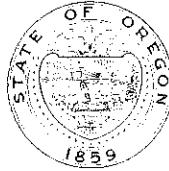


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Thomas A. Balmer
Chief Justice



OREGON SUPREME COURT

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Thomas.Balmer@ojd.state.or.us

April 6, 2017

Attorney General Jeff Sessions
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable John F. Kelly
Secretary of Homeland Security
Washington, DC 20528

Dear Attorney General Sessions and Secretary Kelly:

On behalf of the Oregon Judicial Department, I write to urge you to direct federal law enforcement agencies, including Immigration and Customs Enforcement (ICE), not to arrest individuals inside or in the immediate vicinity of Oregon's county courthouses. If you are unwilling to adopt that policy, then at a minimum, I request that you formally expand the definition of "sensitive locations" in the Homeland Security Policy to include these areas.

Let me explain. Our courthouses are open to the public, as a matter of tradition and as required by the Oregon Constitution, which provides that "justice shall be administered openly." ICE agents and other law enforcement officers have the same access to the public areas of our courthouses as all members of the public.

I fully recognize the scope of the statutory authority of ICE and other federal law enforcement agencies. OJD's policy is scrupulous neutrality -- just as we will not hinder federal, state, or local law enforcement agencies, including ICE, in the exercise of their enforcement authority, neither can we assist federal (or other) law enforcement in apprehending those who may have violated the law. As you know, the courts strive to be -- and must be -- impartial and neutral forums for the resolution of criminal and other cases.

To help the Oregon courts preserve their mandated impartial and neutral role, I respectfully request that you exercise your broad discretion in enforcing federal immigration and criminal laws, and *not* detain or arrest individuals in or in the immediate vicinity of the Oregon courthouses.

Letter to Attorney General Sessions
and Secretary Kelly
April 6, 2017
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As I am sure you appreciate, the Oregon courts must be accessible to all members of the public. The safety of individuals and families, the protection of economic and other rights, and the integrity of the criminal justice system all depend on individuals being willing and able to attend court proceedings: a witness who is subpoenaed to testify in a criminal case; a victim seeking a restraining order against an abusive former spouse; a driver paying a traffic fine; a landlord seeking an eviction or a tenant defending against one; or a small claims court plaintiff in a dispute with a neighbor.

The State of Oregon needs to encourage, not discourage, court appearances by parties and witnesses, regardless of their immigration status. However, ICE's increasingly visible practice of arresting or detaining individuals in or near courthouses for possible violations of immigration laws is developing into a strong deterrent to access to the courts for many Oregon residents. A number of our trial courts report that even attendance at scheduled hearings has been adversely affected because parties or witnesses fear the presence of ICE agents. The chilling effect of ICE's actions deters not only undocumented residents, but also those who are uncertain about the implications of their immigration or residency status or are close family, friends, or neighbors of undocumented residents. ICE's actions also deter appearances in court by those who are legal residents or citizens, but who do not want to face the prospect of what they see as hostile questioning based on perceived ethnicity, cases of misidentification, or other intrusive interactions with ICE agents.

I understand and appreciate the difficulty of the law enforcement work that you do. I trust that you understand as well the central role that the Oregon courts play in our state's criminal justice system, our efforts to protect children and families, and our daily work to ensure the rule of law for all Oregon residents. ICE's detention or arrest of undocumented residents in and near Oregon's courthouses seriously impedes those efforts. It deters individuals, some undocumented and some not, from coming to court when they should. For that reason, I urge you to adopt a policy of *not* arresting individuals for alleged immigration violations in or near Oregon's courthouses, or, at a minimum, to formally include courthouses in your definition of "sensitive locations" where ICE will thoroughly review the implications of and alternatives to making such arrests.

Letter to Attorney General Sessions
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We appreciate the discussions that our judges and staff have had with ICE officials in Oregon about their policies and practices, but believe this current and prospective interference with the administration of justice in Oregon calls for policy changes that only you can direct.

Thank you for your attention to this serious problem for the Oregon courts.

Sincerely,



Thomas A. Balmer
Chief Justice

cc: Governor Kate Brown
Attorney General Ellen Rosenblum
Senator Ron Wyden
Senator Jeff Merkley
Oregon Congressional Delegation
Oregon Presiding Judges

Martha L. Walters
Chief Justice



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OREGON SUPREME COURT

June 17, 2019

Bryan S. Wilcox
Acting Field Office Director
ICE Enforcement & Removal Operations
12500 Tukwila Int'l Boulevard, 4th Floor
Seattle, WA, 98168

Re: ICE Enforcement Activities in State Courthouses

Dear Mr. Wilcox:

In April 2017, Thomas Balmer, my predecessor as Chief Justice of the Oregon Supreme Court sent a letter to the United States Attorney General and the Secretary of Homeland Security. In the letter, he raised concerns about Immigration and Customs Enforcement (ICE) agents arresting individuals in and around Oregon state courthouses. Justice Balmer explained that many members of our communities worry about contact with ICE agents and choose not to come to court. That is true not only for people facing deportation, but also people unsure about their own immigration status and people who fear being misidentified as deportable by ICE agents. By discouraging people from coming to court when they should, ICE's practice of arresting people at courthouses impairs the administration of justice, which depends on people participating in court proceedings -- whether as defendants standing trial, witnesses testifying, or victims seeking protection. In light of those concerns, he asked that ICE either completely stop arresting people at courthouse or at least designate courthouses as "sensitive locations," like churches and schools.

In January 2018, ICE issued a policy directive on courthouse arrests in January 2018. That directive states that ICE enforcement activities in courthouses generally should be limited to targeted individuals, should not involve action against family or friends with the targeted individual, and should avoid areas of the courthouse dedicated to non-criminal activities. The directive also states that ICE agents should make every effort to limit their time in courthouses and avoid unnecessarily alarming the public.

I appreciate ICE's efforts to provide limits on its enforcement activities, but the courthouse arrests that ICE is continuing to make are continuing to have an adverse effect on the administration of justice. Our judges continue to receive reports that ICE's courthouse enforcement practices are affecting community members' willingness to participate in judicial proceedings, including applying for restraining orders and responding to eviction notices.

Even when ICE agents comply with the directive issued in 2018, ICE arrests often create the type of public alarm that the directive seeks to avoid. For example, ICE agents are usually in plain clothes, do not always identify themselves during arrests, and have refused to produce a warrant or other document authorizing the detention, when requested. An arrest made under those circumstances understandably leads to confusion and uncertainty.

In one case, when arrested someone just outside a courtroom where criminal proceedings were taking place, the commotion was so loud that the trial judge had to order security to investigate, leaving the courtroom unsecured. In another incident where ICE arrested someone inside a courthouse, an attorney representing that individual asked to see the judicial or administrative warrant authorizing the arrest. Unfortunately, the agents refused, resulting in additional commotion and fear.

ICE agents also have made numerous investigatory contacts with people in and around the courthouses who are not the targeted individuals. One court employee observed ICE agents stopping numerous people leaving a courtroom where a targeted individual was expected. And, in another case, ICE agents mistakenly accused the wrong person of being the targeted individual and aggressively questioned that person until the agents confirmed the mistake by comparing a photograph of the person stopped and the targeted individual. In those cases, even though ICE agents were looking for a targeted individual, they exposed numerous other people -- based on their race and ethnicity -- to tactics that aroused their fear.

I am concerned that ICE's current enforcement activities in our state courthouses are continuing to negatively impact our communities, and I would like to meet with you to discuss further measures that could be instituted to ensure that Oregonians have access to justice.

I will be happy to arrange a meeting at your convenience. Thank you for listening.

Sincerely,



Martha L. Walters
Chief Justice

cc: Bill Williams, via email
Lisa Norris-Lampe, via email
Jason Specht, via email



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Oregon

December 4, 2018

SENT VIA EMAIL AND US MAIL

Chief Justice Martha L. Walters
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Re: ACLU of Oregon Observation of ICE Arrests in Oregon Courts and Letter in Support of Petition for Chief Justice Order

Dear Chief Justice Walters,

On behalf of the American Civil Liberties Union of Oregon (“ACLU of Oregon”), today we join other immigrant rights and legal organizations in requesting that you exercise your authority as Chief Justice of the Supreme Court of the State of Oregon to issue an order amending the Uniform Trial Court Rules to prohibit civil immigration arrests in and around Oregon courthouses. Based on the ACLU of Oregon’s direct observation of multiple Immigration and Customs Enforcement (“ICE”) courthouse arrests since early 2017, and our ongoing immigrant rights advocacy, we are convinced that this change is necessary to ensure equal and effective administration of justice in Oregon courts.

I. Introduction

The fundamental constitutional protections of due process and equal protection embodied in the United States Constitution and Bill of Rights apply to every person in the United States, regardless of immigration status. Over the past thirty years, the ACLU of Oregon and its national and state affiliate partners (collectively, “the ACLU”) have been involved in many significant legal struggles on behalf of immigrants’ rights. We have challenged laws that deny immigrants access to the courts, impose indefinite and mandatory detention, and discriminate on the basis of nationality. The ACLU has also challenged constitutional abuses that arise from immigration enforcement at the federal, state, and local levels, including anti-immigrant “show me your papers” laws at the state level, and unconstitutional enforcement tactics.

