

CRIMINAL NO. 1:19-cr-10141-LTS

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**SHELLEY M. RICHMOND JOSEPH and
WESLEY MACGREGOR,**

Defendants.

**Amicus Brief of the American Immigration
Lawyers Association and Justice at Work**

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INTEREST OF AMICUS CURIAE

Amicus American Immigration Lawyers Association is a national association of immigration lawyers established to promote justice, advocate for quality immigration and nationality law and practice, and enhance the professional development of its members.

Amicus Justice at Work is a Boston-based legal organization centered on supporting immigrant worker centers and workplace-related legal support. Justice at Work provides legal services to workers, including noncitizen workers facing wage theft, injury on the job, sexual harassment, discrimination, retaliation, and more.

The Indictment in this action raises important questions that concern each of the *amici*'s interests in noncitizens' continued access to justice, a right protected by both the United States and Massachusetts Constitutions.

SUMMARY OF ARGUMENT

The common law privilege against civil arrest at a courthouse has been recognized in the United States for more than a century. *See, e.g., Stewart v. Ramsay*, 242 U.S. 128 (1962) (reviewing history); *Ryan v. U.S. Immigration & Customs Enforcement*, 382 F. Supp. 3d 142 (D. Mass. 2019) (reviewing history; preliminarily enjoining U.S. Immigration and Customs Enforcement ("ICE") from civilly arresting those not in state custody who are appearing in court on official business). This privilege is fundamental to the exercise of all other legal rights, because it is in courthouses that those rights may be vindicated through fair process. All participants in that process must have access to it, or its integrity and reliability quickly erodes. Where courthouses are fertile ground for civil arrests, participants in court proceedings stay away, and communities suffer. Judges and court officers are at the front lines of ensuring access to justice.

This brief summarizes empirical reports, firsthand accounts, and data compilations that show that courthouse arrests erode participation in court proceedings by all types of participants.

As set forth in greater detail below, as a result of increased ICE enforcement in courthouses, noncitizens across the country have been discouraged from exercising their Constitutional right to avail themselves of the remedies provided by the judicial system. Moreover, these individuals are not the only victims of this conduct—prosecutors, law enforcement officials, and victim advocates have reported that the pervasive fear among immigrant populations fueled by increased ICE enforcement in courthouses has diminished their ability to effectuate justice and keep our communities safe. Finally, the practice of courthouse arrests puts state court judges, like Judge Joseph, in the unenviable position of trying to follow federal law while also fulfilling their duty, as state-law judges, to ensure that everyone in the Commonwealth—regardless of immigration status—can exercise his or her constitutional right to access the courts. As set forth in the motion to dismiss advanced by Judge Joseph, judicial immunity exists to ensure that judges can balance these responsibilities free of the fear of federal prosecution. *Amici* respectfully submit that this brief provides important context for the court’s consideration of the motions to dismiss advanced by Judge Joseph and Wesley MacGregor, and of the briefs of the other *amici* in this matter.

ARGUMENT

I. This Prosecution Creates a Chilling Effect on Noncitizens’ Willingness to Come to Court to Exercise Their Right to Access Justice

Both state and federal courts in Massachusetts have recognized that access to justice is critical to noncitizens, and that ensuring noncitizen access to justice is critical to the civil and criminal justice system as a whole.

In 2017, the Massachusetts Supreme Judicial Court held that state judicial officers do not have authority to arrest an individual based on an order from ICE. *Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (2017). Following *Lunn*, and in accordance with its long-standing principles, the Massachusetts state courts adopted a policy generally declining to assist the federal

government in enforcing federal immigration law. *See* Memorandum from Chief Justice Paula M. Carey, *Policy and Procedures Regarding Interactions with the Department of Homeland Security* (Nov. 10, 2017), attached hereto as Exhibit A.

On the federal level, in *Ryan v. U.S. Immigration & Customs Enforcement*, the District Court for the District of Massachusetts granted a preliminary injunction prohibiting ICE officials from conducting civil immigration arrests inside state courthouses in Massachusetts. 382 F. Supp. 3d 142, 160 (D. Mass. 2019) (appeal filed). The court explained that, since colonial times, common-law courts have recognized that permitting arrests at courthouses of those attending court on other matters could chill attendance at those other proceedings. *See The King v. Holy Trinity in Wareham*, 99 Eng. Rep. 531 (1782) (noting that “for the purposes of justice” those attending court proceedings were privileged from being arrested on civil process); *Meekins v. Smith*, 126 Eng. Rep. 363 (1791) (same). Finally, the *Ryan* court recognized that, “justice requires the attendance of witnesses cognizant of material facts, and hence that no unreasonable obstacles ought to be thrown in the way of their freely coming into court to give oral testimony.” *Diamond v. Earle*, 217 Mass. 499, 501, 105 N.E. 363 (1914). Given the weight of this precedent, the court held that ICE should be enjoined from civilly arresting parties, witnesses, and others attending Massachusetts courthouses. *Ryan*, 82 F. Supp. 3d at 160.

In the present case, the prosecution of Judge Joseph sends a deliberate message to citizens and noncitizens alike that they come to court at their peril, and that even state judges may feel pressure—or, indeed, may feel obligated by threat of federal criminal prosecution—to facilitate noncitizens’ arrest by federal officials. Allowing ICE agents to co-opt public spaces and state officers, and particularly state courthouses and judges, to exercise executive administrative warrants would have a ripple effect beyond this prosecution. Protecting access to justice is critical

not only to the integrity of our Constitution and justice system, and well-being of our country's immigrant populations, but also for the safety of our communities.

A. Recent Developments in ICE Enforcement in Courthouses

For noncitizens, the state courthouse has recently transformed from a place where justice may be sought to a site of intimidation, particularly for people seeking to defend themselves against criminal charges and to enforce their civil, labor, and housing rights, or to protect themselves or their children from domestic abuse. The fear and intimidation reported by those directly participating in court proceedings extends to noncitizen courthouse personnel employed to secure the building, answer phones, file papers, and engage in the various other occupations that take place within courthouse walls, and that are critical to the continued, efficient operation of our judicial system.

Enforcement efforts in courthouses have increased dramatically over the past few years. Compared to 2016, there was a 1700% increase in ICE arrests and sightings in 2018 in New York State courthouses alone. *See The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018*, Immigrant Def. Project, 6 (Jan. 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf> (last visited Oct. 8, 2019) (hereinafter, the "Immigration Def. Project") (attached hereto as Exhibit B). Several state chief justices and the American Bar Association have attempted to add courthouses to the list of "sensitive locations"—which currently includes schools, hospitals, places of worship, and places of public demonstration—that are generally off-limits to ICE. However, ICE has reiterated its intent to make arrests within courthouses, with certain self-imposed limitations that they subsequently have ignored. *See* U.S. Immigration and Customs Enforcement, Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses, (Jan. 10, 2018),

<https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (last visited Oct. 8, 2019) (emphasis added) (attached hereto as Exhibit C).

Not only have ICE arrests dramatically increased, they have been executed without regard to ICE's own guidelines: arrests have taken place in public areas of courthouses, near public entrances and exits, and, in at least one case, in a manner so alarming that a bystander called to report a kidnapping. *See* Immigrant Def. Project at 3. Findings from the Immigration Defense Project show that "ICE set no limits on who they targeted in New York's courts—arresting immigrants who appeared in a diversion court for victims of human trafficking and going after survivors of domestic violence." *Id.* at 4. The report also finds that ICE agents frequently employed violence during arrests, and in the vast majority of operations, refused to identify themselves, explain why an individual was being arrested, or offer proof that the individual being arrested was in fact deportable. *Id.* at 3-4. Equally unsettling is the sweeping nature of ICE arrests in courthouses, directed at noncitizens regardless of their reason for being in court that day. For example, an immigrant in Pennsylvania was arrested when he went to court to make child support payments; a man in Queens who accompanied his brother to criminal court was arrested by ICE when he showed a Mexican ID; and a survivor of domestic abuse with no prior criminal history was arrested after her hearing. *See Obstructing Justice – The Chilling Effect of ICE's Arrests of Immigrants at Pennsylvania Courthouses*, Temple University Beasley School of Law, Center for Social Justice (Jan. 2019), 6, <https://www.ncsc.org/~media/Files/PDF/Topics/ICE/Obstructing-Justice013019.ashx> (last visited Oct. 8, 2019) (hereinafter, "Obstructing Justice") (attached hereto as Exhibit D); Immigrant Def. Project at 11. In light of these trends, immigrant populations are being deterred from exercising their right to access justice.

B. The Impact of the Recent Escalation of ICE Enforcement in Courthouses

In 2018, an immigrant worker in Philadelphia was killed in a workplace accident. Obstructing Justice at 1. Despite a strong case for wrongful death benefits, his wife decided not to pursue any claims against the employer because she feared that ICE would appear in court. *Id.* Another immigrant did not attend his own mother's murder trial out of fear that ICE would be present. *Id.* at 10. These tragic stories demonstrate the paralyzing fear felt by noncitizens faced with the choice of either seeking justice in courthouses or risking a possible ICE encounter. A recent study reports that this fear and insecurity is pervasive among immigrant populations. Seventy-seven percent of respondents who worked on court-related matters with immigrants either noted that clients "expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE." *Id.* at 2. These stories of ICE enforcement in courthouses often receive public attention and are spread throughout immigrant communities, serving as a warning and deterrent that justice comes with a cost that many noncitizens and their families cannot bear.

In 2018, the National Immigration Women's Advocacy Project in collaboration with the American Civil Liberties Union compared 2017 data with 2016 data and evaluated responses from a total of 779 individuals across a wide variety of professions and geographies. *See Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National Survey*, National Immigration Women's Advocacy Project, American University Washington College of Law (May 3, 2018), <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf> (last visited Oct. 8, 2019) (hereinafter, "NIWAP Report") (attached hereto as Exhibit E). Findings from these studies and others underscore the danger courthouse arrests pose to all stakeholders of our justice system—not only the individuals who forgo access to justice out

of fear of ICE, not only those who rely on access to the courthouse for their livelihoods, but also for the safety of our communities and the efficacy of our judicial system as a whole.

Fifty-four percent of participating judges (compared to forty-five percent in 2016) reported interruptions in their cases due to an immigrant victim's fear of coming to court. *Id.* at 15. Judges were also asked to report the number of cases where officials from the Department of Homeland Security ("DHS") were involved in immigration enforcement activities within the courthouse. Forty-seven cases were reported, which represented a forty-seven percent increase from 2016 to 2017. *Id.* at 18. This included a twenty-five percent increase in incidents in non-criminal cases, and a sixty-four percent increase in courthouse enforcement in criminal cases. *Id.*

When asked about their level of concern about the impact of immigration enforcement on immigrant and limited English proficiency ("LEP") litigants, judges overwhelmingly responded that they were either "concerned" or "very concerned." *Id.* For example, ninety-four percent of judges said that they were either concerned or very concerned about the impact on human trafficking cases, ninety-three percent reported concern for sexual assault cases, and ninety-one percent reported concern for domestic violence cases. *Id.* These numbers demonstrate the real-life impact of the "chilling effect" that ICE enforcement in courthouses can have on those most vulnerable in our society.

The NIWAP Report also received responses from 50 prosecutors across 19 states. *Id.* at 56. Findings from this portion of the study indicate an increase in the exploitation of immigration status as a strategy in prosecution as well as an overall decline in the willingness of foreign or LEP victims to work with prosecutors—surely resulting in decreased witness participation and a decrease in the willingness of litigants to appear in court out of fear that their immigration status will be used against them. More prosecutors indicated that the willingness of victims to assist in

prosecutions in all cases other than sexual assault cases has *declined rather than increased* in the past three years as opposed to prior years. *Id.* at 71. The study shows a more dramatic change in this finding within the past year alone: forty-three percent of prosecutors reported a decrease in willingness by noncitizens to assist with sexual assault and domestic violence prosecutions, thirty-nine percent reported a similar finding for child abuse prosecutions, and thirty-four percent for general violent crimes. *Id.* at 72. These findings show that immigrant populations are perceiving their cooperation with prosecutors to come at the risk of deportation, and prosecutors cannot effectively prosecute their cases.

The NIWAP Report surveyed a total of 389 advocates and attorneys from fifty states and the District of Columbia who work with immigrant survivors of domestic violence, sexual assault, child abuse, human trafficking, and other violent crimes. *Id.* at 79. The study also sought to identify the number of ICE enforcement actions against victims, and reported on the locations where they took place. Of the 206 immigration enforcement actions against victims identified in the survey, fifty-one of them occurred in connection with their appearance at courthouses. *Id.* at 93. This is especially alarming given that the Violence Against Women Act of 2005 places courthouses on the list of protected locations where enforcement against immigrant crime victims is generally prohibited. *Id.* The study reports that courthouse enforcement was occurring when immigrant crime victims went to court in connection with protection order cases, child custody cases, domestic violence cases, and other cases seeking remedies for abuse or crime victimization. *Id.* at 94-95. Thirty-three of fifty-one enforcement actions took place inside the courtroom, and nine others took place in public areas inside the courthouse. *Id.* at 96.

In an April 2019 report by the Immigration Defense Project, the ICE Out of Courts Coalition (the “Coalition”) gathered data for over two years related to ICE enforcement in New

York state courthouses. *See* Immigration Defense Project, *Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State* (attached hereto as Exhibit F). The Coalition found themselves “alarmed and appalled by [ICE’s] increasing dependence on [New York] State’s court system as its preferred venue for surveilling and detaining immigrant New Yorkers.” *Id.* at 1. The Coalition reported devastating effects of ICE enforcement on various stakeholders including District Attorney Offices, Victims and Witnesses, Victims of Gender-Based Violence, Public Defenders, and more.

New York District Attorneys fear that ICE courthouse operations are a serious public safety issue because they discourage noncitizen crime victims from reporting crime, testifying against perpetrators of crime, and participating in community outreach efforts. *Id.* at 7. District Attorneys from Bronx, Manhattan, Brooklyn, Albany, and Nassau Counties have spoken out about the chilling effect that ICE enforcement has on victim cooperation and prosecutorial efficacy. As Madeline Singas, the Nassau District Attorney states, “New York’s justice system works best when everyone has access....” *Id.* at 9.

