Y GEN., SECURING EQUAL ACCESS TO JUSTICE FOR ALL: GUIDANCE AND MODEL POLICIES TO ASSIST CALIFORNIA'S SUPERIOR COURTS IN RESPONDING TO IMMIGRATION ISSUES 21 (2018)