Since the nation’s founding, nearly 100 million immigrants from every continent have settled in the United States.¹ With the exception of indigenous people, everyone living in this country is either an immigrant or the descendent of voluntary or involuntary immigrants. Yet, every new wave of immigrants to the United States has faced fear and hostility, and they often

¹ David Bier, “Over 100 Million Immigrants Have Come to America Since the Founding,” CATO Institute, October 4, 2018, available online at <https://www.cato.org/blog/over-100-million-immigrants-have-come-america-founding>.

serve as political scapegoats during times of economic hardship, political turmoil, or war.²

Since President Trump took office, ICE officers have dramatically expanded their presence at criminal and civil courts, including in family, landlord-tenant, and traffic courts here in Oregon and across the United States. The regular presence of undercover immigration officers in courthouses and the corresponding increase in courthouse arrests has created deep insecurity and fear among immigrant communities, stopping many individuals from going to court. Immigration enforcement at courthouses poses a grave risk to the security and safety of our communities and threatens the fundamental right to equal protection under the law, a right guaranteed to every person in the United States. ICE arrests at courthouses have created confusion and spread fear and mistrust of even local law enforcement and our Oregon courts—limiting the efficacy of the judiciary, law enforcement, survivors’ services, public defenders, and other core services available at courthouses.³

II. ACLU of Oregon ICE Legal Observers Have Documented Numerous Troubling Arrests by Undercover ICE Agents at Courthouses in Oregon

In spring 2017, the ACLU of Oregon began receiving requests from community organizations for ACLU of Oregon legal observers to accompany immigrants to court, and to witness and document ICE activity at courthouses in Oregon. In particular, community members in Washington County, Oregon contacted the ACLU of Oregon to express concern about a sharp increase in ICE enforcement activity at the Washington County courthouse, including ICE arrests in the courthouse hallways. One early report involved ICE agents tackling an individual on the lawn of the Washington County courthouse.

In April 2017, an ACLU of Oregon legal observer accompanied an immigrant to a hearing at the Clackamas County courthouse in Oregon City, Oregon. After the hearing, the ACLU of Oregon legal observer walked the individual to his truck parked outside the courthouse. As soon as he entered his truck, ICE agents in plain clothes drove up, blocked the individual’s truck with their vehicles, swarmed the truck, violently pulled the individual from his truck, loaded him into an unmarked car, and drove away. At least eight plain-clothed ICE agents participated in the arrest, and none identified themselves to the person being detained or showed an arrest warrant. None of the agents were wearing uniforms. The only agent with a visible badge walked up after the man was forcibly removed from the truck and taken into custody. Throughout the arrest, the ACLU of Oregon legal observer repeatedly asked to see a warrant, but one was not produced. The legal observer documented the detention using the ACLU of Oregon Mobile Justice app, a free smartphone application available to the public to record interactions with law enforcement.⁴

² Peter Beinart, “Trump Scapegoats Unauthorized Immigrants for Crime,” The Atlantic, March 1, 2017, available online at <https://www.theatlantic.com/politics/archive/2017/03/trump-scapegoats-unauthorized-immigrants-for-crime/518238/>.

³ American Civil Liberties Union, “Freezing Out Justice: How immigration arrests at courthouses are undermining the justice system”, 2018, available online at https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

⁴ The video is available at <https://youtu.be/At6DPi4mHtE>. To protect the privacy of the individuals arrested by ICE, the ACLU of Oregon does not publicly release its ICE courthouse arrest videos without blurring the faces and

After documenting this shocking ICE arrest at the Clackamas County courthouse and receiving reports of similarly aggressive ICE tactics at the Washington County courthouse, in May 2017, the ACLU of Oregon organized a special legal observer program to witness and document ICE activity, particularly in and around Oregon courthouses. The ACLU of Oregon has conducted multiple trainings, many in conjunction with local community groups and faith organizations, and now has over 150 trained ICE legal observers.

ACLU of Oregon ICE legal observers have accompanied undocumented community members to hearings in many different Oregon courthouses.⁵ Given the consistently high amount of ICE activity reported, ACLU of Oregon ICE legal observers are present at the Washington County courthouse every Monday, when the court takes pleas and sets cases for hearings.⁶

On May 22, 2017, ACLU of Oregon ICE legal observers were present when ICE arrested three people in a two-hour period at the Washington County courthouse. One was a mother who had left her two young children with a babysitter while she attended a status hearing on her case. ICE agents followed another person from the courthouse to the nearby MAX station, arresting him on the MAX platform just before he boarded the train to return home. The third was arrested as he left the courthouse, just outside a church. In these cases, multiple plain-clothed ICE agents quickly surrounded the individuals, hand-cuffed them, took their phones, and loaded them into unmarked cars. The ICE agents never showed arrest warrants, and generally disregarded traditional law enforcement arrest protocols.⁷

Between May and September 2017, ACLU of Oregon ICE legal observers documented or confirmed ten ICE arrests at the Washington County courthouse.

On Monday, September 18, 2017, faith leaders and immigration advocates organized a “Sanctuary in the Streets” vigil to protest ICE enforcement activity at the Washington County courthouse. ACLU of Oregon ICE legal observers and ACLU of Oregon staff were present at the demonstration, and spotted ICE agents walking through courthouse hallways and unlawfully filming the vigil.⁸ Toward the end of the vigil, ACLU of Oregon ICE legal observers witnessed two ICE agents follow a couple out of the courthouse. Without identifying themselves, two ICE agents confronted Isidro Andrade-Tafolla, a U.S. citizen and long-time Washington County employee, demanded his name and identification, and accused him of matching a mug shot ICE

identifying information of targeted individuals.

⁵ While the majority of ICE enforcement activity observed by the ACLU of Oregon has occurred at the Washington County courthouse in Hillsboro, the ACLU of Oregon has documented or confirmed arrests at other courthouses in Oregon including Clackamas, Multnomah, Wasco, and Clatsop. A review of documents produced as part of the ACLU of Oregon’s on-going FOIA litigation show arrests or planned arrests at courts in Washington County, Clackamas, Beaverton Municipal, Umatilla County, Multnomah County and Tillamook County.

⁶ This news clip describes the work of the ACLU of Oregon’s ICE legal observer program at the Washington County courthouse: https://twitter.com/splinter_news/status/922830136088469504.

⁷ ACLU Mobile Justice videos from some of these arrests can be viewed here:

https://www.youtube.com/playlist?list=PLZ_t5gI0g85rcZstpOuV3kU6yts0Ky0yD.

⁸ Oregon law prohibits federal law enforcement officials from gathering information about political, religious, or social affiliation in Oregon. 2017 ORS 181A.250, Specific information not to be collected or maintained. And ICE’s own “sensitive locations” policy prohibits enforcement actions at “a public demonstration, such as a march, rally, or parade.” U.S. Immigration and Customs Enforcement, “FAQ on Sensitive Locations and Courthouse Arrests,” available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> (last visited on November 29, 2018).

agents had on their phones. Mr. Andrade-Tafolla and his wife, Renee Selden-Andrade, responded that the photo bore no resemblance to him, other than the fact that the photo was of another Latino man. Two cars with four additional ICE agents approached the couple, but no one identified themselves, nor was any arrest warrant ever displayed. After a press crew covering the vigil arrived on the scene, the ICE agents departed abruptly without explanation or apology.⁹

ICE's enforcement activity in Oregon courthouses came under sharp criticism by public officials after ICE racially profiled Mr. Andrade-Tafolla. Immediately following the incident, Oregon congressional representatives wrote to ICE and demanded an investigation.¹⁰ During a press conference held on September 22, 2017, Washington County sheriff Pat Garrett criticized ICE's tactics, saying ICE violated agreed upon protocols by not identifying themselves and by driving unmarked cars without using red and blue lights—which could lead to dangerous and even deadly situations for local law enforcement.¹¹ Since September 2017, Indivisible Hillsboro, Unite Oregon, and the Interfaith Movement for Immigrant Justice ("IMIJ") have held regular protests and vigils against ICE activity at the Washington County courthouse.

ICE denied that their agents did anything wrong in racially profiling Mr. Andrade-Tafolla, and ignored all criticism of their enforcement tactics at Oregon courthouses.¹² The ACLU of Oregon filed a Freedom of Information Act ("FOIA") request with ICE to reveal how federal immigration agents are operating in Oregon following Mr. Andrade-Tafolla's stop outside the Washington County courthouse.¹³

This event traumatized Mr. Andrade-Tafolla and his family. After the ICE encounter, Mr. Andrade-Tafolla reported feeling anxiety and distress. He was unable to sleep at night because of nightmares about ICE agents apprehending him and his family. He also reported fear when he was around public buildings or saw plain-clothes officers and unmarked law enforcement vehicles. He reports that this is particularly difficult because he is a public employee and routinely encounters these situations. His distress reached levels that required professional help and he began seeing a therapist in the hope that therapy would help him recover. Mr. Andrade-Tafolla has stated that he will likely never forget the experience despite his best efforts to move on from the events of that day. Similarly, Renee Selden-Andrade reported trauma following the event. She feels anxiety about herself and her family because of their race and ethnicity. She is

⁹ The ACLU of Oregon ICE legal observer's video of ICE racially profiling Isidro Andrade-Tafolla is embedded in this ACLU blog post: <https://aclu-or.org/en/news/federal-immigration-agents-caught-video-racially-profiling-hillsboro-man>; it has now been viewed millions of times nationwide. See, e.g., *ICE Agents Profile Man Outside of Oregon Courthouse* <https://www.facebook.com/NowThisNews/videos/171475956855526/> (7.8 million views).