The Coalition issued a questionnaire on crime reporting, victim and witness participation in prosecutions, frequency of writ filing, and the effect of ICE enforcement on office management. *Id.* at 10. The findings show a heightened fear among noncitizens of testifying in criminal court, cooperating with prosecutors, and participating in any aspect of the judicial system due to confusion about the authority and whereabouts of ICE. For example, the Trial Division of the Manhattan District Attorney’s Office reported a heightened fear among noncitizens of testifying in criminal court since 2017. *Id.* at 11. The Bronx domestic violence department similarly reported that a previously cooperative complaining witness became reluctant to testify following news reports about ICE enforcement in courthouses. *Id.* at 11-12. The Brooklyn District Attorney, Eric

Gonzalez, stated that “[w]e now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes.” *Id.* at 12. Gonzalez recalled several cases where victims and witnesses expressed fear of coming to criminal court because of the presence of ICE. This chilling effect hinders not only the rights of noncitizens to access justice, but also public safety. The Brooklyn District Attorney’s Office reports several specific instances in which their ability to effectively prosecute harm was hindered by a witness’s fear of coming to court: a victim robbed at gunpoint refused to testify out of fear that ICE would arrest him at the courthouse; a man robbed at knifepoint similarly refused to testify and without his testimony, the ADA was forced to reduce the charges; an eyewitness would not testify out of fear of ICE and as a result the DA was forced to dismiss charges against a violent offender; and the Special Victims Bureau struggled to prosecute a sexual abuse case where the witness, an undocumented mother of the victim, feared cooperation due to ICE presence in courthouses. *Id.* at 12-13.

The Coalition reported a particularly debilitating effect of ICE enforcement in courthouses on victims of gender-based violence, manifested by a decreased willingness among noncitizen and foreign-born individuals to report crime. This effect is measured by a decrease in protection orders issued against intimate partners, a drop in survivors seeking assistance at Family Justice Centers, fewer survivors seeking civil legal assistance, reduced communication with law enforcement, reluctance to pursue affirmative petitions in Family and Supreme Courts, increased fear of compliance with court orders, and a rise in ICE-related threats from abusive partners. *Id.* at 22. As a result, victims of domestic violence are at an increased risk of abuse with a diminishing hope of meaningful recourse.

Between 2017 and 2018, the Sanctuary for Families closed 1,350 fewer cases and assisted 226 fewer clients seeking orders of protection than in the prior year. *Id.* at 24. The organization reports that ICE courthouse operations were to blame, based on conversations with current and prospective clients. *Id.* Andrea Panjwani, a former Immigration Practice Managing Attorney, described the case of a woman who was raped and attacked by her children's father, suffering neurological damage and permanent vision loss as a result. *Id.* at 24-25. When asked why she did not report the assault, she told her attorney that she was afraid of being picked up by ICE. *Id.* Among the legal services providers and advocates who responded to the survey, sixty-seven percent stated that they have had clients who decided not to seek help from the courts, forty-eight percent worked with immigrants who failed to seek custody or visitation, and thirty-seven percent worked with someone who failed to pursue an order of protection, all due to fear of ICE. *Id.* at 27-28.

Public Defenders in New York also report that they are unable to zealously represent their clients and otherwise effectively participate in the administration of justice. They cite directly to clients' rising fears of attending court and an increased issuance of bench warrants, disappearing litigants, resource drain, and an escalating use of force and surveillance by ICE. *Id.* at 38. For example, Kathy Rodriguez, a former Arraignment Clerk and Administrative Assistant for NYCDS stated, "Clients are now calling our office to ask about the consequences of making their court dates (as opposed to missing their court dates) because they are afraid ICE is outside waiting for them. They are terrified, hysterical, and untrusting of any government employee because they feel like we were all out to get them...." *Id.* at 39. This climate of fear among noncitizen and foreign-born populations shows that ICE's presence in courthouses not only reduces noncitizens' *physical*

access to justice, but hinders their right to a zealous defense as public defenders report having to balance the best criminal defense for their clients with the risk of ICE detention.

The data, reports, and firsthand accounts cited here confirm what history, common sense, and established law already have taught us: when ICE officials conduct civil enforcement activities in and around state courthouses, ICE hinders access to justice for noncitizens, reduces the efficacy of our prosecutors and public defenders, and jeopardizes the public's safety. Noncitizens as well as citizens require access to the courthouse to seek protection, and defend themselves and their rights. The numbers suggest that until recently, they felt safe doing so. The courthouse should continue to be an inviting place for all individuals rather than an opportunity for ICE to target the most vulnerable: those who have come to seek justice. The findings from these studies consistently evidence the "chilling effect" that ICE enforcement in courthouses has on noncitizens' constitutionally protected right to access justice. This chilling effect not only negatively impacts these vulnerable communities, but also each and every person who relies on the functioning of these institutions.

CONCLUSION

For the reasons set forth above, *Amici* respectfully submit that Defendants' motions to dismiss should be granted.

Respectfully submitted,

/s Kirsten V. Mayer

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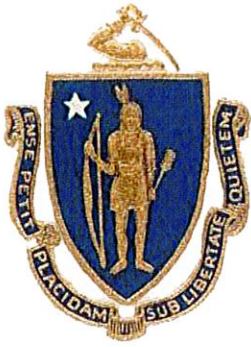
CERTIFICATE OF SERVICE

I, Kirsten V. Mayer, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 15, 2019.

/s Kirsten V. Mayer

Kirsten V. Mayer

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
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Paula Carey
Chief Justice of the Trial Court

Jonathan S. Williams
Court Administrator

Executive Office Transmittal 17-13

To: Judges, Clerks, Registers, Chief Probation Officers and all staff

From: Chief Justice Paula M. Carey
Court Administrator Jonathan S. Williams

JMC

cc: Departmental Chief Justices, Probation Commissioner, Jury Commissioner,
Deputy Court Administrators, OCM Directors

Date: November 10, 2017

Re: Policy and Procedures Regarding Interactions with the Department of Homeland Security

In Transmittal 17-10 we provided notice of the Supreme Judicial Court's decision in *Lunn vs. Commonwealth & Another*, addressing the authority of Massachusetts court officers to arrest pursuant to a civil immigration retainer. As noted at the time, the Court specifically concluded that court officers did not have the authority to arrest and hold an individual solely on the basis of a Federal immigration detainer beyond the time that individual would otherwise be entitled to release from State custody.

At this time we are pleased to provide the document entitled Policy and Procedure Regarding Courthouse Interactions with the Department of Homeland Security, to provide clear guidance to judges, clerks, probation, security and all court staff on responding to DHS requests and the presence in DHS officers in our courthouses.

Please be advised that we have provided the DHS Field Agent in Charge with a copy of this document. We will also be sharing it with CPCS and local bar associations.

Please contact your departmental administrative office with any questions or concerns.

Policy and Procedures Regarding Courthouse Interactions With the Department of Homeland Security

I. PURPOSE AND PRINCIPLES

The following policy governs the manner in which trial court employees, and in particular, court officers, shall respond to requests from the Department of Homeland Security (DHS) to provide information about, and take custody of, individuals subject to civil immigration detainers. It also governs how Trial Court staff shall respond when officials from the D H S enter a Massachusetts courthouse with the intent of taking custody of an individual subject to a civil immigration detainer.

Trial Court employees should be mindful that courthouses are public spaces that are open to all persons and that all persons entering a courthouse should be treated with respect and dignity, including individuals subject to civil immigration detainers and DHS employees. Trial Court employees play essential roles in ensuring the orderly administration of justice and providing a safe and secure environment inside the courthouse.

Nothing in this policy shall be construed to restrict compliance with 8 U. S. C. § 1373 (current edition) or to limit or abrogate: a court officer's authority to detain an individual pursuant to G.L. c. 221, § 70A; an order of a judge; a warrant issued by a judge or clerk authorizing the arrest of an individual for a criminal offense; or a criminal detainer.

II. RESPONSE TO DHS REQUESTS

Individuals subject to a civil immigration detainer often arrive in custody at a courthouse accompanied by a DHS "Notice of Action" immigration detainer form (currently DHS Form I-247A) that requests court employees to voluntarily: 1) detain the individual subject to the detainer for up to 48 hours in order for DHS officials to arrive and take custody of the individual even though the individual would otherwise be released from the trial court's custody; 2) transmit information to DHS regarding the individual subject to the detainer; 3) serve the individual with a copy of the detainer form; 4) relay the detainer to any other law enforcement agency to which the court employee transfers custody of the individual; and 5) notify DHS in the event of the individual's death, hospitalization or transfer to another institution. The DHS detainer form frequently is accompanied by a civil immigration warrant (ICE Form I-205 and/or Form I-200) that is signed not by a judge or clerk, but by a DHS official. In addition, there may be instances in which DHS officials directly ask court personnel for information regarding an individual or an individual's case.

Trial Court employees shall not hold any individual who would otherwise be entitled to release based solely on a civil immigration detainer or civil immigration warrant. Trial Court employees do not have authority to detain an individual based solely on a civil immigration detainer. Nor do Trial Court employees have the authority to comply with a civil warrant issued by a DHS official for the arrest of an individual based solely on a civil immigration violation. Trial Court employees shall not serve civil immigration detainers or civil immigration warrants. Individuals subject to civil immigration detainers or warrants shall be processed and handled in the same manner as all other individuals coming before the court. No person shall be held in custody for any shorter or longer period than the person would otherwise be held based solely on a civil immigration detainer or civil immigration warrant.

Requests by DHS officials for information regarding an individual or an individual's case, whether made in a civil immigration detainer or made directly to court personnel, shall be treated by court employees in the same manner as would a request for information from any other member of the public.

If a DHS official requests information from a court officer regarding the status of an individual's case, the court officer may direct the DHS official to the appropriate clerk's office.

If a DHS official requests information from the clerk's office regarding an individual's case, or any case file, the scope of the responding employee's response shall be guided by the same statutes, rules, and policies that govern public access to court records.

If a DHS official requests information from Probation, the Probation employee shall direct the request to the attention of the Probation Legal Unit to be processed in the normal course.

III. DHS OFFICIALS TAKING CUSTODY OF INDIVIDUALS AT A COURTHOUSE

Although DHS officials are permitted to act in the performance of their official duties in Massachusetts courthouses, it is essential to the fair administration of justice that members of the community are provided a safe and secure environment when they enter the courthouse. To that end, DHS officials may enter a courthouse and perform their official duties provided that their conduct in no way disrupts or delays court operations, or compromises court safety or decorum.

In accordance with existing policy, armed law enforcement officers may enter a courthouse while in the performance of official duties. As applicable to all law enforcement officers, when an armed DHS official enters a courthouse, courthouse security personnel shall ask the DHS official to state his or her official law enforcement purpose for entering the courthouse and the proposed enforcement action to be taken, if any. The DHS official's information shall immediately be transmitted to a security supervisor or designated court officer.

The security supervisor or designated officer shall inform the first justice, or regional administrative justice of the department with jurisdiction over the person if DHS officials are present in the courthouse with the intent of arresting or taking anyone into custody, i.e. a party or other participant in a case before a judge or magistrate, or a person attending to business in the courthouse.

A. Individuals over whom the Trial Court has custody

Consistent with Chapter 2, sections XIV and XV of the Court Officer Manual (current edition), when an individual who was brought into court in custody is subject to release after his or her court proceeding, court security personnel shall process that individual out of lock up in the normal course regardless of whether the individual is subject to a civil immigration detainer or warrant.

If, during the processing of an individual subject to release out of the courthouse, a DHS official is present in the courthouse and seeks admission into the courthouse's holding cell area in order to take custody of the individual pursuant to an immigration detainer or warrant, court officers shall permit the DHS official(s) to enter the holding cell area in order to take custody of the individual once Trial Court security personnel have finished processing that individual out of the court security personnel's custody,

if a security department supervisor determines that the DHS official would otherwise take custody of the individual inside or immediately outside of the courthouse.

Before being granted entry into the holding cell area, DHS officials must present credentials and a copy of the detainer or civil immigration arrest warrant to court security personnel, sign in to the holding cell area, and surrender their weapons.

To the extent possible, court security personnel should require that DHS officials transport any individuals taken into custody through the prisoner transport entrance and avoid taking the individual through the public areas of the courthouse.

B. Individuals coming to court who are not in the custody of the trial court

In those instances where DHS officials seek to take custody in a courthouse of an individual who is not in custody of the courthouse security personnel, Trial Court employees shall neither impede DHS officials from doing so nor assist in the physical act of taking that individual into custody. In the event that court security personnel are present as DHS officials place an individual in custody in a courthouse, the role of such court personnel is to take those actions necessary to maintain the safety and decorum in the courthouse.

Nonpublic spaces in a courthouse, such as within clerks' offices or Probation offices, may not be used by DHS officials. No DHS official shall be permitted to take an individual into custody pursuant to a civil immigration detainer or warrant in a courtroom, unless permission has been given in advance by the regional administrative judge or first justice sitting in the courthouse.

IV. RECORDING INTERACTIONS WITH DHS

Court security personnel shall keep a log of every individual over whom the court accepts custody and who is subject to a civil immigration detainer or warrant, if known. Court security staff shall likewise keep a log of every instance in which DHS was notified that a person subject to a detainer was released from court custody, as well as every time DHS takes an individual into custody in a courthouse.

In addition, court security personnel shall draft an incident report for every instance in which DHS takes an individual into custody in a courthouse.

EXHIBIT B



The Courthouse Trap

How ICE Operations Impacted
New York's Courts in 2018

January 2019



Summary of Findings

In 2018, Immigration and Customs Enforcement (ICE) substantially expanded arrest and surveillance operations in New York’s courts, continuing a disturbing trend that began with the inauguration of President Donald Trump. ICE operations increased not only in absolute number but grew in brutality and geographic scope. Agents, disguised in plainclothes, used intrusive surveillance and violent force to execute arrests. They also reached into many new areas of the state, conducting arrests in several upstate counties that were previously untouched. And ICE agents pursued New Yorkers in a broader range of courts—conducting operations in civil and criminal courts and in courts designed to be rehabilitative instead of punitive. All of these changes underline ICE’s increasing reliance on the state’s court system as a place to trap and detain immigrant New Yorkers.

The Immigrant Defense Project has been monitoring ICE courthouse raids since 2013 and first reported the sharp rise in a [2017 report](#) highlighting changes to enforcement under the Trump administration. The information below is culled

from hundreds of reports collected by IDP’s staff over the course of 2018. In addition to presenting key statistics, the report highlights new trends in ICE courthouse enforcement and provides a selection of stories of individual New Yorkers who have been arrested while attending court, many of which have never been shared publicly. For more on IDP’s courthouse work, visit immigrantdefenseproject.org/ice-courts/



Left: Plainclothes ICE agents leading a man into an unmarked car outside of the Brooklyn Criminal Court.

This report highlights six key changes in ICE courthouse operations in 2018

ICE made more arrests and increased the physical presence of its agents in New York's courts

1

From 2017 to 2018, ICE operations in and around the courts continued to increase, keeping arrests at an unprecedented level. These operations increased by 17% compared to 2017 and by 1700% compared to 2016. New York City continued to account for about 75% of arrests statewide with Queens and Brooklyn reporting the largest numbers.

ICE targeted several upstate counties that it had left untouched in 2017

2

Several upstate counties, including Orange, Rensselaer and Fulton reported ICE courthouse arrests for the first time. Westchester County reported the largest increase in arrests statewide.