¹⁰ United States Representative Suzanne Bonamici, "Blumenauer, Bonamici Urge ICE to Investigate Unjustified Questioning of U.S. Citizen in Washington County," September 20, 2017, available online at <https://bonamici.house.gov/media/press-releases/blumenauer-bonamici-urge-ice-investigate-unjustified-questioning-us-citizen>.

¹¹ The press conference can be viewed online at <https://www.facebook.com/OneOregonUnited/videos/1738622206439109/>.

¹² Geoff Pursinger, "Immigration Field Office Director Responds to Hillsboro Incident," The Portland Tribune, October 20, 2017, available online at <https://pamplinmedia.com/ht/117-hillsboro-tribune-news/376054-261213-immigration-field-office-director-responds-to-hillsboro-incident>.

¹³ American Civil Liberties Union, FOIA Filed for Information on Courthouse Arrests and Racial Profiling by Federal Immigration Agents, October 12, 2017, available online at <https://www.aclu.org/news/aclu-oregon-demands-documents-ice-practices-oregon>.

concerned that they will be targeted by law enforcement because of the color of their skin. Mr. Andrade-Tafolla and Mrs. Selden-Andrade believe the event impacted their children as well, who reported feeling very concerned for their parents following the events. They made regular visits to check on their parents in the months following the ICE detention.

On February 7, 2018, the ACLU of Oregon filed suit against ICE for failing to produce documents relating to courthouse arrests in Oregon.¹⁴ Over a year after Mr. Andrade-Tafolla was racially profiled outside of the Washington County courthouse, ICE has still not provided much of the documentation requested by the ACLU of Oregon and the litigation over these documents is on-going. Those documents that have been produced, though heavily redacted, indicate ICE officers routinely target individuals at Oregon courthouses.

A preliminary review of a subset of those documents related to Washington County show that ICE had planned, or executed, 45 arrests at the Washington County court house between March 6, 2017 and September 18, 2017.¹⁵ According to ICE's internal emails relating to these arrests, 15 such arrests targeted individuals with no known prior convictions. These arrests in particular targeted the DUII Diversion Court. Twelve planned arrests targeted individuals with no known prior convictions who were appearing on a DUII Diversion petition. Several additional arrests targeted individuals whose criminal history included only a single misdemeanor conviction or a single conviction for DUII.

These ICE emails also indicate that individuals were frequently targeted for arrest based only on information generated and provided by the Washington County Sheriff's Office. That is, ICE was (and likely still is) routinely targeting for arrest individuals that it does not actually know to be in violation of immigration law, but rather who they assume are in violation based only on country-of-birth information gathered as a part of the booking process at the county jail.

After a short hiatus, ICE resumed enforcement activity at the Washington County courthouse in January 2018, following the issuance of a new directive regarding ICE enforcement in courthouses.¹⁶ The new directive stated that ICE would generally avoid enforcement actions in courthouses and avoid non-criminal proceedings.¹⁷ The new directive also stated ICE would only pursue courthouse arrests of individuals with criminal convictions, gang affiliations, or who pose a national security or public safety threat.¹⁸ Based on ACLU of Oregon ICE legal observer documentation of ICE activity at the Washington County courthouse in 2018, ICE is not following its directive in Oregon courts. For example, arrests documented by the ACLU of Oregon have involved individuals with low level crimes like people in diversion

¹⁴ Aimee Green, "ACLU sues for answers about ICE agents at Oregon's courthouses," February 7, 2018, available online at https://www.oregonlive.com/portland/index.ssf/2018/02/aclu_asks_judge_to_force_ice_t.html.

¹⁵ A review of the documents available to the ACLU of Oregon at the time of writing this letter shows over 100 arrests at courthouses in Oregon in the first three quarters of 2017. This number will likely go up as ICE continues to produce documents in this litigation.

¹⁶ U.S. Immigration and Customs Enforcement, Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses, January 10, 2018, available online at (cont. on following page)

<https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

¹⁷ Id.

¹⁸ Id. See also, Conrad Wilson, "ACLU Files Suit Against ICE For Details On Courthouse Arrests," Oregon Public Broadcasting, February 7, 2018, available online at <https://www.opb.org/news/article/aclu-files-suit-against-ice-for-details-on-courthouse-arrests/>.

for driving under the influence (DUII). ICE has stated that a DUII makes an individual a threat to public safety. If the ICE directive includes all crimes and crimes like DUII are considered a public safety risk, the ICE directive is meaningless. Arrests known to the ACLU of Oregon, though not documented by ACLU of Oregon ICE legal observers, include arrests in areas in courthouses that are clearly non-criminal, like family court. Moreover, it is hard to imagine how an arrest by ICE inside an Oregon courthouse could be done without any disturbance to non-criminal areas of the court given than many of our courthouses are relatively small with criminal and non-criminal courtrooms located within earshot and line-of-sight. The most noticeable change in ICE behavior has been a shift toward even more secrecy. For example, ICE now regularly uses restricted entrances, hallways, and parking areas at the courthouse, making it more challenging to observe and record ICE arrests and abuses in the courthouse.

Since January 2018, ACLU of Oregon ICE legal observers have documented or confirmed six arrests at the Washington County courthouse. On June 1, 2018, ICE arrested a man in the Washington County Circuit Court immediately following a hearing in his case. The arrest was violent and created chaos in the hallways immediately outside of Chief Criminal Judge Erwin's courtroom.

The most recent arrest documented by ACLU of Oregon ICE legal observers was on October 29, 2018, inside Judge Erwin's courtroom. A total of five ICE agents in street clothes staked out the courtroom. Four agents waited outside the courtroom, while another agent observed the proceedings inside the courtroom.¹⁹ After Judge Erwin finished hearing the cases on his calendar, but while people remained in the courtroom, the agent in the courtroom signaled to the agents waiting outside to enter the courtroom. The agents identified themselves as "immigration," handcuffed the individual in the courtroom, took his phone, and failed to produce any arrest warrant. One ICE agent positioned himself in the way of ACLU of Oregon ICE legal observers seemingly in an attempt to obscure their view of the arrest.²⁰ Another ICE agent filmed the arrest and the legal observers in the courtroom.²¹ ICE took the handcuffed individual to the public elevator, prohibited ACLU of Oregon ICE legal observers' access to the elevator, and put the individual in an unmarked car in the restricted loading dock area of the courthouse.²²

Since the inception of the ACLU of Oregon ICE legal observer program in May of 2017, we have documented 16 arrests in or around the Washington County courthouse. This number is much lower than the actual number of arrests occurring at the Washington County courthouse.

¹⁹ The agent inside Judge Erwin's courtroom was one of the agents who racially profiled Isidro Andrade-Tafolla.

²⁰ The ACLU of Oregon understands that no video recording is allowed inside the Washington County courthouses and trains its ICE legal observers accordingly. Because ICE was conducting an arrest inside a courtroom and attempting block the view of ACLU ICE legal observers, ACLU of Oregon ICE legal observers took a photograph of the arrest. We understand that photography in courtrooms is also prohibited by Washington County, but there was no other means to document the extraordinary event. The ACLU of Oregon disclosed to the Washington County court that day that its legal observers had taken such a photograph, and explained the extraordinary circumstances leading to the decision to capture the ICE courtroom arrest on film. The photo of the arrest in Judge Erwin's courtroom is available at https://aclu-or.org/sites/default/files/october_29_washco_arrest_still_photo.pdf.

²¹ The ACLU of Oregon submitted a Freedom of Information Act request for the video footage taken by the ICE agent.

²² A video submitted to the ACLU of Oregon shows ICE agents putting the individual into an unmarked car in the restricted loading dock; the video is available at <https://youtu.be/AnaqkEd2Zjc>.

Based on documents reviewed by the ACLU of Oregon, at least 45 arrests occurred between March and September 2017 alone.²³ The ACLU of Oregon documented only 10 of those arrests. While ICE's reluctance to share information with the public about enforcement activity means we cannot be sure how many arrests have occurred in Oregon courts over the last two years, we know it is significant. For every arrest we documented, three more occurred in secret.

III. Many Immigrants are Afraid of Going to Court Because of ICE Enforcement Actions in Courthouses

The ACLU of Oregon is frequently contacted by Oregonians, with and without legal status, who are afraid to go to court to attend to important court business. Similarly, lawyers who represent immigrant clients or witnesses regularly contact the ACLU of Oregon requesting advice regarding the likelihood of arrest by ICE agents in Oregon courts. As a consequence, the ACLU of Oregon routinely advises individuals afraid to access our state court system and lawyers representing individuals in the same situation.

Unlike the ACLU of Oregon ICE legal observer program, the ACLU of Oregon does not track every contact with immigrants afraid to attend court or attorneys concerned about ICE arrest of witnesses or clients. However, two recent contacts are illustrative of the real and well-founded fear immigrants have of ICE encounters in Oregon courts.

In early September 2018, the ACLU of Oregon was contacted by an attorney appointed to represent an indigent defendant in Washington County. The attorney had three witnesses she wished to call as part of her defense; however, all three witnesses were concerned that attending court could result in their arrest by immigration officials. In this case, the witnesses were theoretically safe from ICE arrest because of the Deferred Action for Childhood Arrivals program. Yet despite having DACA, at least one of the witnesses was so afraid of going to court that she would not testify without first receiving immigration advice from an attorney. While it was reasonable to believe that she was not in great risk of being targeted by ICE for arrest, enforcement actions by ICE against immigrants with current DACA status meant that the ACLU of Oregon could not assure the witness that attending court was without risk of arrest. After receiving the ACLU of Oregon's counsel, the witnesses courageously testified and the defendant was acquitted of all charges at a jury trial.

In late September 2018, the ACLU of Oregon was contacted by another defense attorney who explained in an email that that she had "a pretty important witness" in her case who "doesn't want to come to court because she is afraid she will be detained by ICE." The defense attorney indicated to the ACLU of Oregon that the witness was undocumented. The witness was an important exculpatory witness who could provide testimony regarding the defendant's innocence. Based on ICE's enforcement activities at and around courthouses, the ACLU of Oregon was unable to counsel the witness that she could testify in the case without risking arrest by ICE.

²³ Arrest numbers were calculated through a review of documents provided by ICE to the ACLU of Oregon in ongoing FOIA litigation. Because the document production is incomplete, the number of arrests may be higher than our current count.

These examples go to the core of the problem created by ICE enforcement in courthouses. Immigrants, even those with some level of protection from ICE arrest, are afraid to appear in Oregon courts. While some decide to go despite their fears, others do not and the consequences can be grave. Witnesses failing to appear with exculpatory evidence means the court cannot provide the full and fair trial guaranteed to defendants in criminal cases by both the United States and Oregon Constitutions.

Defense attorneys working with undocumented clients have told the ACLU of Oregon that ICE's regular presence in and around courthouses and the increased enforcement activity inside courthouses where they practice law is interfering with their representation of undocumented clients. Just this week, the ACLU of Oregon learned of an apparent ICE arrest of two individuals inside the Multnomah County courthouse. A local defense attorney described seeing four plainclothes ICE officers escorting two Latino-appearing individuals down the court's stairwell on Friday, November 30, 2018. The defense attorney described the event as "shocking" and posted about it on social media. The ACLU first learned of this incident after a different defense attorney in Washington County discussed the event with an ACLU of Oregon ICE legal observer, commenting that ICE's courthouse actions appeared to be getting worse and wondered whether, under the circumstances, she could counsel her clients against coming to court without violating her ethical obligations.

"The idea that someone could be arrested for appearing on an accusation that they are presumed innocent of, especially something as pithy as a driving while suspended or something similar, makes me feel deeply saddened and like I am doing something wrong by advising my clients to come to court, even though that is what the law requires of me."

This concern is not unique to this defense attorney. Several attorneys have shared similar worries with the ACLU of Oregon in recent months. It is unacceptable that ICE enforcement actions have gotten to the point of creating ethical conflicts for attorneys about something as basic as advising a client on their obligation to attend court hearings. Effective representation is impossible when attorneys believe that it is better for their client to suffer the severe legal consequences of a failure to appear than simply show up for a hearing.

Concern in the immigrant community about court involvement is not limited to criminal matters. For example, the ACLU of Oregon was contacted by a legal permanent resident who was concerned that challenging a speeding ticket could have adverse immigration consequences. We have also been contacted by parents afraid to go to family court for fear of deportation. In every instance, these are people who are trying to assert their rights or pay their debt to society, but are fearful that in doing so they will put themselves and their families in danger. They are in an impossible situation because of ICE's unnecessary enforcement at courthouses.

IV. Conclusion

It is profoundly disturbing to watch government agents in street clothes prowl the hallways of courthouses, racially profile and swarm vulnerable people, fail to identify themselves

as ICE agents, handcuff community members, take their phones away, and disappear with people into unmarked cars—without ever showing an arrest warrant or following normal law enforcement protocol. It is in this setting that immigrants, or those profiled as such, must attend court in Oregon today. Knowing that such treatment is possible—perhaps likely—makes their decision to attend a court hearing a feat of courage.

It has become increasingly clear that ICE is not welcome in the courthouses by both court staff and Oregonians who are watching this issue. A wide range of people who are in court attending to their own business regularly express appreciation to ACLU of Oregon ICE legal observers for their presence. Similarly, courthouse staff have approached ACLU ICE legal observers and staff to thank the ACLU for working to facilitate access to the courts for everyone, regardless of citizenship status, and for shining a light on ICE activity in Oregon courthouses. This suggests to us that the requested Chief Justice Order would be broadly welcomed by Oregonians and Oregon courts.

Access to the courts is a fundamental right, and immigrant arrests in courthouses undermine the criminal justice system and civil courts in Oregon. The ACLU of Oregon opposes ICE activity in and around Oregon courthouses. The ACLU of Oregon supports a change in ICE policy to add courthouses to the list of sensitive locations, like churches, schools, hospitals, and public demonstrations, where ICE conducts enforcement activities more rarely.²⁴ In the past two years, however, ICE has rejected calls for this policy change, including a request from Oregon Chief Justice Thomas Balmer.²⁵ Instead, ICE has doubled-down on using courthouses as a central part of its enforcement strategy in Oregon, ignoring its own directives. Stopping ICE enforcement actions in Oregon courthouses through Oregon's court rules is therefore necessary to secure the safety, accessibility, and integrity of Oregon courts.

Should the Chief Justice desire further detail regarding any of the information contained in this letter, we would welcome an opportunity to discuss this issue in person.

Sincerely,



Katherine McDowell
Vice President of Legal Affairs
ACLU of Oregon Board of Directors



Mat dos Santos
Legal Director
ACLU of Oregon

²⁴ While they appear to be considerably less frequent than courthouse arrests, ICE enforcement actions do occur at ICE designated sensitive locations in Oregon. See, e.g., Katie Sheppard, "ICE Arrested an Undocumented Immigrant Just Outside a Portland Hospital," Willamette Week, October 31, 2017, available online at <https://www.wweek.com/news/courts/2017/10/31/ice-arrested-an-undocumented-immigrant-just-outside-a-portland-hospital/>.

²⁵ Ryan Haas and Conrad Wilson, "Oregon Supreme Court Chief Justice Tells ICE to Stay Out Of Courthouses," Oregon Public Broadcasting, April 7, 2017, available online at <https://www.opb.org/news/article/oregon-supreme-court-justice-ice-courthouse-letter/>.

DECLARATION OF BRIDGET COOKE OF ADELANTE MUJERES

Bridget Cooke hereby declares as follows:

1. I am the Executive Director of Adelante Mujeres. In my capacity as Executive Director, I lead the senior management team and provide direction for the Board in support of Adelante Mujeres' mission, vision, values, direction and policies. I also assure the delivery of excellent, integrated, culturally responsive services with measurable results. I am over the age of 18 and have personal knowledge of the facts described herein.

2. Adelante Mujeres (Women Rise Up) has a rich history of successfully engaging the low-income Latino and immigrant community by providing educational resources and services for community advancement. Our organization began when Latina women in the community wanted a safe space to receive educational services. Since then, the Latino community in Washington County has built a trusted relationship with Adelante and continues to guide us in determining program creation and expansion. Driven by community need, we have grown to provide the following culturally-competent programs: Early Childhood Education, Chicas Youth Development, ESPERE Violence Reduction, Empresas Small Business Development, Sustainable Agriculture, and the Forest Grove Farmers Market.

3. As a culturally-specific organization, our staff (86% are Latino) reflects the community we serve. All of our direct program staff speak Spanish, and we make a concerted effort to hire program participants for staff positions while assuring equity practices are promoted to meet the needs and development of our staff and participants. Our organization serves a broad range of individuals, including immigrants and communities of color in the Portland Metropolitan area with most participants residing in Washington County.

4. We submit this declaration in support of Petitioners' request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents have resulted in lower participation in the justice system and resulted in our clients not seeking critical services.

5. Since Immigration and Customs Enforcement ("ICE") began making arrests in and around Oregon courthouses, our client community has seen immediate, adverse affects. News of these arrests spread quickly, and our client community is now more reluctant to report domestic violence incidents, seek help to receive child support, seek reductions in traffic fees, and have limited their access courthouses for basic services like name changes, or real estate transactions. This impact has been felt broadly among the immigrant community and communities of color because the provision of these services and legal pathways are necessary for community safety and well-being.

Long-standing members of our community and clients of color feel impacted by ICE interference at the courthouse, regardless of status, as they do not want to be profiled or harassed while coming and going to the courthouse. Being delayed or arrested by ICE, even if released later, could result in loss of employment, absence from important responsibilities, and trauma to one's family and oneself.