The arrest and surveillance tactics employed by ICE agents became more violent and the brutality more commonplace

3

Reports of ICE using violent force to conduct arrests—slamming family members against walls, dragging individuals from cars, and even pulling guns on people leaving court—have become commonplace. Witnesses to ICE arrests have called 911 to report that they were witnessing a kidnapping. ICE has also turned to more aggressive surveillance, trailing attorneys to their offices and eavesdropping on confidential attorney-client conversations.

ICE targeted particularly vulnerable immigrants including survivors of human trafficking, survivors of domestic violence, and youth

4

ICE set no limits on who they targeted in New York's courts—arresting immigrants who appeared in a diversion court for victims of human trafficking and going after survivors of domestic violence. ICE also stepped up arrests of youth, even when they were eligible for special forms of immigration relief like DACA.

ICE officers refused to provide basic information or documentation, ignoring their own regulations

5

In the vast majority of operations, ICE agents refused to identify themselves, explain why an individual is being arrested, or offer proof that they have reason to believe that the individual they're arresting is deportable. This occurred despite the fact that internal agency regulations require them to provide this information.

ICE's courthouse operations expanded in the same year that the agency issued its first formal policy on courthouse arrests

6

In January of 2018, ICE issued its first policy on courthouse arrests.¹ Reports to IDP show that after this policy was issued, ICE agents expanded the reach of courthouse arrests. ICE agents also appeared to ignore their own policy directive, continuing to conduct arrests in civil and criminal courts, and targeting friends and family members who accompanied a loved one to court.



Left: ICE agents preparing to put a young man into an unmarked minivan outside of the Queens Criminal Court.

1. See “Directive 11072.1: Civil Immigration Enforcement Actions Inside Courthouses,” U.S. Immigration and Customs Enforcement (Jan. 10, 2018). For a complete analysis of the policy, see the “Annotated Version of Directive 11072.1,” which was produced by IDP and the NYU School of Law Immigrant Rights Clinic. The annotated directive is available at www.immigrantdefenseproject.org/national-resources/.

Statistics

Collecting Reports from the Frontlines

During the past five years, IDP has collected reports of ICE courthouse raids through collaborations with community-based and legal services organizations throughout New York State, as well as through calls and reports received on our hotline. In addition, New York State uniquely houses both Regional Immigrant Assistance Centers (RIAC) in all counties across the state, as well as the New York Immigrant Family Unity Project (NYIFUP) in immigration courts. Both initiatives have provided a mechanism for IDP to collect firsthand accounts of raids from the individuals arrested by ICE (via their attorneys), whose experiences during ICE raids may otherwise not have been shared or reported. IDP confirms details of raids reports by speaking with witnesses of raids or those with direct knowledge, the individuals arrested by ICE themselves, or their attorneys.

What's the difference between an ICE arrest and an ICE sighting?

Arrest: We use the word arrest when we've been able to confirm that ICE took someone into custody during a courthouse operation.

Sighting: We use the word sighting when we've confirmed that witnesses saw ICE agents or ICE vehicles, but we weren't able to verify an arrest. This could mean a lot of things:

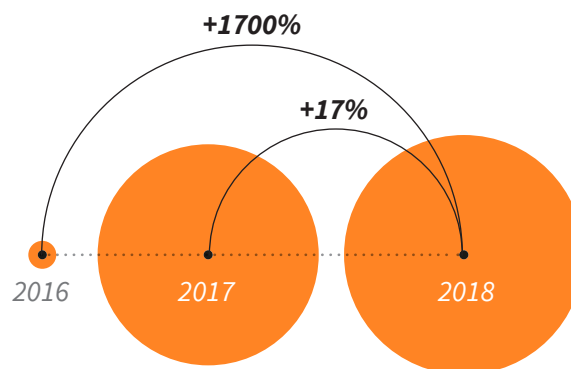
- ICE may have come looking for someone and not found the person;
- ICE may have made an arrest that simply wasn't reported; or,
- ICE may have come to the court for the purpose of conducting surveillance or collecting court records on people they are targeting.

The findings

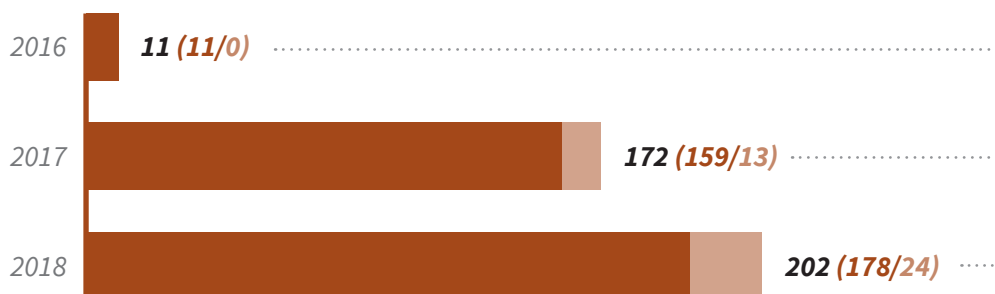
ICE Courthouse Operations (2016–2018)

A Marked Increase

From 2017 to 2018, ICE operations in and around the courts increased by 17%, keeping arrests at an unprecedented level. Compared to 2016, ICE courthouse operations increased by 1700% in 2018.



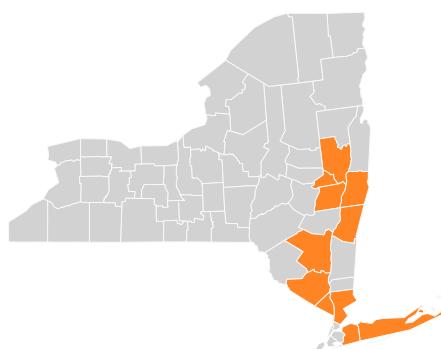
Total (Arrests/Sightings)



Why have the numbers from 2017 changed?

IDP has revised its figures for 2017 from 144 ICE operations to 172. The jump is due to the fact that IDP continued to receive many reports after the end of 2017. Because individuals routinely spend months in detention before they have a chance to see an immigration judge, we may not hear about an individual's arrest until they finally resurface in immigration court. Under current federal practices, that can take months. Note that several New York legal service organizations have sued federal immigration officials over the months long delay in immigration court appearances.

ICE Arrests Outside of New York City (2018)



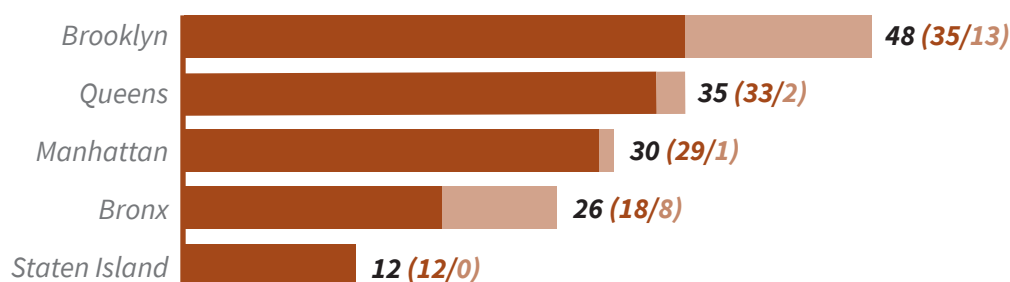
13 Westchester	3 Ulster
8 Orange	2 Rockland
6 Saratoga	2 Schenectady
6 Suffolk	1 Columbia
4 Albany	1 Nassau
4 Rensselaer	

New York with Counties Single Color
by FreeVectorMaps.com

ICE agents reached into new territory, stepping up courthouse operations counties outside of New York City. For the first time, IDP received reports of ICE courthouse arrests in Orange, Rensselaer, and Fulton counties. While most arrests in 2017 focused on larger county or city courthouses, ICE widened its net to town and village courts. Operations were reported in more than a dozen town and village courts across Westchester, Rockland, Columbia, Orange, Ulster, and Albany. Westchester reported the largest increase in arrests statewide, with ICE courthouse operations more than tripling from 4 in 2017 to 13 in 2018.

ICE Operations Within New York City (2018)

Total (Arrests/Sightings)



New York City continued to account for the majority of ICE operations statewide. Within New York City, Brooklyn reported the largest number of operations when accounting for arrests and sightings. However, Brooklyn and Queens were about tied when comparing just arrests with 35 arrests reported in Brooklyn and 33 in Queens. Staten Island reported the largest increase from 2017 to 2018 with arrests doubling from 6 to 12.

Trends

Use of Force

One of the most striking changes in ICE operations has been an increase in the use of force. ICE agents typically operate in large teams of 3 or 4 agents, with reports of up to 10 agents involved in a single arrest. Over the past year, IDP has received reports of ICE agents tackling individuals to the ground, slamming family members against walls, and dragging individuals from cars in front of their children. They have also pulled guns on individuals leaving court. In one incident, ICE officers physically assaulted an attorney who was 8 months pregnant.



A Mother's Cry for Help

A young man and his mother had just left the Brooklyn Criminal Court after the man's appearance in court. About a block from the court, two plain-clothes ICE officers appeared out of nowhere, grabbed the man and started to drag him towards an unmarked car. Thinking that her son was being kidnapped, the mother repeatedly asked who the agents were. The officers refused to answer her and when she asked if they were immigration, the officers said no. As the mother cried for help, a third plain-clothes ICE officer came over and pushed her against a wall, causing her head to hit the wall. The officer repeatedly told her to "shut up" and physically blocked her from going over to the unmarked car where her son had been pushed inside. The officers then drove away, leaving his mother sobbing on the street, panicked that her son had been kidnapped. She did not know it was ICE agents who arrested him until she received a call from her son in an ICE processing facility later that day.

Guns on the Van Wyck

A man with no prior arrests had just left the Queens Criminal Court where he had made a brief appearance before a judge. After getting into his car with a friend he noticed a strange car trailing him. When he got onto the Van Wyck Expressway, the car followed. Suddenly, the car flashed its lights. The man pulled over and three unmarked cars suddenly surrounded him and his friend. Seven ICE officers jumped out of the cars and surrounded them with guns drawn. They asked him and his friend for ID and then pulled him from the car and arrested him.

“911: There’s a Kidnapping!”

A man was leaving the Brooklyn Supreme Court with his attorney and family when he was suddenly surrounded by plainclothes ICE agents. He had just exited the courthouse when two agents threw him against a wall and put his hands behind his back. Two other plainclothes agents and a court officer blocked him from his attorney. When the attorney demanded to know who they were, the agents refused to identify themselves and simply replied that they were doing their jobs. The ICE officers pulled the man into an unmarked car with no plates. Several bystanders witnessed the commotion and one woman, believing that the man was being kidnapped, called 911.

Increased Surveillance

ICE agents are not just making arrests at courthouses, they are also using the courts as places to surveil immigrants. Agents have been spotted sitting in courtrooms, and lurking in hallways, where they watch and wait for individual cases to be called. ICE agents also loiter by security lines at courthouse entrances, and stand directly



outside of the courthouse. Individuals appearing in court have been followed in and out of courtrooms, down elevators, into bathrooms, and even out of the court to the subway. ICE officers have also trailed family members, eavesdropped on privileged attorney-client conversations, and followed individuals all the way from the courthouse to their attorney’s office.

Attorney Followed Out of Court

A Brooklyn attorney asked a judge to excuse her client's appearance for the day; the judge granted the request, but asked the attorney to personally serve the client with an order of protection. She left the Brooklyn Supreme Court, and headed toward a nearby McDonald's, where she had arranged to meet her client. Unbeknownst to her, undercover ICE agents had followed her. After meeting with her client and serving him with the order, the attorney and the client left the McDonald's and went their separate ways. Suddenly, five undercover ICE officers surrounded her client and arrested him. The client, who is married to a U.S. citizen, languished in immigration detention for more than four months before being scheduled for his first hearing in immigration court.

Targeting Vulnerable Immigrants

ICE agents aggressively targeted immigrants who are survivors of domestic violence, survivors of human trafficking, and youth. Despite public outcry from a series of high profile arrests in 2017, ICE continued to conduct operations in special courts for human trafficking, arresting at least one man appearing in the Queens Human Trafficking Court in 2018.

ICE also arrested survivors of domestic violence, arresting one woman after her case had been dismissed. Young people also appeared to be a growing ICE target. In one case, ICE went after a 20 year-old who had already submitted an application for a special visa for minors who are abused, neglected or abandoned by their parents. In other cases, ICE arrested young people who were brought to the United States as toddlers and were eligible for DACA (Deferred Action for Childhood Arrivals).



A DREAM Deferred

A 23 year-old man was walking into the New Paltz Town court with a friend when a man he had never seen before asked him for his name. When he declined to answer, two more men surrounded him, handcuffed him, and took him to an unmarked SUV. It wasn't until he was in the car that the three men revealed that they were ICE. The young man is an LGBT activist in his community who came to the United States when he was 6 years old. He is a DREAMER who previously had Deferred Action for Childhood Arrivals (DACA).

A Survivor of Domestic Violence Held for ICE

A survivor of domestic violence had just appeared in the Yonkers City Court for a hearing at which all charges were dismissed. The woman had no prior criminal history. After the hearing ended, a local law enforcement officer (either a court officer or jail employee) returned to the court and said that ICE was waiting for her. The officer suddenly re-arrested her and took her to a holding cell inside the courthouse which is maintained by the Yonkers police. She was held there for several hours until ICE agents came to pick her up that evening.

Friends and Family at Risk

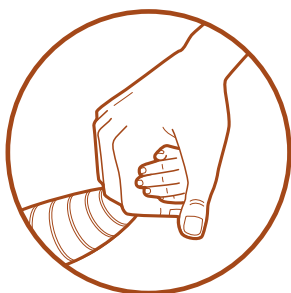


Although ICE said in a 2018 memorandum that it would only go after specific “targets” and avoid “collateral arrests” of their friends and family members, IDP has received several reports of ICE agents questioning friends and family members who accompany their loved ones to court. In a handful of cases, this has led ICE agents to arrest family members.

A Tale of Two Brothers

When his brother had to go to criminal court in Queens, the young man decided he would go too. He believed in supporting his family. The man and his brother were just leaving the Queens courthouse when they were suddenly approached by plainclothes ICE agents. The agents asked his brother for identification and then turned to him with the same question. When he presented a Mexican ID, the ICE agents handcuffed him and took the two brothers into custody.

No Courts Off Limits



Despite a pledge made in a January 2018 memorandum to stay away from non-criminal courts, ICE arrested at least one individual who was attempting to attend a Family Court hearing. ICE also pursued individuals appearing in community justice courts, which are designed to be rehabilitative instead of punitive. In one case, ICE targeted a young man attempting to participate in a parole reentry program in Manhattan.