Several of our program participants have described their fear of going to the courthouse when experiencing domestic violence. Rather than seek a restraining order, they have made the difficult decision of exposing themselves and their children to further violence because of fear of the abuser, fear of ICE and ultimately fear of deportation and separation from their families. This reality puts individuals in a dreadful catch 22.

6. The impact of ICE arrests on our clients has been profound. Clients have dropped out of English language and G.E.D. classes for fear of ICE presence in our community. They have isolated themselves and their families in the home, preventing their children from attending afterschool enrichment activities, field trips and church outings. They have made rash financial decisions regarding their studies, businesses and other investments. The level of daily fear endured by our clients has also contributed to increased depression and intrafamilial conflict and violence.

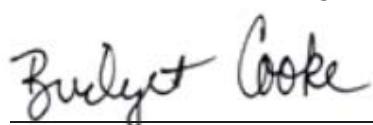
7. ICE presence in the courthouse tells these embattled communities that they are not safe anywhere, even in the halls of justice. Even where their rights as victims, as spouses, as witnesses, as children, as tenants or employees are purportedly protected. Instead of being protected by the courts, courthouses are seen as a site of more profiling, harassment and danger.

8. We believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will make it possible for our clients to conduct necessary business essential for family well-being. It will also ensure the reputation and integrity of our justice system, making our communities safer for all. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th day of November 2018, at Forest Grove, Oregon.

By:



Bridget Cooke, Executive Director

DECLARATION OF LORENA MANZO OF CAUSA OREGON

Lorena Manzo hereby declares are follows:

1. I am the Lead Organizer of Causa Oregon. In my capacity as Lead Organizer, I facilitate leadership groups with members in the Latino community in Marion County, focusing on growing and developing participants' leadership skills to empower them to advocate for their own rights. I also oversee another organizer who works in Washington and Multnomah Counties. I also organize many events throughout Oregon where I have contact with members of the Latino immigrant community and their families, including Immigrant Action Day and the May Day rally in Salem. I am over the age of 18 and have personal knowledge of the facts described herein.

2. Causa works to improve the lives of Latino immigrants and their families in Oregon through advocacy, coalition building, leadership development, and civic engagement. Latino immigrants and their families are the heart of Causa and inspire, implement, and champion our work. Our organization serves a broad range of individuals statewide, including immigrants and communities of color in Marion, Yamhill, Clackamas, Multnomah, and Washington Counties.

3. We submit this declaration in support of Petitioners' request to the Oregon Supreme Court for a rule of protection against civil arrests in Oregon courthouses because civil arrests by federal immigration agents have eroded our participants' trust in the justice system in Oregon.

4. Since Immigration and Customs Enforcement ("ICE") began making arrests in and around Oregon courthouses, our participants and affiliates have reported that they are afraid to appear in court, even to pay a simple traffic ticket. We receive calls asking whether they can

pay by mail or any alternative to showing up to a courthouse. This impact has been felt broadly among the immigrant community and communities of color because they have seen that taking care of day-to-day business can result in a family being torn apart, and that this often starts with an incident of being profiled because of race or the language you are speaking.

5. Long-standing members of our community and people of color are impacted by ICE interference at the courthouse, regardless of status, as they do not want to be profiled or harassed while coming and going to the courthouse.

6. We know that many of our participants fear going to court for any reason because they do not have a state ID and they fear that they will be discriminated against or racially profiled by ICE while there.

7. Due to the fear of civil arrests, members of our coalition have decided not to get a marriage license, and make other adverse personal and financial choices, to avoid such harassment in our courts. Indeed, many immigrant families often do not want to go to any state building, for fear of being targeted and harassed by federal immigration officials.

8. The impact of ICE arrests on our participants has been profound. I have one participant in particular who was racially profiled by local police. He reported to me that the police were called during an argument in which he was assaulted. Unfortunately because he is an immigrant he was the only one cited, and had to present himself in court where the charges were then dismissed. Having to appear in court without cause, and when in fact he was a victim, caused this individual great hardship. This was made worse by the fact that he and his whole family felt great trepidation in attending courthouse proceedings for fear that they would be targeted yet again at the courthouse by ICE.

9. These days, our participants have fear of any government entity, no matter what agency they are from. They do not distinguish police court employees from ICE agents, or feel they can trust those differences. The rise of courthouse arrests have greatly eroded community trust in the justice system. This year we have had at least two cases of people who were victims of crimes and who were so afraid to go to the police department to request a report of the crime that they asked a member of Causa Oregon to accompany them. We also have participants who declined to report employer abuses out of these same fears of subsequent arrests by ICE or ICE retaliation for having asserted their rights.

10. We believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents will encourage participation in the justice system, ensure the integrity of our justice system and will make our communities safer and more inclusive. We also feel it is crucial that the Court ensure that when an individual completes their business in the court, be it serving as a witness, paying a fine, or whatever, that they can do so without fear that in several days, weeks, or months they may receive a knock at the door from ICE, a fear which discourages participants from participating in the justice system in the first place.

11. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th Day of December 2018, at Salem, Oregon.

By:

Lorena Manzo

 
Signature: _____

12-04-2018
Date

DECLARATION OF LISA LESAGE, IMMIGRATION COUNSELING SERVICE

I, Lisa LeSage, hereby declare as follows:

1. I am the Executive Director of Immigration Counseling Service (ICS).

In my capacity as Executive Director, I oversee the operations of the organization, including the provision of legal services and outreach to community members and stakeholders. I am over the age of 18 and have personal knowledge of the facts described herein.

2. ICS is Oregon's oldest, and only, independent nonprofit law firm providing direct legal services to immigrants in Oregon and Southwest Washington, since 1978. Our organization serves a broad range of individuals, including immigrants and communities of color in Oregon and Southwest Washington. ICS operates two offices, one in Portland and one in Hood River, and operates a "mobile legal clinic" in Central Oregon once a month, in partnership with the Central Oregon Latino Community Association. ICS also has the only program representing detained, unaccompanied children under the age of 18 in Oregon, and a full-time anti-trafficking program providing legal and social services to foreign born human trafficking victims.

3. We submit this declaration in support of Petitioners' request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents have eroded our clients' trust in the justice system in Oregon. Since Immigration and Customs Enforcement (ICE) began making arrests in and around Oregon courthouses, our client community has expressed to our advocates here at ICS great fear in using the courthouse.

4. This impact has been felt broadly among the immigrant community and communities of color because they are in fear of being singled out, detained, or

arrested. For example, one attorney reports how an undocumented client considered not attending a custody hearing to obtain custody of her U.S. citizen children against her abusive husband. The client feared she would put herself and her children in even graver danger of harm if she was deported if ICE arrested her at the courthouse. Other clients have expressed fear of pursuing restraining orders or divorces against abusive partners due to the risks they face in presenting themselves at courthouses.

5. Long-standing members of our community and clients of color have expressed to our advocates feeling impacted by ICE interference at the courthouse, regardless of status, as they do not want to be profiled or harassed while coming and going to the courthouse. For example, one of our BIA representatives reports that whenever there is a new story in the media about ICE activity at a courthouse, it usually goes viral in the immigrant community (such as ICE agents' mistaken stop of a citizen outside the Washington County Courthouse in 2017). This in turn creates immediate panic among clients, including those with legal status.

6. In the past year, the BIA representative has spoken with people who have come in for consultations, as well as calls from existing clients with legal status, expressing their fear of accessing the courthouse, and wondering if they are safe.

7. Also, ICS community partners complain of their clients being fearful of using the courthouses. ICS has a partnership with the Latino Community Association (LCA) in Central Oregon, and provides free monthly legal clinics to LCA's clients. LCA reported to me this week that their clients have expressed concern about being profiled, harassed or detained at their local courthouses. Clients become afraid when they hear news of ICE activity at courthouses around Oregon, and this makes them afraid to even go to municipal court to pay traffic tickets. Because of this fear, LCA, together with the Immigrant Solidarity Network in Central

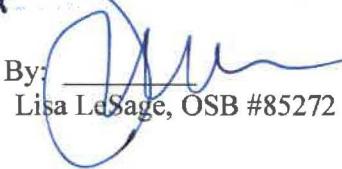
Oregon, has begun providing accompaniment to immigrants using Central Oregon courthouses, and have accompanied three clients so far. LCA is holding a training next week for Central Oregonians who are willing to accompany immigrants to court because of this fear.

8. The impact of ICE arrests on our clients has been profound. Many ICS clients have suffered trauma in their home countries, on their journeys to the United States, and here upon arrival. Our legal workers report that news stories about ICE presence in the courthouse has exacerbated their trauma, making it more difficult for clients to trust that the legal system will protect them. This in turn makes it even more difficult for ICS legal advocates to effectively communicate with clients and build trust through the ever-lengthening, and increasingly complex, process of legalization.

9. We believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will improve client outcomes, help immigrants feel comfortable exercising their rights and complying with their civic duties in state courthouses, ensure the integrity of our justice system and make our communities safer and more inclusive. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th day of November 2018, at Portland, Oregon.