No Justice in the Community Justice Court

A young woman was leaving the Midtown Community Court in Manhattan after appearing on the court's quality of life docket. She had just received an adjournment in contemplation of dismissal when two ICE agents surrounded her outside of the courthouse and arrested her.

A Father in Family Court

A father went to a Westchester Family Court to appear on a case. He was waiting for his case inside the courthouse when several ICE officers approached. He asked if he could talk to the Family Court judge, his lawyer, or his partner. The officers would not let him. They took him into custody and placed him into removal proceedings.

Court Officer Involvement



New York State court officers have participated in several ICE operations. This has included physically assisting arrests, allowing ICE to use private areas of the court to make arrests, and providing information to ICE agents about individuals. A new decision from New York's appellate courts suggests that this type of participation in ICE operations violates states law.²

² In *People ex rel. Wells v. DeMarco*, a New York appellate court held that it is unlawful for New York state and local officers to detain people for civil immigration violations because New York law does not authorize them to enforce civil immigration law. See *People ex rel. Wells v. DeMarco*, No. 2017-12806, 2018 WL 5931308 (N.Y. App. Div. Nov. 14, 2018).

Court Officer Does ICE's Job

A man was in the Chatham Justice Court, and after his case was called, a Chatham police officer, who was providing security for the court, arrested him. The police officer handcuffed the man without giving him a reason or Miranda warnings and refused to answer questions asked by his attorney. The police officer then took the handcuffed man out of the court's back door, where ICE agents were waiting in the parking lot. When the ICE agents began questioning the man, his attorney asked if they had a warrant and the ICE officers refused to provide any documentation.

Caught on Tape

A father was on his way into the Queens Criminal Court when he was arrested by ICE. He never got to appear on his case. A bystander outside of the Queens Criminal Court caught several plainclothes ICE agents working with uniformed court officers to arrest him directly outside of the courthouse. The [video](#) shows at least three uniformed court officers helping the ICE agents to hold the father down as he screams, "Why are you doing this to me?" One uniformed court officer is then seen holding the man with an ICE agent and walking the man to an unmarked car parked on the curb. He has been detained by ICE, transferred to an ICE facility in Oklahoma.

Derailing Criminal Cases

ICE operations are derailing criminal cases, preventing individuals from attending hearings, and threatening to undermine court operations. Many individuals attempting to attend required court proceedings are arrested before they even get to the courtroom. After ICE arrests and detains individuals, they may refuse to return that person to court again, even when a state court orders that ICE produce the person.

Increasingly, ICE is also transferring New Yorkers to far away facilities, forcing people to fight their cases from detention in New Mexico, Massachusetts, or Oklahoma. In practice, this means that once individuals are disappeared into the immigration detention system, their criminal cases remain in limbo.



From Queens to Oklahoma

After several ICE agents were caught on tape tackling a man outside of the Queens Criminal Court, the man faced long odds. He was torn from his family, locked up in a New Jersey immigration jail and facing deportation with an open criminal case. But a few days later, things got worse when ICE transferred him to a detention facility in Oklahoma. In the New York area he had been eligible to get a free immigration attorney through a special program that assigns attorneys to indigent immigrants. But in Oklahoma, he had to go it alone in immigration court. Without an attorney, he was quickly deported, but his criminal case remained open. Even though he was now out of the country, a Queens judge issued a bench warrant for his arrest because he failed to appear in court.

ICE Ignoring ICE Regulations



ICE routinely ignored its own regulations, which require that they answer basic questions about their identity and provide information justifying arrests. In almost every report received by IDP, ICE agents were described as dressing in plain clothes without visible badges. Individuals and attorneys frequently reported that agents would refuse to identify themselves or answer questions about why they were taking an individual into custody, a violation of ICE's own regulations. ICE's internal regulations also require that they provide documentation that they have reason to believe that someone is indeed subject to deportation. This documentation—often referred to as an “administrative warrant”—does not meet the standard of a criminal warrant and merely requires another ICE officer's signature, not a judge's. But despite this minimal requirement, IDP has found that ICE agents almost never provide these documents, even when directly asked by attorneys.

Where's the Warrant?

Of the 317 ICE courthouse arrests IDP has documented in 2017 and 2018, ICE has only once presented a judicial warrant signed by a federal Article III judge.



The Immigrant Defense Project (IDP) was founded 20 years ago to combat an emerging human rights crisis: the targeting of immigrants for mass imprisonment and deportation. As this crisis has continued to escalate, IDP has remained steadfast in fighting for fairness and justice for all immigrants caught at the intersection of the racially biased U.S. criminal and immigration systems. IDP fights to end the current era of unprecedented mass criminalization, detention and deportation through a multipronged strategy including advocacy, litigation, legal advice and training, community defense, grassroots alliances, and strategic communications.

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EXHIBIT C

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses

Issue Date: January 10, 2018

Effective Date: January 10, 2018

Superseded: None

Federal Enterprise Architecture Number: 306-112-002b

- 1. Purpose/Background.** This Directive sets forth U.S. Immigration and Customs Enforcement (ICE) policy regarding civil immigration enforcement actions inside federal, state, and local courthouses. Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents. When practicable, ICE officers and agents will conduct enforcement actions discreetly to minimize their impact on court proceedings.

Federal, state, and local law enforcement officials routinely engage in enforcement activity in courthouses throughout the country because many individuals appearing in courthouses for one matter are wanted for unrelated criminal or civil violations. ICE's enforcement activities in these same courthouses are wholly consistent with longstanding law enforcement practices, nationwide. And, courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails.

- 2. Policy.** ICE civil immigration enforcement actions inside courthouses include actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed, when ICE officers or agents have information that leads them to believe the targeted aliens are present at that specific location.

Aliens encountered during a civil immigration enforcement action inside a courthouse, such as family members or friends accompanying the target alien to court appearances or serving as a witness in a proceeding, will not be subject to civil immigration enforcement action, absent special circumstances, such as where the individual poses a threat to public safety or interferes with ICE's enforcement actions.¹

¹ ICE officers and agents will make enforcement determinations on a case-by-case basis in accordance with federal law and consistent with U.S. Department of Homeland Security (DHS) policy. See Memorandum from John Kelly, Secretary of Homeland Security, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 20, 2017); Memorandum from John Kelly, Secretary of Homeland Security, *Implementing the President's Border Security and Immigration Enforcement Improvements Policies* (Feb. 20, 2017).

ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings. In those instances in which an enforcement action in the above situations is operationally necessary, the approval of the respective Field Office Director (FOD), Special Agent in Charge (SAC), or his or her designee is required.

Civil immigration enforcement actions inside courthouses should, to the extent practicable, continue to take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits.

Planned civil immigration enforcement actions inside courthouses will be documented and approved consistent with current operational plans and field operations worksheet procedures. Enforcement and Removal Operations (ERO) and Homeland Security Investigations (HSI) may issue additional procedural guidance on reporting and documentation requirements; such reporting and documentation shall not impose unduly restrictive requirements that operate to hamper or frustrate enforcement efforts.

As with any planned enforcement action, ICE officers and agents should exercise sound judgment when enforcing federal law and make substantial efforts to avoid unnecessarily alarming the public. ICE officers and agents will make every effort to limit their time at courthouses while conducting civil immigration enforcement actions.

This policy does not apply to criminal immigration enforcement actions inside courthouses, nor does it prohibit civil immigration enforcement actions inside courthouses.

3. Definition The following definitions apply for the purposes of this Directive only.

3.1. Civil immigration enforcement action. Action taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations.

4. Responsibilities.

4.1. The Executive Associate Directors for ERO and HSI are responsible for ensuring compliance with the provisions of this Directive within his or her program office.

4.2. ERO FODs and HSI SACs are responsible for:

- 1) Providing guidance to officers and agents on the approval process and procedures for civil immigration enforcement actions at courthouses in their area of responsibility beyond those outlined in this Directive; and
- 2) Ensuring civil immigration enforcement actions at courthouses are properly documented and reported, as prescribed in Section 5.1 of this Directive.

- 4.3. ICE Officers and Agents** are responsible for complying with the provisions of this Directive and properly documenting and reporting civil immigration enforcement actions at courthouses, as prescribed in Section 5.1 of this Directive.²

5. Procedures/Requirements.

5.1. Reporting Requirements.

- 1) ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse.³
- 2) Unless otherwise directed by leadership, there will be no additional reporting requirements in effect for this Directive.

- 6. Recordkeeping.** ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP). ERO will maintain the FOW in accordance with the Fugitive Operations schedule DAA-0567-2015-0016. HSI will maintain EOPs in accordance with the Comprehensive Records Schedule N1-36-86-1/161.3. The EOPs will be maintained within the Investigative Case Files.

7. Authorities/References.


- 7.1.** DHS Directive 034-06, *Department Reporting Requirements*, October 23, 2015.
- 7.2.** DHS Instruction 034-06-001, Rev. 1, *Department Reporting Requirements*, March 28, 2017.

8. Attachments. None.

- 9. No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

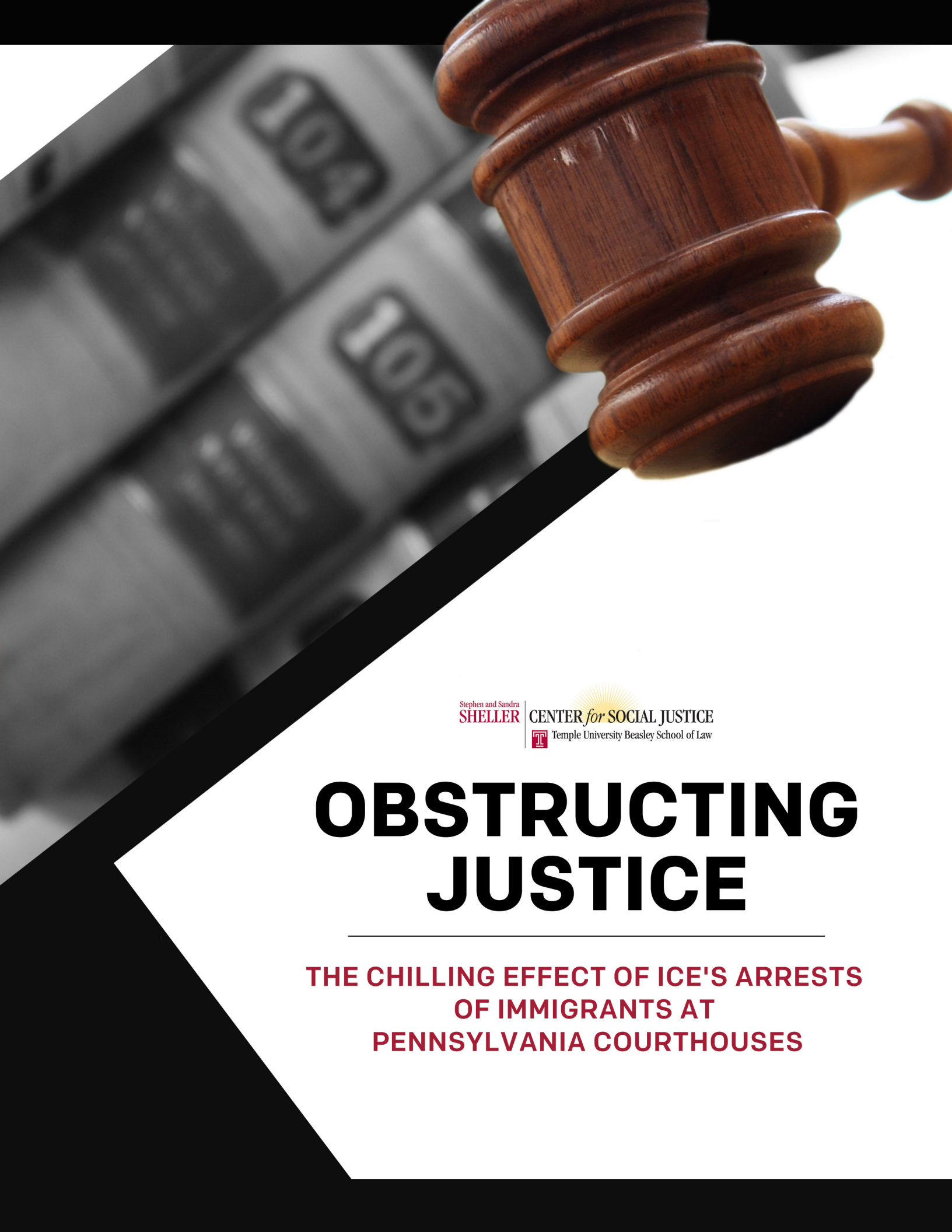
² See also ICE Directive No. 10036.1, *Interim Guidance Relating to Officer Procedure Following Enactment of VAWA 2005* (Jan. 22, 2007), for additional requirements regarding civil immigration enforcement actions against certain victims and witnesses conducted at courthouses.

³ ERO will use the Field Operations Worksheet and HSI will use the Enforcement Operation Plan.



Thomas D. Homan
Deputy Director and
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement

EXHIBIT D



Stephen and Sandra
SHELLER

 **CENTER *for* SOCIAL JUSTICE**
 Temple University Beasley School of Law

OBSTRUCTING JUSTICE

**THE CHILLING EFFECT OF ICE'S ARRESTS
OF IMMIGRANTS AT
PENNSYLVANIA COURTHOUSES**

The Social Justice Lawyering Clinic

This report was produced by Patrick Gordon ('19), Kelley Grady ('19), and Shaqueil Stephenson ('19), law students in the Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice at Temple University Beasley School of Law, supervised by Professor Jennifer J. Lee. Students at the clinic work first hand on social justice issues that directly impact local communities, through legal representation, community education, and policy advocacy.

Acknowledgments

The authors would like to thank Nadia Hewka at Community Legal Services (CLS) and the ICE Out of Courts Coalition for their guidance throughout this project. There are many others who helped to support this project. Sundrop Carter with the Pennsylvania Immigration and Citizenship Coalition and Sam Milkes at the Pennsylvania Legal Aid Network helped to distribute our survey amongst their membership. Temple Law Professors Sara Jacobson, Sarah Katz, and Jules Epstein provided advice and connected us with the Pennsylvania Association of Criminal Defense Lawyers and the Family Law Section of the Pennsylvania Bar Association. Others include Caitlin Barry at Charles Widger School of Law at Villanova University, Golnaz Fakhimi from the American Civil Liberties Union of Pennsylvania, Lisette McCormick, Margaret Ogden, and Leonard Rivera from the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness; Katie Roussos, a summer intern with CLS; and Nick Kato ('19) and Grace Chehoud Vangelo ('19) from Temple Law. Len Rieser from the Sheller Center provided us with invaluable editorial assistance. A special thanks to Lena Graber and the staff at the Immigrant Resource Legal Center who generously shared their responses to their Freedom of Information Act request with the US Department of Homeland Security.

Issued January 2019

Cover designed by Amber Bethune, Temple Law School.

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Executive Summary

In Philadelphia, an undocumented immigrant worker was killed in a workplace accident due to the unsafe conditions that went unaddressed by management. His wife and family struggled to fill the void left by his absence. There were witnesses to the accident and a strong case for wrongful death benefits. Despite this, his wife and the witnesses to the accident decided not to pursue any claims against the employer because they were all too fearful of ICE to appear in court.

—Reported by a Philadelphia Attorney¹

Since the election of President Trump, the priorities and tactics surrounding immigration enforcement have changed.² The categories of immigrants that are a priority for removal have expanded and Immigration and Customs Enforcement (“ICE”) has told its officers to take action against all undocumented immigrants encountered on duty, regardless of their criminal history.³ ICE’s tactics have also become more varied in that immigrants are being arrested at their homes, on the way to school, or at their workplace.⁴ In Pennsylvania, ICE arrests have increased by 34% in fiscal year 2017 as compared to 2016.⁵

The aggressive targeting of immigrants at the courthouse is one of ICE’s latest enforcement tactics.⁶ These arrests are happening nationwide, creating an outcry from judges, prosecutors, and advocacy organizations.⁷ Because of these enforcement activities at the courthouse, immigrant communities are fearful of going to court, with the result that they are effectively denied access to the courts. Courts too cannot properly adjudicate cases, which undermines the integrity of the judicial system.

This report specifically studies the issue of ICE enforcement in Pennsylvania courts. We surveyed and interviewed lawyers, legal services organizations, victim services advocates, and community based service providers across Pennsylvania. We also reviewed written materials obtained and collected by advocacy organizations. A more detailed explanation of our methodology is in the Appendix.

We found that the problems related to ICE enforcement at courthouses are widespread across Pennsylvania. In particular, we found that in Pennsylvania: (1) ICE is effecting arrests in and around courthouses; (2) courthouse personnel are collaborating with ICE by asking about immigration status, providing information, or assisting with ICE arrests; and (3) immigrants fear going to court because of these ICE enforcement activities.

We found instances of ICE arrests or court collaboration in 13 counties across Pennsylvania (Figure 1). Unsurprisingly, 11 of these counties correspond to the top 12 counties with the highest number of immigrants in Pennsylvania.⁸ Such arrests occurred on the way to court and inside the courthouse. Court personnel, particularly probation officials, collaborated with ICE at the courthouse. Further, we confirmed that ICE enforcement activities at the courthouse are creating fear in immigrant communities. Seventy-seven percent of respondents who worked on court related matters with immigrants either noted that clients “expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE.”

Figure 1. Counties with Incidents of ICE Arrests or Court Collaboration

Allegheny
Beaver
Berks
Bucks
Chester
Cumberland
Delaware
Lackawanna
Lancaster
Lehigh
Montgomery
Northampton
Philadelphia

We also analyzed the ways in which ICE enforcement activities at the courthouse, which obstruct access to justice, are legally problematic. The Pennsylvania and US Constitutions guarantee that individuals have the right to access the courts under principles of due process, equal protection, and open courts. Under the Tenth Amendment, ICE cannot coerce the states to do its enforcement work. To the extent that court personnel are participating in such ICE enforcement activities, Title VI of the Civil Rights Act of 1964 also prohibits discrimination against individuals based on their national origin.

The Supreme Court of Pennsylvania has both the authority and responsibility to address ICE enforcement at the courthouse. At the end of this Report, we request that the Supreme Court create a special task force to develop model policies for adoption by the courts. We recommend that such policies incorporate the following principles:

- A protocol that limits ICE enforcement activities at the courthouse
- Limiting court personnel from using court resources to cooperate with ICE
- Prohibiting the collection of immigration status information by the courts
- Requiring ICE agents to register when entering the court
- Requiring training of judges, administrators, and court personnel

The adoption of appropriate policies, therefore, can not only mitigate the chilling effect of ICE arrests at the courthouse but also preserve the independence of the Pennsylvania courts from federal interference.

Introduction

ICE is a law enforcement agency housed in the US Department of Homeland Security (DHS) that is tasked with removing immigrants present in violation of civil immigration laws. Arrests by ICE are “administrative arrests” for violations of the civil immigration laws.⁹ In this non-criminal context, ICE issues its own warrants that need not be reviewed by a judicial officer.¹⁰

Currently, ICE is engaging in a range of tactics to target immigrants, including arresting immigrants at the courthouse.¹¹ In North Carolina, a mother and her son, victims of domestic abuse, were arrested by ICE after appearing at a hearing.¹² In Pennsylvania, ICE detained a man on his wedding day at the behest of the judge presiding over the wedding.¹³ The Immigration Defense Project reported that courthouse arrests and attempted arrests by ICE in New York increased by 1200% in 2017.¹⁴ Because the arrests are often highly publicized, undocumented immigrants are expressing a “profound fear of going to court,” essentially blocking their access to the courthouse.¹⁵

In response to the public outcry over these arrests, ICE issued a directive in early 2018 clarifying how it would make arrests in courthouses.¹⁶ While the directive notes that agents should try to steer clear of civil proceedings and refrain from arresting accompanying “family members or friends,” much discretion was left in the hands of the ICE agents.¹⁷ The directive allows arrests to continue in civil courts, such as family courts, when “operationally necessary.” It also directs ICE to make arrests in non-public areas of the courthouse “in collaboration with court security staff.” Such secrecy and collaboration with courthouse personnel do little to appease fears within the immigrant community about their ability to safely access the courts. Rather than declare the courts a “sensitive” location, like schools, hospitals, and places of worship, where enforcement should not occur, this directive simply reaffirms that ICE will continue to target immigrants at the courthouse.¹⁸

To combat this phenomenon of ICE arrests, states and localities are responding. Various judges, attorney generals, and district attorneys from around the country have spoken against the practice (Figure 2).¹⁹ As a result, some states and localities have begun to respond. California’s Attorney General has issued guidance and model policies for California courts to address immigration enforcement actions at or near state court facilities.²⁰ Washington’s Attorney General has also suggested that courts adopt best practices to address the issue.²¹ The Office of Court Administration (OCA) of New York has also issued a protocol for how courthouse personnel should handle ICE enforcement at the courthouses.²² Other courts have similarly delineated policies that seek to prohibit disruption to court business by ICE unless necessary to secure immediate public safety.²³

Figure 2. State and Local Authorities Responding to ICE Enforcement

Supreme Court Chief Justice	Attorney General	District Attorney
California	Maine	Alameda County, CA
Connecticut	Maryland	Burbank, CA
New Jersey	New York	Brooklyn, NY
Oregon		Bronx, NY
Rhode Island		Denver, CO
Washington		Hawthorne, CA
		Long Beach, CA
		Los Angeles, CA
		New York, NY
		San Diego, CA
		San Francisco, CA
		Santa Barbara, CA
		Santa Monica, CA
		Sonoma County, CA

This report explores the issue of ICE enforcement at the courthouses in Pennsylvania. Part I reports the results of our investigation across Pennsylvania after talking and surveying advocates across the state. Part II discusses why ICE enforcement in the courthouses in Pennsylvania is legally problematic. Part III concludes with recommendations for how Pennsylvania can better protect access to justice at its courthouses.

Part I: Widespread ICE Presence in Pennsylvania Courthouses

Following national trends, ICE enforcement has grown in Pennsylvania.²⁴ The Philadelphia ICE office, which covers Pennsylvania, Delaware, and West Virginia, surpassed all 23 other regional offices in the country in making more “at-large” arrests of immigrants without criminal convictions in 2017.²⁵ This figure is particularly striking as Pennsylvania is home to the 16th largest undocumented population, with Delaware and West Virginia ranked far behind Pennsylvania.²⁶

Enforcement at courthouses in Pennsylvania is a significant tactic in ICE’s arsenal. A few well publicized instances of ICE arrests at courthouses in Pennsylvania were reported in the news, such as the stories about high school sweethearts getting married or a father addressing a messy divorce.²⁷ Other stories quickly circulated through word of mouth in immigrant communities.²⁸

Our study was an attempt to more systematically gather these stories from across the state. We did so by surveying lawyers, legal services organizations, victim services advocates, and community-based service providers across Pennsylvania. Further, we were able to examine recent information about ICE operations at courthouses based on information from the Immigrant Legal Resource Center (ILRC) pursuant to their Freedom of Information Act (FOIA) request to DHS. Finally, we collected information from media stories and spoke directly with individuals who work at courthouses across the state. Our study, however, did not easily lend itself to any quantification of data (see Methodology in the Appendix).



Our findings reveal that ICE enforcement at the courts is widespread in Pennsylvania. We found three themes: (1) ICE arrests in and around courthouses; (2) courthouse personnel collaborating with ICE; and (3) immigrants who feared going to court. In particular, we found instances of ICE arrests or court collaboration in 13 counties

across Pennsylvania (Figure 1). Further, those responding to the survey overwhelmingly reported that clients either expressed a fear of going to court or chose not to go to court because of ICE enforcement activities.

A. ICE Arrests

Our research has uncovered multiple instances of ICE apprehending individuals at Pennsylvania courthouses. There have been reports of ICE agents entering courtrooms, apprehending people in courthouse hallways and common areas, and waiting outside courthouses until people arrive or leave. Sometimes agents wait across the street from the building, usually with a photograph of their target.

People are being arrested in the area surrounding courthouses. In Bucks County, a community-based organization reported that a Mexican national showed up to Ottsville Magisterial District Court to pay for his ticket and he was “detained by ICE on his way into the courthouse.” His ticket was for driving without a license after being pulled over for an obstructed window. The Bucks County group reported a similar incident of a Guatemalan national being “apprehended by ICE in the parking lot” after appearing at the New Britain Magisterial District Court. A person who works in the court system in Chester County recounts seeing ICE, in “unmarked cars” and “civilian clothing,” arresting individuals on their way into magisterial district courts.

In Montgomery County, one attorney reported that ICE waits outside of the courthouse with “police photo[s]” and arrests people “before they go into the building.” Because the immigrants never make it to their court hearing, judges issue “bench warrants” that are then held against the immigrant during their hearing before the immigration judge. Another community advocate from Montgomery County recounted an incident where she was outside the courthouse and ICE arrested the immigrant she was assisting, even though “the picture they [had] was not the person arrested.” These reports were further confirmed by a news report of multiple incidents at the Montgomery County Courthouse with one observer stating “[t]he ICE agents are careful about how they’re dressed . . . [t]hey seem inconspicuous when they’re here.”²⁹

Less frequent but even more alarming are times when ICE enters courthouses to arrest people. In Berks County, an attorney reported that her client was arrested after appearing at a Protection from Abuse hearing. She stated “ICE agents sat through his hearing and arrested and detained him after.” A community advocate in Berks County recounted how an immigrant was arrested when making his child support payments at the courthouse. In Allegheny County, a community-based organization stated that arrests usually take place outside of the courtroom. An advocate from this organization also reported seeing ICE agents or vehicles in or around the Pittsburgh family and criminal courthouses. In Chester County, a person who works with the court system recounted how ICE was waiting to arrest an immigrant in the basement as the sheriff accompanied the immigrant down to the holding cells. In Lehigh County, a court interpreter recounted how an

immigrant who appeared for her criminal hearing was “shivering outside a courtroom” because ICE had found her, taken her passport, and given her deportation papers. In Northampton County, a person who works with the court system confirms that ICE takes immigrants into custody at the courthouse and that the district attorneys or deputy sheriffs delay individuals from leaving so ICE has time to appear. As further detailed below in the section relating to courthouse personnel, attorneys and community advocates in several counties have also had clients arrested in the courthouse when they appeared for their appointments with probation.

In Philadelphia County, lawyers reported having witnessed people being arrested around and inside both the Family Court and the Criminal Justice Center (CJC). One lawyer reported that her clients are regularly “arrested by ICE on their way to criminal court.” She stated “the most recent case is from today, one of my clients, who is in a diversionary program (no criminal conviction, and no previous criminal history) was detained by ICE when he went to court to report.” Another lawyer provided us with the ICE record of arrest (Form I-213) of a client on his way out of CJC after having appeared in his DUI case and having received Accelerated Rehabilitative Disposition (ARD) instead of a conviction (Figure 3).³⁰ The arrest record confirmed that he had no other previous criminal history except being “charged with [a] DUI” and that the charge was “still pending.” For his family history, it detailed that he has a “USC spouse” and “USC children.” WHYY reported on an immigrant, without any sort of criminal record, being nabbed by ICE on his way to family court.³¹ Another attorney from Philadelphia County reported that she received notification from ICE that her juvenile client, who had been adjudicated delinquent but was doing well in foster care, would be arrested at the child’s next hearing.

Figure 3. Record of Encounter Excerpt (I-213)

On [REDACTED] 2018, DO Wallace, DO Medina, DO Slatwoski, and SA Mitnick of the Philadelphia At-large unit conducted an operation at 1301 Filbert Street Philadelphia, PA [address of the CJC]. The target of the operation was [REDACTED]. At approximately 1330 the above mentioned officers observed the subject near 13th and Filbert Street and identified themselves as immigration. [REDACTED] was positively identified as the target of the operation through a prior arrest photo. At the time of the encounter target confirmed that he was “[REDACTED],” target of the operation. The subject was informed he was under arrest by Immigration and Customs Enforcement for violating the laws of the Immigration and Naturalization Act and then placed into handcuffs. The subject was transported without incident, to the Philadelphia ICE/ERO Office for processing.

B. Courthouse Personnel

In Pennsylvania, a related issue is the extent to which court personnel collaborate with ICE to apprehend immigrants while in court or on their way to the courthouse. This issue

ranges from probation officers routinely collaborating with ICE to judges asking about immigration status or asking other court personnel or attorneys to contact ICE.

Probation officials appear to be regularly collaborating with ICE to arrest immigrants.³² In Philadelphia County, a victim witness advocate witnessed a parole officer ask a client if “they were in the country legally” and warned the client that “if [the client] tried any funny business” the officer would call ICE. Other attorneys in Philadelphia confirm that individuals are arrested by ICE when they come for their “check in” with probation. In Allegheny and Chester Counties, community advocates and attorneys similarly state that people are regularly arrested at probation appointments. FOIA results obtained by ILRC establish that ICE and probation officials in the courts are reaching out to each other.