By: 
Lisa LeSage, OSB #85272

DECLARATION OF CARL MACPHERSON OF METROPOLITAN PUBLIC DEFENDER

Executive Director Carl Macpherson hereby declares as follows:

1. I am the executive director of the Metropolitan Public Defender (“MPD”).
2. I am over the age of 18 and have personal knowledge of the facts described herein.
3. MPD is a nonprofit law firm that provides holistic public defense services to both U.S. citizens and noncitizens in Multnomah and Washington Counties. Between January 1 and November 18, 2018, MPD has represented at least 200 cases where the defendant was a non-U.S. citizen.
4. In addition to its public defense services, MPD also has a civil legal services division, MPD’s Community Law Division. The Community Law Division, funded through a variety of public and private contracts, provides civil legal services to indigent clients throughout the State of Oregon in a variety of legal fields, including, but not limited to, record expungement, felony reductions, landlord-tenant disputes, immigration removal defense, and family law matters. Housed within the Community Law Division, is MPD’s immigration project, Immigrant Defense Oregon (“IDO”), which provides legal representation for indigent persons in removal proceedings, including current and former MPD criminal clients. IDO also carries out MPD’s *Padilla* Project, in which one of our immigration attorneys advises MPD defense attorneys regarding the immigration consequences of the charges against their non-U.S. citizen clients, as mandated by the U.S. Supreme Court in *Padilla v. Kentucky*, 555 U.S. 1169 (2009).
5. MPD serves a broad range of indigent clients throughout the State of Oregon including immigrants and people of color.

6. Based on their experiences practicing in both criminal and civil courts, MPD lawyers are well-placed to see how Immigration and Customs Enforcement (“ICE”) practices in Oregon courthouses affect multiple facets of the Oregon justice system. In sum, the threat of ICE presence discourages and in some cases prohibits people witnesses, accused persons, and alleged victims—from appearing in court, attending their court dates, and availing themselves to the protection of the law.

7. I submit this declaration in support of Petitioners’ request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents have eroded our clients’ trust in the justice system in Oregon, have disrupted ongoing proceedings, and have created a sense of chaos in the administration of our legal system.

8. Due to their sensitive and confidential nature, comprehensive data on these matters are not available. The following paragraphs set forth a small but representative sample of the available evidence, based on a recent survey of MPD criminal defense attorneys:

- a. An MPD client was arrested by ICE at the Washington County courthouse in 2018, in the middle of his case. The client was arrested inside of the courthouse just outside of a courtroom. The MPD attorney noted that everyone inside of the courtroom could hear what was happening and initially believed that there was a fight outside of the courtroom. The incident was very traumatic for the client and all bystanders. The attorney discovered after the fact that her client had been taken to the Northwest Detention Center in Tacoma, Washington and she was unable to communicate with the client thereafter. The client had additional trial dates which the client failed to appear upon being detained.

- b. Our defense attorneys believe that some clients fail to appear at their court hearings because of the risk of ICE arrests in and around the courthouse. This not only prejudices the client in these cases, but creates additional costs to the judicial system via warrants, apprehension, incarceration, and unnecessary delays.
- c. Three MPD defense attorneys have reported that key witnesses in at least one of their cases have refused to testify, and even refused to give their name and contact information, due to their fear of being arrested by ICE. In two of these cases, the person who refused to participate in court proceedings was an eyewitness who would have provided exculpatory testimony. As a result, those proceedings were compromised because their testimony was not otherwise available. The inability to present an exculpatory witness not only creates the possibility of an unwarranted conviction, but also such a conviction could potentially have immigration consequences on the noncitizen client such rendering them deportable.
- d. One MPD defense attorney in Washington County reports that, while walking with a client to the courthouse, she was followed by a plain clothes ICE officer, who she identified by his handcuffs and covered badge.
- e. At least two defense attorneys report walking their noncitizen clients to and from the courthouse whenever they have a hearing to ensure that an attorney is present if ICE approaches the client. This places additional

strain on public defense attorneys, whose time and resources are already limited.

- f. Defense attorneys are constantly assessing if ICE is present in the courthouses and have to advise their noncitizen clients of the risk of ICE presence in assessing whether to appear. This has created additional stress and anxiety for clients and clients' loved ones.
- g. One MPD attorney in Multnomah County expressed concern for her clients with mental health issues. She explained that some of her clients suffer from paranoia, believing they are being followed, and worries that seeing ICE arrest people in the courthouse only confirms those fears. Another MPD attorney expressed concern that her client wanted to have their family members present for moral support at her hearings, but did not want to expose them to a potential ICE arrest, so chose to attend her hearings alone. These psychological stressors impact witnesses' ability to speak with authority and confidence; a climate of fear may lead them to appear less credible or inconsistent in their testimony.
- h. One MPD defense attorney reported advising her clients not to speak in their native language while outside of the courthouse or in the halls of the courthouse, for fear that their clients' lack of English proficiency will be an indicator to ICE officers to ask questions or even make an arrest. Similarly, ICE's presence also inhibits defense attorneys' ability to speak with their clients about their cases while in the courthouse as they do not

want their clients' lack of English proficiency or native accent to be noticed by ICE.

- i. Multiple MPD attorneys have observed ICE arrests taking place in and around the courthouses and have expressed how traumatizing the experience was for them and for the other bystanders. Within the last two months, there have been at least two instances of ICE arrests within the Washington County courthouse.
- j. MPD attorneys, who already shoulder a very heavy caseload and represent the most vulnerable populations in our State, now are daily keeping alert for ICE presence in the courthouses, creating an immediate and daily impact on the provision of public defense services.

9. Additionally, MPD's Community Law attorneys have observed that ICE's presence in Oregon courthouses directly affects their clients' willingness to exercise their rights and pursue legal options available to them through the court system. The following are specific situations where a noncitizen client was hesitant or refused to pursue legal options available to him or her because he or she was afraid of being arrested by ICE at the courthouse:

- a. One Community Law attorney reported that one of her clients is terrified to go to court to request a restraining order to protect her from her abuser.
- b. Another attorney reported that a client refused to pursue her available legal remedies when her rent was increased without notice.
- c. Another attorney reported that a client refused to pursue legal options against his employer after being injured at the workplace because he was

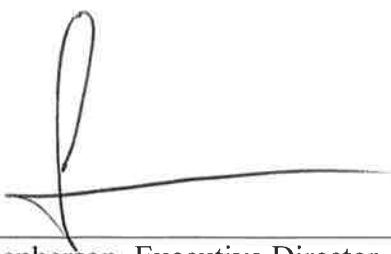
afraid ICE would discover his lack of legal status through the process of a workers' compensation claim.

- d. IDO receives calls monthly from noncitizens who have minor interactions with the criminal justice system – often in the form of paying or contesting traffic ticket - who are often terrified of approaching a courthouse and frequently ask to resolve their matters without going to the courthouse for fear of civil arrest while coming to and from the building.

10. As executive director of MPD, I believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will improve client outcomes, ensure the integrity of our justice system, alleviate the already burdensome job of public defenders, ensure that all criminal defendants receive due process, and provide noncitizens, and all people who may be perceived as immigrants based on their skin color, language, or affiliation, a mechanism to rely on to protect them when they initiate civil proceedings and pursue their rightful legal remedies. Currently, noncitizen persons and people of color face an impossible choice between exercising their rights and a possible arrest that would change the course of their lives. I urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 21st day of November 2018, at Portland, Oregon.



By: _____
Carl Macpherson, Executive Director
Metropolitan Public Defender

DECLARATION OF D. MICHAEL DALE, NORTHWEST WORKERS' JUSTICE
PROJECT

D. Michael Dale hereby declares are follows:

1. I am the Executive Director of the Northwest Workers' Justice Project.

In my capacity as executive director, I am responsible for supervising the litigation of the four attorneys currently employed by the project and for the policy advocacy of the project. I am over the age of 18 and have personal knowledge of the facts described herein.

2. We provide legal representation in employment matters, policy advocacy, community legal education and training to our clients. Our organization serves a broad range of individuals, but our work is particularly concentrated on the employment rights of immigrant and contingent workers throughout the state of Oregon.

3. I submit this declaration in support of Petitioners' request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents in and around Oregon's courthouses have created a climate in which our immigrant clients are reluctant to assert legitimate claims for relief arising out of their employment, particularly if the process will involve visiting an Oregon Courthouse or other public building. Since Immigration and Customs Enforcement ("ICE") began making arrests in and around Oregon courthouses, our client community has become increasingly panicked about attending court as litigants or even as witnesses. This impact has been felt broadly among the immigrant community because we must look to the courts to defend the rule of law. If immigrants can't safely go to court, the rule of law collapses. Although we at NWJP are most often concerned about this in the context of litigants taking affirmative steps in the courts to

enforce their rights, we also regularly encounter clients who are required to attend court in connection with criminal or domestic relations cases, but desperately fear that meeting these obligations will cause them to be arrested by ICE.