Emails between probation officials in Beaver, Bucks, Chester, Delaware, and Lehigh Counties, and ICE demonstrate how the collaboration occurs.³³ Probation officials may affirmatively reach out to ICE about individuals. In Bucks County, for example, probation would contact ICE upon the sentencing of an individual. In one instance of an individual with a DUI, probation stated that on “running his rap sheet” they noted indications that he was a “deportable alien.” Probation contacted ICE offering the individual’s phone number, home address, place of employment, and uncle’s phone number for apprehension.³⁴ ICE too will initiate contact with probation officials in the courts. Apart from providing information about such individuals, probation officers will help coordinate with ICE to come and arrest such individuals. They might do so by coordinating with ICE to appear at the next regularly scheduled probation appointment or requiring that such individuals come and report “in person” (Figure 4).³⁵

Figure 4. E-mail Excerpt between Beaver County Probation and ICE

Probation (3:11 pm): He has been processed and placed in the ARD program with me. He is required to report once per month by phone. I have not heard from him yet. I can attempt to get him to report in person if he needs to be taken into custody. The address we have on file is [REDACTED]. Let me know how I can assist you further.

ICE (3:17 pm): Sounds good. I'll touch base with the case officer and see how he wants to handle it. Appreciate your willingness to assist. I believe that is the address he has as well so if he isn't picked up I will let you know and we'll see if we can get something worked out. Thank you[.]

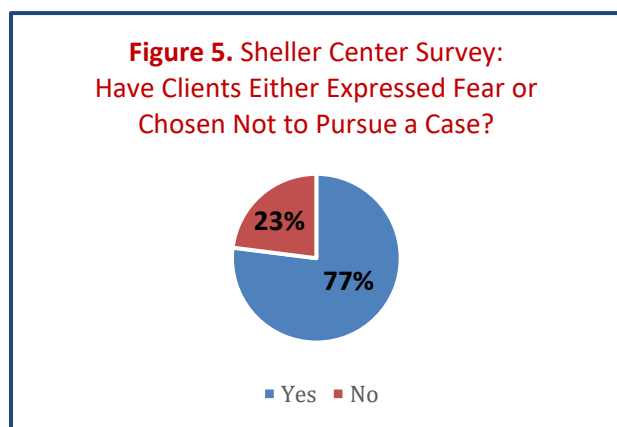
Probation (3:24 pm): He was just sentenced only a week ago, so chances are good that I can get him in here without suspicion. I can tell him he has to sign supervision papers, etc. Just let me know

Court personnel are also involved in asking about immigration status, as well as contacting ICE and assisting ICE. There is the well-publicized story about the Magisterial District Judge (MDJ) in Cumberland County who called ICE because she believed that the groom appearing in front of her was an undocumented immigrant.³⁶ ICE arrived at the

courtroom, fingerprinted the immigrant, and determined he was lawfully in the country. In Philadelphia County, an attorney reported that a Court of Common Pleas Judge “ordered the DA to notify ICE about a defendant.” In Montgomery County, a criminal defense attorney reported that a sheriff at the courthouse helped ICE to detain a man appearing for a DUI proceeding. In Lancaster County, an attorney reported that a MDJ repeatedly asked a defendant about his immigration status during a traffic hearing.³⁷ When the defendant admitted that he was undocumented, the MDJ asked the police officer whether he had notified ICE and ordered that the defendant be taken to Lancaster County Prison on a \$750 bond.³⁸ In Chester County, several people who work in the court system confirmed that judges in criminal cases are asking in open court those with “Spanish surnames” or “Latinos” about their immigration status.

C. Fear of Clients

The National Immigrant Women’s Advocacy Project (NIWAP), in collaboration with the American Civil Liberties Union (ACLU), conducted a national survey to analyze how the fear of arrest and deportation has impacted immigrants’ decisions to report crimes and participate in court proceedings.³⁹ Police officers surveyed reported that crimes are becoming more difficult to investigate. Among police officer respondents, 69% said domestic violence was harder to investigate in 2017 compared to 2016 (with similar percentages for investigations of human trafficking (64%) and sexual assault (59%)).⁴⁰ Judges too reported an increase in disruption of court cases due to immigrant victims being afraid to come to court.⁴¹ Legal services and victim advocates reported that their offices had filed 40% fewer cases for immigrants in 2017 than in 2016.⁴²



In our own survey with lawyers, legal services agencies, and community based organizations across Pennsylvania, we also found that fear was the most widely reported effect of ICE enforcement at courthouses (Figure 5). Seventy-seven percent of respondents who worked on court related matters with immigrants either noted that clients “expressed fear of going to court or chose not to pursue a case because they may be arrested or detained

by ICE”.⁴³ In Allegheny County, a community-based organization reported that immigrants are “deathly afraid to go to court.” An attorney with a Bucks County client recounted how she “was afraid to attend a state civil court hearing related to a personal injury case on behalf of her minor (US Citizen) son . . . [s]he wanted me to go with her in case ICE tried

to arrest her.” A community-based organization in Philadelphia reported that “[o]ne client’s family member did not appear for the client’s mother’s murder trial out of fear.”

Advocates who work with victims across the state reported that victims feared the consequences of seeking protection from abuse in the courts. A domestic violence services agency in Western Pennsylvania, for example, stated that some immigrant victims “have expressed fear of filing a protection order (PFA) due to incorrect information their intimate partners have told them about being deported if they go to court.” Attorneys recounted how clients have declined to move forward with cases concerning family law or workplace exploitation, or to report human trafficking. Witnesses fear coming to testify in court (Figure 6).⁴⁴ The issue of fear is particularly problematic for immigrants who are trying to comply with the requirements to resolve their criminal case. As one criminal defense attorney deftly summarized “unfortunately they either go to court and risk to be picked up by ICE or they may end up with a bench warrant,” concluding “there is no middle ground here.”

Figure 6. Victim Services Agency Story

A brother and a cousin witnessed a racially-motivated attack on their relative. Neither of them wanted to come back to court as witnesses after the very first preliminary hearing got continued. Every time agency staff asked the victim why his brother and cousin were not coming to court anymore, his answer was the same: they fear that ICE will be there and will pick them up because they are undocumented.

Legal services organizations have mostly reported a decline in immigrants seeking their services.⁴⁵ Community Legal Services in Philadelphia reports “a 35% drop in undocumented immigrants coming in to get help with wage theft cases.”⁴⁶ Philadelphia Legal Assistance has similarly seen “a significant drop in immigrant domestic violence survivors filing Protection from Abuse orders due to articulated fears regarding ICE presence in courts.”⁴⁷ In Franklin County, a legal services provider reported that they have generally “hear[d] from the community that undocumented individuals don’t seek their services from us (or similar agencies/organizations) based on this fear [of going to court].”

Finally, organizations have had to figure out how to help immigrants who need to access the courts. Many recounted how they try their best to counsel clients about their fears to encourage them to go to court or that they now will accompany clients to court. One community-based organization explained how they accompanied an immigrant who, despite the risk, was fighting for full custody of his two daughters. Staff, neighbors, and clergy flooded the courthouse. After winning custody at the hearing, they helped to whisk the father away to avoid the ICE agents across the street from the courthouse. Not all immigrants, however, will have access to such extensive support. Many more unfortunately will make the decision on their own that they cannot risk going to court.

Part II: ICE Enforcement in the Courts Is Legally Problematic

The presence of ICE in Pennsylvania courthouses is problematic. ICE's activities interfere with the legal rights of immigrants to access the courts and to be free from discrimination. This part explains why the Pennsylvania courts should be concerned about the ways in which ICE enforcement disrupts a well-functioning court system.

A. Judicial Efficacy and Integrity

The fair administration of justice requires that all individuals should have access to the courts. Because of ICE's arrests of immigrants both on the way to and inside the courthouses, many immigrants, whether as plaintiffs, defendants, victims, witnesses, or simply supportive family members, now fear attending court. This chilling effect means that courts are in turn less able to effectively adjudicate cases, because the necessary parties are not present.⁴⁸ This situation interferes with the fundamental responsibilities and obligations of the courts to vindicate the legal rights of parties. When individuals—such as witnesses testifying about crimes, defendants complying with the criminal court or probation process, or victims pursuing protection from abuse—become less willing to testify, comply with, or pursue their case in court, the safety of the entire community is placed in jeopardy.⁴⁹

Further, the judiciary must remain free from any outside influence to ensure fairness in the judicial process. Judicial integrity is the cornerstone of the court system. Collaboration by court personnel with ICE interferes with the role of the judiciary and undermines confidence in judicial independence. This problem is made especially acute by the fact that immigrants are being arrested at the courts without any indication that they are a threat to public safety. As the Chief Justice of California's Supreme Court has stated, these activities "not only compromise our core value of fairness but they [also] undermine the judiciary's ability to provide equal access to justice."⁵⁰

B. Constitutional Rights to Access Pennsylvania Courts

Access to the court system is a fundamental right under the First, Fifth, Sixth, and Fourteenth Amendments to the US Constitution. The First Amendment includes the right of immigrants to petition the government to address grievances.⁵¹ The Due Process Clauses of the Fifth and Fourteenth Amendments ensure the right and opportunity to be heard by the courts while the Sixth Amendment ensures in all criminal cases that "the accused shall enjoy the right . . . to be confronted with the witnesses against him."⁵² Finally, the Equal Protection Clause mandates that no class of individuals, such as immigrants, be blocked from their ability to exercise their rights in a courtroom.⁵³

Further, the Pennsylvania Constitution’s Remedies Clause specifically states that “[a]ll courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”⁵⁴ Interpreting this Clause, the Pennsylvania Supreme Court has stated that “it is the constitutional right of every person” who finds it necessary to access the courts for legal protection to do so without “denial or delay.”⁵⁵ The Pennsylvania Remedies Clause has been invoked for multiple purposes, including to strike down laws that block a wronged person’s access to the courts.⁵⁶ The Pennsylvania Supreme Court has stated that “it does prevent the Legislature from denying an injured party the right to seek relief from the courts for a legal injury.”⁵⁷ By analogy, ICE’s arrests of immigrants at the courthouse and courthouse personnel’s collaboration with ICE create “denial or delay” for litigants to access the courts for a remedy. These actions, therefore, are problematic as they could violate the Remedies Clause in the Pennsylvania Constitution.

C. Title VI

In Pennsylvania, courthouse personnel are assisting ICE with limiting or blocking immigrants’ access to the courts, although such immigrants are using the courts for matters completely unrelated to their immigration status. Courts, however, may not treat individuals differently simply because of the way someone looks or speaks. Title VI states, “No person in the United States shall, on the ground of . . . national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”⁵⁸ Pennsylvania courts are required to follow Title VI because they receive federal funds.

The Administrative Office of Pennsylvania Courts (AOPC) has already directed courthouse personnel not to use the fact that an individual needs language assistance as a basis for inquiring into the individual’s immigration status.⁵⁹ Targeting individuals based on actual or perceived citizenship or residency for differential treatment, such as inquiring into an individual’s immigration status based on the way they look, can be discriminatory under Title VI.⁶⁰ When judges or court personnel are taking actions that result in refusing, excluding, or intimidating individuals from court services based on their perceived race or national origin, such actions may constitute direct evidence of discrimination in violation of Title VI.⁶¹

D. Tenth Amendment

State courts must be free to perform their traditional duties of administering justice without interference from the federal government.⁶² The federal government is not permitted to enlist local government, against their wishes, to carry out the federal government's bidding.⁶³ The Tenth Amendment reads, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁶⁴ This amendment is the root of many battles between the federal government and state governments, most often when the federal government oversteps its bounds and infringes on those powers that are "reserved to the States respectively." In the late 1990s, the Supreme Court "revived the importance of protecting state police power and insuring that it remains free of federal interference."⁶⁵

When federal immigration enforcement interferes with the operation of the state court system, there exists a serious federalism problem. There has long been a "fundamental policy against federal interference with the functioning and administration of state courts, particularly in the context of state criminal prosecutions."⁶⁶ Immigrants are present at courthouses because they are either compelled to be there pursuant to state or local prosecutions or are seeking justice from the state judicial system. These systems, which often address issues of public safety and well-being, do not function properly when ICE agents threaten those who seek justice. As Professor George Bach noted, "[t]his affront to federalism is worsened by the reality that ICE presence at state and local courthouses undermines the ability of states to enforce their laws at those courthouses."⁶⁷ Further, ICE agents using state courthouses (and state courthouse personnel) to round up undocumented immigrants is "tantamount to commandeering the state police power to do the bidding of federal law."⁶⁸ Using the state's judicial resources to enforce federal immigration law or interfering with the function of Pennsylvania courthouses, therefore, is legally problematic as it disrupts state control over public safety and the integrity of the courts.

Part III: Recommendations

The Pennsylvania courts must act to protect the rights of immigrants to access courthouses free from ICE interference.⁶⁹ This part outlines the legal basis for the courts to intervene. It also recommends that the Supreme Court specifically create a special task force comprised of various stakeholders to develop model policies for adoption by the Pennsylvania courts.

A. Legal Basis for Action

In Pennsylvania, “every court shall have power to make such rules and orders of court as the interest of justice or the business of the court may require.”⁷⁰ The courts have previously issued rules that deal with security, public safety, and judicial integrity in the courts. Rule 1954 requires the president judge in each judicial district to establish a court security committee, which makes recommendations on protocols, policies, and procedures to protect the public.⁷¹ Rule 110 allows the court to exclude news media if the media’s presence would interfere with the rights of the accused to a fair trial.⁷² Rule 223 allows the court to regulate or exclude “the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.”⁷³

Further, Professor Chris Lasch has argued that the common law privilege against civil arrest provides legal support for the concept that the Pennsylvania courts should protect people from being subject to civil arrest by ICE at the courthouse.⁷⁴ The common law privilege from civil arrest stems from pre-Revolution England, as described by William Blackstone:

Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king’s presence, nor within the verge of his royal palace, nor in any place where the king’s justices are actually sitting.⁷⁵

While Blackstone’s context is dated, his message is clear: there is a privilege from arrest while people are handling business in court and while they are simply in a court in the vicinity of a judge.⁷⁶ The American courts construed the privilege to apply to “any matter pending before a lawful tribunal,” giving the rule a wide breadth to extend to people both on the way to court and leaving court.⁷⁷ In *Long v. Ansell*, the United States Supreme Court recognized “the common-law rule that witnesses, suitors, and their attorneys, while in

attendance in connection with the conduct of one suit, are immune from service in another.”⁷⁸

Pennsylvania has specifically recognized this common law privilege. In 1803, the Pennsylvania Supreme Court in *Miles v. M’Cullough* brought the common law privilege from civil arrest from England to Pennsylvania.⁷⁹ All people in the court are protected from arrest and service of process both while in court and for a reasonable amount of time to allow them to come and go from court.⁸⁰ In *Cusco v. Strunk Steel Co.*, however, the Pennsylvania Supreme Court declined to exercise immunity from service from a civil lawsuit when it was on a defendant appearing for a criminal case.⁸¹ The court rationalized that “[t]he criminal defendant has no choice in the matter of attendance. . . [n]o further interest of the court is to be served by insuring immunity from service to a criminal defendant.”⁸² Other courts have similarly found that immunity is inapplicable when it is not necessary to ensure a person’s “presence in court.”⁸³ Yet ICE arrests are distinguishable because they do impact whether or not an immigrant will be present in court. Such arrests may not only physically prevent individuals from appearing at court hearings (resulting in the issuance of bench warrants) but also discourage immigrants from using the courts by creating widespread fear.