4. The impact of ICE arrests on our clients has been profound. Allow me to provide a few examples (Names given are aliases due to settlement confidentiality agreements and to protect the individuals involved):

- AZ was a maid cleaning hotel rooms for many years. Although she was paid minimum wage for the hours she worked cleaning rooms, she was also required to fold laundry for the hotel. She was paid a piece rate for this work that did not cover the extra hours she worked at a minimum wage rate, plus this work resulted in her working more than forty hours per week, and she was not paid overtime for those hours. AZ was extremely afraid that if there was a trial in her case she would be arrested by ICE while she was in the courthouse. Most of all she was afraid that someone she knew would see her being taken into custody and felt very humiliated by that prospect. She settled her case at a discount in no small part to avoid having to go to trial and risk confrontation with ICE.
- For many years E was a janitor at a hotel. During all the time she was working she was not paid at a legal rate, including many hours of overtime that was not paid at the overtime premium. When we were litigating her claims she incessantly expressed to her lawyer that she had great fear of the moment arriving in which the case would require that she go to court. She was sure that ICE would arrive to arrest her and take her to jail, and then deport her. She begged her lawyer to do anything possible to make sure that she never had to set foot in a courtroom.

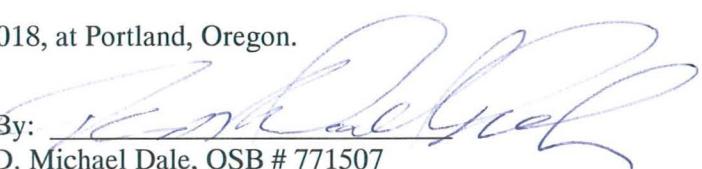
- EA worked several years for a saw mill, as a temporary worker referred by an employment agency. He was injured on the job. His injuries were such that he could not return to his old work at the mill, but during the time his workers compensation case was pending, he was assigned to light duty by the temp agency, holding a sign on the street advertising the temp agency. When his case was settled, he was discharged, even though he was entitled to be placed in any available job that he was physically able to do. EA expressed great fear of going to court to assert this right, even though he has lived in the United States for many years, and has a valid social security number. From the beginning of our representation, EA expressed great worry that he might get in trouble with ICE for having brought a case against his employer.
- CS, was a client in a claim for unpaid wages. Independent of that case, CS was required to report to court periodically pursuant to a DUII conviction, and was very worried about doing so for fear of arrest by ICE at the court. Although he successfully reported to the court several times to pay his fine, when he went to make his final payment, he was arrested, jailed, and ultimately deported.
- CSL was a client in a hard-fought, lengthy wage claim. In the course of that experience, he became involved in our legislative advocacy regarding wage theft legislation. He went to Salem to testify or to share his experience with individual legislators on various occasions. He thoroughly enjoyed doing so, and even helped us to recruit other worker witnesses. He agreed to be interviewed on television to share his story with the public. However, after ICE began making arrests in the courthouses, he became very reluctant to go to the Capitol out of fear that ICE would be there, also, to make arrests. We explained that this was unlikely and that we'd never experienced ICE's

presence in Salem. In the end, he agreed to go, but then did not appear at the time and place set for him to get a ride from Portland to Salem. I believe that he missed that appointment because of second thoughts about the fears that he had been expressing.

5. I believe that a uniform rule prohibiting civil arrests will improve client outcomes, ensure the integrity of our justice system and will make our communities safer and more inclusive. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th day of December, 2018, at Portland, Oregon.

By: 
D. Michael Dale, OSB # 771507

DECLARATION OF KAYSE JAMA OF UNITE OREGON

Kayse Jama hereby declares are follows:

1. I am the Executive Director of Unite Oregon. In my capacity as Executive Director, I oversee the administration, programs, and strategic plan of Unite Oregon. I am over the age of 18 and have personal knowledge of the facts described herein.

2. Unite Oregon's mission is to build a just and equitable society by building power for an intercultural racial justice movement. Unite Oregon is led by immigrants, refugees, and people of color in Multnomah County, Washington County, and the Rogue Valley, providing leadership training, civic engagement education, and community organizing.

3. We submit this declaration in support of Proponents' request to the Oregon Supreme Court for a rule of protection against civil arrests in Oregon state courthouses. Civil arrests by federal immigration agents have resulted in our community not seeking services and driving the immigrants, refugees and communities of color we serve away from full, fair, and equal participation in the justice system.

4. Because Immigration and Customs Enforcement ("ICE") began making arrests in and around Oregon courthouses in 2017, our community lives in fear of family separation if they report, serve as witness, or have any interaction with the justice system. We have witnessed entire sectors of our community driven further into the shadows and isolation. This impact has been felt broadly among the immigrant community and communities of color because they have been the victims of predatory and racially-motivated targeting in the Courthouses and other government sites – sites that require trust in order to uphold law and overall safety.

5. Long-standing members of our community, particularly immigrants and refugees, feel impacted by ICE interference at the courthouse, regardless of status, as they do not want to be profiled or harassed while coming and going to the courthouse.

6. Courthouse arrests have a rapid, negative affect on families and communities at large. In one case, a father of three children was detained by ICE at the Washington County Courthouse after attempting to pay for a ticket for driving without a license. He was transferred to the Tacoma Northwest Detention Center and subsequently was unable to make the payment he originally set out to make on the dreadful day he was separated from his family.

7. The responsibility then fell on his wife to pay the ticket. She agonized at the thought of being detained when she set foot at the courthouse. She did not want to leave her three children without a mother or a father. After connecting with a staff member at Unite Oregon, and with the support of community, the wife made the courageous decision to go to the Washington County Courthouse and paid the fee.

8. The impact of these ICE arrests on our members have been profound. Mixed status families are afraid of the thought and action of being ripped apart. When apprehensions do take place, families experience an influx of stress, economic hardship, and homelessness.

9. Teachers are witnessing the emotional, physical, and mental impact ICE detentions are having on children and are at a loss for how to support their students.

10. Healthcare providers are seeing a drop in patient attendance and our communities express a reticence to leave their homes to address essential needs.

11. We believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will improve community outcomes, ensure the integrity of our justice system and will make our communities safer and more inclusive. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 25 day of October 2018, at Portland, Oregon.

By: Kayse Jama

A handwritten signature in black ink, appearing to read "KAYSE JAMA".

DECLARATION OF VICTIM RIGHTS LAW CENTER IN SUPPORT OF
PROPOSER'S REQUEST FOR A RULE PROHIBITING CIVIL ARRESTS IN
OREGON COURTHOUSES

I, McKenzie Harker, hereby declare as follows:

1. I am a Staff Attorney at the Victim Rights Law Center's Portland, Oregon, office. In my capacity as Staff Attorney, I represent sexual assault survivors in civil legal matters and provide legal representation for survivors engaging with the criminal justice system as victims / witnesses. I am over the age of 18 and have personal knowledge of the facts described herein.

2. Since the Victim Rights Law Center opened in 2003, we have provided legal representation to survivors of rape and sexual assault. With offices in Massachusetts and Oregon, our attorneys help thousands of survivors each year to access legal remedies in the areas of employment, education, immigration, housing, economic security, safety, privacy, and criminal victim/witness representation and advocacy. In addition to direct representation, we provide national training and technical assistance to increase the capacity of legal services providers to address sexual assault survivors' legal needs and support victim service providers in their efforts to protect survivor privacy. This dual approach to our work gives us a unique perspective to identify, evaluate, and remedy concerns expressed by survivors of sexual assault and their providers as they navigate the legal system. Our work in Oregon brings us to courts primarily in Multnomah, Washington, and Clackamas counties, with more limited representation around the state, as we appear with our clients and advocate for their safety and wellbeing.

3. We submit this declaration in unequivocal support of Proponents' request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents have eroded our clients' trust in the justice system in

Oregon. These practices deny immigrant residents of Oregon a fundamental right to access justice freely and threaten the safety, morale, independence, and wellbeing of all residents of Oregon by preventing immigrants – including those most vulnerable to harm – from accessing the courts.

4. Over the past year and a half the Victim Rights Law Center has experienced firsthand the chilling effects of ICE presence in Oregon courthouses on immigrant survivors of sexual assault and their families. The immigrant survivors we work with unanimously express significant fear of detention or deportation when contemplating engaging in criminal justice and/or civil legal remedies in the aftermath of their assaults.

5. We work each day with survivors of sexual assault who feel forced to give up their rights to civil and criminal legal remedies for fear that engagement with the legal system even when seeking relief may trigger detention or removal. The impact of ICE arrests on our clients has been profound. The following are just some examples of the ways in which our clients have retreated into the shadows instead of accessing justice through the courts in the last year and a half. Identifying information has been changed to protect client confidentiality.

6. Elena is an undocumented thirty-one year old mother of two. Her husband physically and sexually abused her for years. To protect herself and her minor children, Elena obtained a Family Abuse Prevention Act protective order against her abuser in 2016. When her abuser continued to violate the restraining order, Elena made numerous reports to police. In September of 2018 Elena was notified that her abuser had been charged with violating the protective order and that she would need to appear in court to testify. Elena contacted her VRLC attorney, terrified that she would be arrested by ICE if she appeared in court to testify against her abuser.

Elena faced the horrible reality of having to choose between standing up to her abuser in court but facing arrest by ICE, or having the charges against her abuser dismissed so that Elena could protect herself from arrest and possible removal. Due to ICE activity in our courthouses, Elena's attorney could not provide any assurances of safety.