Pennsylvania court decisions have firmly established that the common law privilege is about “whether immunity will expedite the business of the courts and insure justice.”⁸⁴ As our findings show, ICE’s civil arrests disrupt the functioning of the court system in Pennsylvania. Pennsylvania courts have the general authority to invoke the privilege and require, for example, that any ICE arrests be backed by judicial warrants verifying that the arrest is truly necessary for public safety. A court policy enforcing the common law privilege, therefore, would help to solve this problem by protecting people as they seek justice. In fact, New York has a proposed state law to codify the common law privilege against civil arrest.⁸⁵

B. Advocating for Change in Pennsylvania

Here in Pennsylvania, we respectfully request that the Supreme Court of Pennsylvania create a special task force to develop model policies for adoption by the courts. The task force should be comprised of various stakeholders, such as court representatives, defense attorneys, immigration attorneys, prosecutors, interpreters, and community advocates. The task force could consult with the Interbranch Commission for Gender, Racial, and Ethnic Fairness (“Interbranch Commission”), the AOPC, and other relevant Supreme Court Committees, Boards, or Advisory Groups. Further, the Supreme Court should request a meeting with the Philadelphia ICE Office to underline the severity of the implications that their statewide presence in courthouses presents.⁸⁶

The Interbranch Commission has already alerted the Pennsylvania Supreme Court about critical immigration issues in Pennsylvania courthouses. In response, the AOPC issued a Title VI advisory that provided guidance to courts about the potential problem with inquiring into an individual's federal immigration status.⁸⁷ The Supreme Court has not issued any further statements, guidance, or policies to address the issue of either ICE arrests at the courthouse or the collaboration of courthouse personnel with ICE enforcement activities.

In Philadelphia, the ICE Out of Courts coalition has also been actively advocating with the First Judicial District ("FJD") in Philadelphia County for the development of proposed policies.⁸⁸ FJD's Probation and Parole Department has taken some steps to change practices by limiting or prohibiting contact with ICE and the request for information about immigration status.⁸⁹ The FJD courts, however, have not made comparable changes, although discussions are ongoing.⁹⁰

Further, Pennsylvania can look to several states that are actively discussing or have adopted rules or protocols to address both the issue of ICE enforcement and court collaboration with ICE. In California, the Attorney General has issued proposed guidelines for the courts. This guidance was issued pursuant to California's law that mandated the AG to publish model court policies that "limit[] assistance with immigration enforcement to the fullest extent possible consistent with federal and state law."⁹¹ These proposed policies include: (1) protocols for handling ICE's appearance at the courts for enforcement activity including notification to the presiding judicial officer and guidelines for responding to different kinds of warrants; (2) prohibiting court personnel from cooperating with ICE in enforcement activities; (3) prohibiting the disclosure of or inquiry about immigration status to the extent permitted by law; and (4) training court personnel about these policies.⁹² Washington's Attorney General has similarly made best practice recommendations for the court system.⁹³

In New York, the Office of Courts Administration (OCA) has issued guidance, which includes requiring ICE to identify themselves upon entry to the courthouse (including providing information about whether they have a judicial warrant for arrest) and notification by court staff to the judge about intended enforcement activities.⁹⁴ In Washington, the Supreme Court adopted a rule of evidence making a party's or witness's immigration status inadmissible unless immigration status is an essential fact to prove an element of, or a defense to, a criminal offense, or to show bias or prejudice of a witness.⁹⁵

Some local courts too have created rules to regulate ICE arrests. In New Mexico, Bernalillo County Metropolitan Court has a rule that law enforcement officers "shall not detain,

arrest, or question any person” in the courthouse unless it is required by on-site law enforcement, public safety, or a judicial warrant.⁹⁶ In Washington, the King County Superior Court has adopted a rule to prohibit arrests in the courtrooms unless “directly ordered by the presiding judicial officer” and discourages any such activity within the courthouse “unless the public’s safety is at immediate risk.”⁹⁷

We believe that the Pennsylvania courts can likewise address the problem of ICE enforcement by developing and adopting policies that set forth specific rules, guidance, or protocols for addressing immigrants at the courthouse. We would recommend that such rules, guidance, or protocols consider the following policy principles:

1. **Developing a protocol that limits ICE enforcement activities at the courthouse.** Such a policy would require judicial, not administrative warrants for making arrests inside the courthouse unless the arrest is necessary to secure immediate public safety. It would also prohibit ICE from any nonpublic areas of the courthouse. The rule should also formally recognize the common law privilege against civil arrest.⁹⁸
2. **Limiting court personnel from using court resources to cooperate with ICE.** Such a policy would prohibit court personnel, including probation, from assisting in immigration enforcement actions and from providing ICE with access to nonpublic databases.
3. **Prohibiting court personnel from collecting the immigration status information of individuals.** Such a policy would include precluding court personnel from inquiring into a person’s immigration status, and would make immigration status inadmissible as an evidentiary matter (with an exception for when immigration status is an essential fact for proving or defending against a criminal offense).
4. **Creating a system for requiring ICE law enforcement officers to register when entering the court.** Such a policy would include a public registry of all law enforcement officers entering the courthouse for purposes of transparency and oversight.
5. **Requiring training of judges, administrators, and court personnel about immigrants and access to the courts.** Such trainings should cover the above policies and include topics such as information about nonpublic areas of the courthouse, the difference between administrative and judicial warrants, and Title VI compliance.

Conclusion

A true system of justice must have the public's confidence. When individuals fear that they will be arrested for a civil immigration violation if they set foot in a courthouse, serious consequences are likely to follow.

—Chief Justice Stuart Rabner of New Jersey⁹⁹

We have gathered information on ICE arrests, courthouse personnel assisting ICE, and the widespread fear that exists within the immigrant community. The collective picture is one of crisis. If people are unable to access the court system, they will be unable to vindicate their rights, as plaintiffs, victims, and criminal defendants. The consequences of this problem reach beyond just the immigrant community and implicate the safety of all communities.

There are solutions to this problem. Both legally and as a matter of sound public policy, the Pennsylvania Supreme Court must exercise the leadership required to protect the rights of individuals to access the courts, and the obligation of courts to fairly resolve cases. Fortunately, Pennsylvania can look to other states and localities for excellent models of policies that help address ICE enforcement at the courthouse.

Appendix

Methodology

In order to collect information for this report, we used several methods. Starting in August 2018, we reached out to various groups, including private attorneys, government attorneys, legal and social services agencies, and community based organizations. We collected information through a questionnaire resulting in a total of 56 responses (Figure 6) and more than a dozen direct interviews. Further, we relied on other information that had already been collected by third parties, such as Community Legal Services of Philadelphia and the Interbranch Commission. Finally, we relied on the Freedom of Information Act responses obtained from ICE by the Immigrant Legal Resource Center.

Figure 6. Questionnaire

Name:

Organization:

Email Address:

What services does your organization offer to immigrants?

Do you assist or represent victims of crime or violence? Yes or No.

Since 2017, have you seen ICE agents or vehicles in or around courthouses? If yes, please specify which courthouses.

Have you witnessed any courthouse personnel (e.g. sheriffs, parole officers, judges, clerks) inquire into the immigration status of anyone at the courthouse or contact ICE for any reason? Yes or No. If yes, please describe in detail.

Please describe any incidents you know of where immigrants have been arrested or detained by ICE at a courthouse. Be sure to include as much detail as you can (e.g. where the arrest took place, the type of case, the individual's immigration status).

Please describe any conversations you have had with immigrants where they expressed fear of going to court or chose not to pursue a case because they may be arrested or detained by ICE.

Since 2017, the number of immigrants you have seen coming to you for services has:
Increased, decreased, or stayed the same.

Please provide us with the contact information of anyone you know who we should talk to about this topic.

Any additional thoughts or comments?

We found that it was impossible to accurately quantify most of the information that we received. While some respondents personally witnessed incidents, others had learned of incidents from clients or other people, creating potential overlap. Further, there is simply no realistic method to reach every private attorney, legal and social services organization, or community based organization that would have information about ICE enforcement in Pennsylvania. Any numerical quantification, therefore, would likely underrepresent the actual problem in the state.

Our final results came from 20 different counties across Pennsylvania: Allegheny, Berks, Bucks, Centre, Chester, Cumberland, Dauphin, Delaware, Erie, Franklin, Lackawanna, Lehigh, Monroe, Montgomery, Northampton, Perry, Philadelphia, Schuylkill, Washington, and York counties.

Endnotes

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² On January 25, 2017, President Trump signed an executive order stating that ICE would now also target those who had solely been charged, rather than convicted, with any criminal offense. Exec. Order No. 13,768 (Jan. 25, 2017).

³ John Kelly, Secretary of DHS, *Memo on Enforcement of the Immigration Laws to Serve the National Interest* (Feb. 17, 2017); Matthew T. Albence, Executive Associate Director, ICE, *Memo on Implementing the President's Border Security and Interior Immigration Enforcement Policies* (Feb. 21, 2017).

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⁵ Kristin Bialik, *ICE arrests Went Up in 2017, With Biggest Increases in Florida, Northern Texas, Oklahoma*, Pew Research Center (Feb. 8, 2018), <http://www.pewresearch.org/fact-tank/2018/02/08/ice-arrests-went-up-in-2017-with-biggest-increases-in-florida-northern-texas-oklahoma/>.

⁶ Arrests at the courthouse did occur under the Obama Administration but were supposed to be limited to immigrants who had been convicted of specific crimes or suspected of “terrorism or espionage.” See, e.g., *ILRC v. DHS*, ILRC (Jul. 24, 2018), <https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security> (last visited Jan. 19, 2019) (email from ERO Taskings to Field Office Directors and Deputy Field Office Directors re Reminder: Enforcement Actions at or Near Courthouses (Oct. 21, 2015)).

⁷ See *infra* note 19.

⁸ U.S. Immigrant Population by State and County, Migration Policy Institute, <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county> (last visited Dec. 11, 2018) (select Pennsylvania and “(Total)” under Country/Region of Origin from the drop down menu).

⁹ 8 C.F.R. § 287.5(c)(1); *Fiscal Year 2017 ICE Enforcement & Removal Operations Report*, U.S. ICE <https://www.ice.gov/removal-statistics/2017> (last visited Dec. 29, 2018).

¹⁰ 8 C.F.R. § 287.5(e).

¹¹ The Obama Administration also engaged in courthouse arrests but their priorities were more limited. Message from John Gurule, Assistant Director for Field Operations, ICE to Field Office Directors and Deputy Field Office Directors entitled *Reminder: Enforcement Actions At or Near Courthouses* (Oct. 21, 2015), available at *Immigrant Legal Resource Center v. Department of Homeland Security* 183 (Jul. 24, 2018), <https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security>.

¹² Kaelyn Forde, *‘Where Can Anyone Seek Justice?’: Experts Warn ICE Courthouse Arrests May Mean Witnesses, Victims Won’t Show Up*, ABC NEWS (Jul. 27, 2018), <https://abcnews.go.com/US/seek-justice-experts-warn-ice-courthouse-arrests-witnesses/story?id=56756506>.

¹³ Chantal Da Silva, *Pennsylvania Judge Calls ICE to Arrest Couples on their Wedding Day*, NEWSWEEK (Apr. 20, 2018), <https://www.newsweek.com/judge-calls-ice-arrest-couples-their-wedding-days-895116>

¹⁴ *ICE Out of Courts*, IMMIGRATION DEFENSE PROJECT (last visited Dec. 11, 2018), <https://www.immigrantdefenseproject.org/ice-courts/>.

¹⁵ *ICE in NYS Courts: Legal Service and Advocates Survey*, IMMIGRATION DEFENSE PROJECT (last visited Dec. 11, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

¹⁶ ICE Directive No. 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses* (Jan. 10, 2018).

¹⁷ *Id.*

¹⁸ Compare *id.* with John Morton, ICE Director, Memo on Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011).

¹⁹ Letter from Tani Cantil-Sakauye, Chief Justice of Cal. Supreme Court, to John Kelly, Secretary of Homeland Security, & Jeff Sessions, Attorney General of the U.S. (Mar. 16, 2017); Letter from Stuart Rabner, Chief Justice of N.J. Supreme Court, to John Kelly, Secretary of Homeland Security (Apr. 19, 2017); Letter from Chase T. Rogers, Chief Justice of Ct. Supreme Court, to Hon. Jefferson Sessions III, Attorney General of the U.S. & Hon. John Kelly, Secretary of Homeland Security (May, 15, 2017); Letter from Thomas A Balmer, Chief Justice of Or. Supreme Court, to John Kelly, Secretary of Homeland Security, & Jeff Sessions, Attorney General of the U.S. (Apr. 6, 2017); Letter from Mary E. Fairhurst, Chief Justice of Wash. Supreme Court, to John Kelly, Secretary of Homeland Security (Mar. 22, 2017); News Advisory from R.I. Judiciary, *Court Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges* (Jun. 16, 2017); Letter from Janet T. Mills, Attorney General of Me., to Richard W. Murphy, Acting U.S. Attorney for the State of Me., John Kelly, Secretary of Homeland Security (Apr. 10, 2017); Azi Paybarah, *Law Enforcement, Court Officials Differ on Impact of ICE Courthouse Arrests*, POLITICO (Aug. 3, 2017) (noting critique by Attorney General of N.Y.), <https://www.politico.com/states/new-york/albany/story/2017/08/03/law-enforcement-court-officials-differ-on-impact-of-ice-courthouse-arrests-113781>; Letter from Brian E. Frosh, Attorney General of Md., to John Kelly, Secretary of Homeland Security et al. (Mar. 2, 2017); Erin Durkin, *City DA's Plead with ICE to Stop Arresting Immigrants at NYC Courthouses: 'It Jeopardizes Public Safety,'* NY DAILY NEWS (Feb. 14, 2018) (noting critique by the Manhattan, Brooklyn, and Bronx D.A.s), <https://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798#http://www.nydailynews.com/new-york/city-das-press-ice-stop-arresting-immigrants-courthouses-article-1.3820798>; Letter from Office of the City Attorney, City of Los Angeles et al., to Jeffrey Sessions, Attorney General of the U.S. & John Kelly, Secretary of Homeland Security (Apr. 4, 2017) (including coauthors from various counties and cities in California); Letter from Michael B. Hancock, Mayor of Denver, et al., to Jeffrey D. Lynch, Acting Field Office Director, ICE (Apr. 6, 2017) (including requests from Denver D.A.). See *generally Improving Relationships with ICE*, NATIONAL CENTER FOR STATE COURTS, <https://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx> (last visited Jan. 1, 2019); Immigrant Defense Project, *Statements from Chief Justices, Governors, Prosecutors, Attorney Generals, and Bar Associations*, IMMIGRANT DEFENSE PROJECT, <https://www.immigrantdefenseproject.org/wp-content/uploads/CourthouseToolkitSection4.pdf> (last visited Jan 1., 2019).