7. Maria is a thirty-three year old mother of three. She is also undocumented. Maria's partner of over fifteen years emotionally, physically, and sexually abused her throughout their relationship. He used Maria's lack of familiarity with the legal system in the U.S. as a tool of control and manipulation, frequently telling her that if she tried reporting the abuse to police she would be arrested and deported. Maria finally reported her abuse to police in 2015 after a particularly brutal sexual assault. She participated in the case against him and testified against him at trial in October of 2015. He was convicted and sentenced to 100 months in prison. Prior to the increased ICE presence in Oregon courthouses Maria was able to rely on the criminal justice system to protect her and her children without fear of immigration consequences, and a dangerous criminal was sent to prison. Over a year later Maria's purse was stolen while she was waiting for the MAX. The perpetrator was arrested and charged, and Maria was subpoenaed to testify in court in late January of 2017. Maria was so afraid to go to court that she was considering not appearing, facing contempt charges for disregarding the subpoena, and causing the case against this second perpetrator to be dismissed. Because of ICE presence at Oregon courthouses, Maria's VRLC attorney could not reassure her that participating in the criminal justice system would not result in adverse immigration consequences. All we could do was counsel Maria on the need to balance her personal safety against her desire to see the perpetrator punished.

8. Mathias is a forty-one year old father of five who was physically and sexually abused by his U.S. citizen partner. Since 2016, Mathias has petitioned for and been granted multiple civil protective orders against her. In February of 2018 Mathias's abuser was charged with multiple violations of the protective order and the district attorney's office notified Mathias that he would be subpoenaed as a witness in the case if his partner was not willing to enter a guilty plea. After speaking with the district attorney's office Mathias called his VRLC attorney and said he did not want to attend court because he was afraid he would be arrested by ICE. Mathias was so afraid that he was only willing to participate in the case if he could do so via telephone or closed circuit TV without having to enter the courthouse. Mathias's attorney could not confidently reassure him that he would be safe going to the courthouse.

9. Guadalupe is a minor who was sexually assaulted by a classmate. The assailant also lived in her neighborhood. Guadalupe's assailant knew that her parents were undocumented and repeatedly threatened to have them deported if Guadalupe told anyone about the assault. Guadalupe and her parents decided not to report the sexual assault to law enforcement because they feared they could be deported if they had to appear in court for any reason. They also decided not to pursue a civil protection order, similarly fearing that any contact with the Oregon courts placed them in jeopardy.

10. Pilar met her abuser in Mexico in 2001. He forced her to come to the U.S. with him and once here he became even more controlling and abusive. When Pilar worked, her abuser made her turn over all the wages that she earned. He refused to give her money to buy formula, clothes, and diapers for their son, or other life necessities. In 2013 Pilar was charged with Theft in the Third Degree when she was

caught stealing clothes for her son. Her abuser prevented her from attending her arraignment; he didn't want Pilar to tell the court about the abuse. When Pilar came to the Victim Rights Law Center seeking legal assistance in 2017 her attorney saw that there was an outstanding warrant from the theft case and told Pilar that it was something she should address. Pilar feared she would be detained by ICE and deported if she attended court and debated forgoing immigration remedies she was otherwise eligible for because she was so afraid of entering the courthouse. Pilar's VRLC attorney could not assure Pilar that she would not be arrested by ICE if she went to court to respond to the theft charges and in fact agreed that arrest by ICE was a significant risk.

11. In each of the above examples, survivors of sexual violence were inhibited from freely accessing the justice system due to their fear of adverse immigration consequences. We believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will improve client outcomes, make our communities safer and more inclusive, and ensure the integrity of our justice system. We urge the Court to take prompt action to protect the rights of all Oregonians to equal access to our courthouses, and the fair administration of justice.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 25th day of October 2018, at Portland, Oregon.

By: McKenzie Harker
McKenzie Harker OSB # 133793

DECLARATION OF ELENA CAJACOB IN SUPPORT OF PETITIONERS' REQUEST FOR
A RULE PROHIBITING CIVIL ARRESTS IN OREGON COURTHOUSES

Elena CaJacob hereby declares are follows:

1. I am the Oregon Ready Coalition Manager at Causa Oregon. In my capacity as Oregon Ready Manager, I coordinate resource-sharing and collaboration for Oregon Ready, a statewide coalition of 60+ partner organizations dedicated to advancing the defense, protection, and inclusion of immigrants in the state. I facilitate monthly all-coalition meetings and subcommittee activities, maintain a shared resource library, and manage the coalition email list, which reaches approximately 150 individuals.
2. Oregon Ready coalition partners are primarily non-profit organizations with an immigration focused mission and/or program. Partner organizations represent many sectors, including legal services, policy, advocacy and organizing, labor, social services, and faith-based service and activism.
3. I submit this declaration in support of Petitioners' request to the Oregon Supreme Court for a rule of protection because civil arrests by federal immigration agents negatively affect the ability of Oregon Ready partner organizations to serve and access justice for their immigrant clientele.
4. On June 6, 2018, in collaboration with Erin Pettigrew, Rights Attorney at Innovation Law Lab, I emailed the survey entitled "ICE in Oregon Courthouses: Service Provider Survey" to the Oregon Ready email list and invited coalition partners to respond. I also asked recipients to share with collaborating organizations outside the coalition.

5. Thirty-one individuals responded to the survey. Twenty-two organizations and firms were represented by respondents. Slightly over half of organizations represented provide non-profit or private legal services. The remaining organizations are primarily non-profit organizations dedicated to immigrant rights organizing and direct social services, including victims' services, to immigrant populations. The highest number of respondents coordinate services in civil courts, followed by criminal courts, family courts, juvenile courts, and probate courts.

6. Twenty-three different Oregon counties are served by the respondents, with the majority concentrated in the Portland Metro area and the Mid-Willamette Valley.

7. Thirty individuals, or 100% of those who chose to respond to the question, answered "yes" when asked: "[h]ave you worked with clients, regardless of immigration status, who have expressed fear of going to Oregon courts because of ICE presence at the court?"

8. Over 75% of responding to the question, answered "yes" when asked: "[h]ave you worked with a client who has either failed to file a petition, complaint or court filing of any kind because of fear of encountering ICE at an Oregon court?"

9. Over 75% of those responding also indicated they had worked with clients who 1) had failed to appear in court, 2) expressed fear of calling the police, and 3) expressed fear of serving as a witness, all due to fear of encountering ICE.

10. Responses also indicate a significant impact of ICE presence in courthouses on appearances in court. 82% of those responded "yes" when asked, "[h]ave you worked with clients who have failed to appear in court because of fear of encountering ICE at an Oregon court?

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th day of December 2018, at Portland, Oregon.

By: /S/Elena CaJacob
Elena CaJacob

I, Jordan Bates, declare as follows:

1. I am over 18 and have personal knowledge of the facts stated herein.

2. I am an attorney with Youth Rights and Justice (“YRJ”) in Portland, Oregon. YRJ is a non-profit public defense law firm. Our office is court-appointed to represent children and parents in the child welfare system and youth in the juvenile delinquency system. Our office also files petitions on behalf of unaccompanied minors residing in immigration custody in Portland, OR. I have been employed at YRJ as a staff attorney for over 7 years. I personally represent children and parents in juvenile court dependency actions and youth in delinquency actions.

3. Prior to working at YRJ, I worked at St. Andrew Legal Clinic, which is a non-profit legal clinic providing family law services to the community at a low cost. The clinic is located in Washington County, Oregon, a county with a large population of Hispanic and Asian immigrants. Prior to law school, I was a legal assistant at an immigration law firm in Oakland, California.

4. I am a proficient Spanish speaker. I started studying Spanish over twenty years ago, and have lived and traveled in Central America. With this background, I have been drawn to assisting people facing challenges in the immigrant community.

5. I began specializing in the overlap between juvenile dependency and immigration law when I started at YRJ and have since represented over 30 children and teenagers in juvenile dependency Special Immigrant Juvenile Status (“SIJS”) actions. I have also consulted on numerous cases and provided several trainings around the state in this area of the law. My office as a whole has represented well over 60 children in these actions.

6. As the only Spanish speaking attorney at my office that appears in court, I also represent many parents and children who are in the United States without documentation, but not in immigration custody. I consult with other lawyers in my office who have clients – children and parents – who are in the United States without documentation.

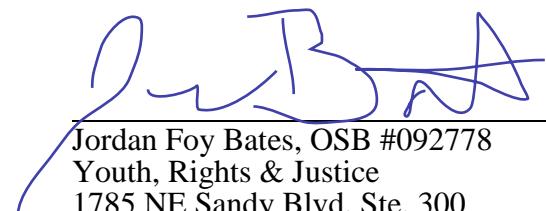
7. Since Immigration and Customs Enforcement (“ICE”) began making arrests in and around Oregon courthouses, our client community has reacted in various ways, from choosing not to attend court, to not putting themselves forward as a placement resource for children in foster

care. Clients appear to be concerned that their participation in the judicial system or the child welfare system could put them at risk of arrest.

8. I believe that a uniform rule prohibiting civil arrests, particularly by federal immigration enforcement agents, will improve client outcomes, ensure the integrity of our justice system and will make our communities safer and more inclusive.

I hereby declare under the penalty of perjury pursuant to the laws of the state of Oregon, that the above is true and correct to the best of my knowledge.

DATED this 4th day of December 2018, at Portland, Oregon.



Jordan Foy Bates, OSB #092778
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