²⁰ XAVIER BECERRA, CALIFORNIA ATTORNEY GENERAL, SECURING EQUAL ACCESS TO JUSTICE FOR ALL: GUIDANCE AND MODEL POLICIES TO ASSIST CALIFORNIA'S SUPERIOR COURTS IN RESPONDING TO IMMIGRATION ISSUES (Oct. 2018).

²¹ WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL BOB FERGUSON, GUIDANCE CONCERNING IMMIGRATION ENFORCEMENT 29-30 (2017).

²² Michael Magliano, Chief of UCS Department of Public Safety, Memo on Policy and Protocol Governing Activities in Courthouses by Law Enforcement Agencies (Apr. 26, 2017); New York City Bar, *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* (Jul. 2018) (describing May 2018 instructions issued by OCA).

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²⁴ Bialik, *supra* note 5.

²⁵ Deborah Sontag and Dale Russakof, *In Pennsylvania, It's Open Season on Undocumented Immigrants*, PROPUBLICA (Apr. 12, 2018), <https://www.propublica.org/article/pennsylvania-ice-undocumented-immigrants-immigration-enforcement>.

²⁶ *Id.*

²⁷ Da Silva, *supra* note 13; Bobby Allyn, In Philly Halls of Justice, Feds Seizing More Immigrants with No Criminal Past, WHYY (Dec. 20, 2017), <https://whyy.org/segments/philly-halls-justice-feds-seizing-immigrants-no-criminal-past/>.

²⁸ See AMERICAN CIVIL LIBERTIES UNION (ACLU), FREEZING OUT JUSTICE: HOW IMMIGRANT ARRESTS AT COURTHOUSES ARE UNDERMINING THE JUSTICE SYSTEM 2 (2018).

²⁹ Brian Hickey, *ICE Arrests at Montgomery County Courts Spark Fears of Chilling Effect on Crime Victims, Witnesses*, PHILLY VOICE (Mar. 15, 2018), <https://www.phillyvoice.com/ice-arrests-montco-courthouses-said-have-chilling-effect-crime-victims-witnesses/>.

³⁰ Form I-213 – Record of Deportable-Inadmissible Alien (Jul. 2018) (on file with authors).

³¹ Allyn, *supra* note 27.

³² ICE has had an interest in arresting individuals who are on probation and parole from the Obama Administration to today. See, e.g., ILRC v. DHS, ILRC (Jul. 24, 2018), <https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security> (last visited Jan. 19, 2019) (email from ERO Taskings to Field Office Directors, Deputy Field Office Directors, and Local Probation and Parole Points of Contact re Probation and Parole Teleconference (Apr. 14, 2016)).

³³ Such collaboration also occurs with Probation in Montgomery County, which is under the Corrections Department. Corrections, MONTGOMERY COUNTY PENNSYLVANIA, <https://montcopa.org/862/Corrections> (last visited Dec. 11, 2018).

³⁴ DHS' Response to ILRC's Freedom of Information Act Request (2018) (on file with authors).

³⁵ *Id.*

³⁶ Da Silva, *supra* note 13.

³⁷ Pennsylvania Interbranch Commission on Gender, Racial and Ethnic Fairness, Memo on Reports of State Court Judicial Officers' Assumption of Jurisdiction Over Immigration Issues and the Impact of the Presence of Immigration Enforcement Agents in Courthouses on Litigants' Constitutional Rights 2 (Apr. 5, 2018), available at http://www.pa-interbranchcommission.com/_pdfs/Memo_re_Immigration_in_State_Courts_Anon.pdf (last visited Jan. 18, 2019).

³⁸ *Id.*

³⁹ ACLU, *supra* note 28, at 1.

⁴⁰ *Id.*

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ This analysis does not include those who failed to respond to the question or wrote "N/A."

⁴⁴ CLS, *supra* note 1.

⁴⁵ In contrast, one of our survey respondents from a legal services organization felt the opposite "[g]enerally we've had clients who are more willing to come forward/file a complaint despite increased risks. . . [w]e have not seen a decrease in clients' willingness to pursue claims."

⁴⁶ CLS, *supra* note 1.

⁴⁷ *Id.*

⁴⁸ Letter from Community Legal Services, to Sheila Woods-Skipper, President Judge, First Judicial District (Sept. 6, 2018).

⁴⁹ ACLU, *supra* note 28, at 2.

⁵⁰ Letter from Chief Justice Tani Cantil-Sakauye, *supra* note 19.

⁵¹ Michael Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 684 (2003).

⁵² U.S. Const. amend. V; VI; XIV.

⁵³ New York City Bar, *supra* note 22, at 7 n. 28 (citing *Bounds v. Smith*, 430 U.S. 817, 828 (1977) (requiring prison authorities to provide prisoners with adequate law libraries and to assist them in

preparing court papers); *Boddie v. Conn.*, 401 U.S. 371, 377 (1971) (court filing fee could not prevent indigent couple from filing for divorce)).

⁵⁴ Pa. Const. art. 1, § 11.

⁵⁵ *Masloff v. Port Authority of Allegheny Cty.*, 531 Pa. 416, 424 (1992).

⁵⁶ *Id.* at 425; *see also* *Ieropoli v. AC&S Corp.*, 577 Pa. 138, 155-56 (2004).

⁵⁷ *Masloff*, 531 Pa. at 425. While it is problematic to extinguish a cause of action that has already accrued, entire causes of action can be abolished, especially when an administrative mechanism for recovery is supplied.

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⁵⁹ Administrative Office of the Pa. Courts (AOPC), *Advisory Re: Title VI of the Civil Rights Act* (2018) (providing an exception for when immigration status is relevant to the matter before the court or agency).

⁶⁰ *Id.*

⁶¹ U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, TITLE VI LEGAL MANUAL § 6.

⁶² *Younger v. Harris*, 401 U.S. 37, 44 (1971).

⁶³ *See, e.g.,* *Printz v. United States*, 521 U.S. 898, 925 (1997); *New York v. United States*, 505 U.S. 144, 178 (1992).

⁶⁴ U.S. Const. amend. X.

⁶⁵ George Bach, *Federalism and the State Police Power: Why Immigration and Customs Enforcement Must Stay Away from State Courthouses*, 54 WILLAMETTE L. REV. 323, 328 (2018).

⁶⁶ *New York City Bar*, *supra* note 22, at 13 n. 60 (citing *Younger v. Harris*, 401 U.S. 37, 46 (1971)). *See also* *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (finding that the decision about qualifications of state judges “is a decision of the most fundamental sort of a sovereign entity”).

⁶⁷ Bach, *supra* note 65, 331.

⁶⁸ *Id.*

⁶⁹ Pa. Const. art V, § 10(c) (“The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . .”)

⁷⁰ 42 Pa. C.S.A. § 323.

⁷¹ 201 Pa. Code Rule 1954.

⁷² 234 Pa. Code Rule 110. *See also* Rule 2.8 of the Pennsylvania Rules for Magisterial District Judges (MDJs) allows judges to exclude public broadcasting in the courtroom or in the areas immediately adjacent to the courtroom.

⁷³ 231 Pa. Code Rule 223.

⁷⁴ *See generally* Chris Lasch, *A Common Law Privilege to Protect State and Local Courts During the Cimmigration Crisis*, YALE L.J. FORUM 410 (Oct. 24, 2017). Professor Chris Lasch has advocated for reviving the privilege against civil arrest given ICE’s enforcement in and around courthouses around the country. The privilege is not used today as it was in the past because we no longer start civil lawsuits through arrest. Massachusetts Supreme Judicial Court, however, has recently denied a petition requesting the privilege against civil arrest for immigration arrests. Alanna Durkin Richer, *Mass. High Court Judge Denies Bid to Block Courthouse Immigration Arrests*, WBUR (Sept. 21, 2018), <https://www.wbur.org/news/2018/09/21/judge-rules-against-bid-to-block-courthouse-immigration-arrests>.

⁷⁵ Lasch, *supra* note 74, at 423.

⁷⁶ *Id.*

⁷⁷ *Id.* at 425.

⁷⁸ *Long v. Ansell*, 293 U.S. 76, 83 (1934).

⁷⁹ *Miles v. M’Cullough*, 1 Binn. 77 (Pa. 1803).

⁸⁰ *Baxter v. Conroy*, 26 Pa. D. 430 (C.P. Phila. 1917); *see also* *Hayes v. Shields*, 2 Yeates 222 (Pa. 1797).

⁸¹ *Crusco v. Strunk Steel Co.*, 365 Pa. 326, 327-328 (1950).

⁸² *Id.* at 329.

⁸³ *Gekoski v. Starer*, 223 Pa. Super. 560, 564 (1973). Another factor appears to be whether service of the civil suit is “a cause of action arising out of the same transaction.” *Id.* at 563. With ICE arrests, the civil immigration violation that forms the basis of the arrest is entirely unrelated to reason why an immigrant may be in court.

⁸⁴ *Id.* at 563 (citing *Crusco*, 365 Pa. at 328).

⁸⁵ Protect Our Courts Act, A.11013 (N.Y. 2018) (same as S.08925).

⁸⁶ WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29.

⁸⁷ AOPC, *supra* note 59.

⁸⁸ *Getting ICE Out of Courts*, Community Legal Services, <https://clsphila.org/learn-about-issues/getting-ice-out-courts> (last visited Jan. 16, 2019) (select attachments that include proposed policies for FJD).

⁸⁹ Conversation with Nadia Hewka, Senior Attorney, Community Legal Services (Jan. 4, 2018).

⁹⁰ *Id.*

⁹¹ California Values Act, S.B. 54 (Cal. 2017).

⁹² BECERRA, *supra* note 20.

⁹³ WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29-30.

⁹⁴ New York City Bar, *supra* note 22, at 16.

⁹⁵ Wash. R. Evid. 413.

⁹⁶ Bernalillo Cty., N.M., Metropolitan Court, Courthouse Access Policy (Sept. 25, 2018).

⁹⁷ WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, *supra* note 21, at 29 (quoting King Cty., Wash., Superior Ct. Policy on Immigration Enforcement in Courtrooms).

⁹⁸ The Pennsylvania Courts have “power to issue, under its judicial seal, every lawful writ and process necessary or suitable for the exercise of its jurisdiction.” 42 Pa. C.S.A. § 323.

⁹⁹ Letter from Chief Justice Stuart Rabner, *supra* note 19.

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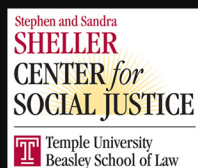


EXHIBIT E

**Promoting Access to Justice for Immigrant and Limited English Proficient Crime Victims
in an Age of Increased Immigration Enforcement: Initial Report from a 2017 National
Survey¹**

May 3, 2018

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Introduction

This report explores the impact of that public discussions about immigration, the rise in anti-immigrant sentiment in the public discourse, and the increased federal immigration enforcement are having on immigrant crime victims and their willingness to seek help from courts, police, prosecutors, victim advocates, and attorneys. In particular, we are interested in understanding the experiences of immigrant and limited English proficient (LEP) crime victims in accessing the justice system.

To understand how increased immigration enforcement is affecting immigrant crime victims, we conducted on-line surveys with four different groups of professionals – judges, police, prosecutors, and victim advocates/attorneys. The goal was to learn about judges', law enforcement officials', prosecutors', and victim advocates' and attorneys' observations of differences in their work with immigrant and LEP victims and about immigrant victims' willingness or reticence to access help. The survey of victim advocates and victims' attorneys, contained two different types of questions. Many questions asked the advocate/attorney participants to reply with the number of their immigrant victim clients who had made a particular choice or had the experience described in the question. Other questions asked advocates and attorneys to report more generally about their immigrant victim clients' experiences. In some instances, we aimed to understand better the common themes emerging from these justice system professionals' experiences with immigrant and LEP victims. The results of this survey provide a complex picture developed from multiple perspectives describing:

- Whether fears about immigration enforcement and immigration status concerns are:

¹ The authors wish to thank the many interns and Deans' Fellows at American University Washington College of Law for their collaboration and hard work including Tolulope Adetayo, Monica Bates, Rachel Nyakotey, Grace Logan, Mae McCauley, Zoe Morgan, Genesis Marte, and Nicole DiOrio. The authors also wish to thank the Judges, Law Enforcement officials and Advocates who provided their assistance and insights.

- Arising in courtrooms in criminal and family law cases;
- Affecting the willingness of immigrant and LEP crime victims to cooperate with police and prosecutors on criminal investigations and prosecutions;
- Influencing the ability of law enforcement to hold offenders accountable;
- Impacting community policing and relationships between law enforcement agencies and immigrant crime victims' advocates and attorneys;
- Deterring immigrant crime victims' and their children's access to the justice system for help;
- Contributing to immigrant crime victims' fears that going to court and attending proceedings at courthouses are not safe; and
- Decreasing victims' willingness to pursue crime victim related protection, including those available under immigration, family, and public benefits law.

The survey instruments questions required participants to provide evidence based information regarding their experience working with immigrant and LEP victims of crime (i.e. numbers and percentages), while also offering respondents the opportunity to provide narrative commentary on their work. The surveys were developed to include questions that are specifically relevant to each professional group's sphere of work and interaction with immigrant and Limited English Proficient (LEP) populations. The surveys contained questions that allowed us to analyze the data we collect both quantitatively and qualitatively as well as to track various changes in each group's interaction with immigrant and LEP populations in 2016 and 2017. Prosecutors were asked to compare the past year, the past three years and the past five years with previous years.

NIWAP distributed the survey to its list of 9,000+ attorneys, advocates, judges, law enforcement officials and organizations that worked with or sought training or assistance in case of immigrant victims, women and children. In addition, several professional organizations assisted NIWAP by sending the survey to their e-mail lists including the Police Executive Research Forum, the National Council of Juvenile and Family Court Judges, the Association of Prosecuting Attorneys, and a number of national and statewide organizations working on domestic violence, sexual assault or immigrant's issues.

A total of 779 individuals from a wide variety of professions and numerous jurisdictions participated in the survey during October and November of 2017. One hundred and eight (108) Judges and court staff from twenty five (25) states returned their *National Survey of Judges*. Two hundred and thirty two (232) law enforcement officials from twenty four (24) states returned their *National Law Enforcement Survey*. A total of fifty (50) prosecutors from nineteen (19) states returned their *National Prosecutors Survey*. Three hundred and eighty-nine victim advocates and attorneys from all 50 states and the District of Columbia completed *The National Victim Advocates and Attorneys Survey*.

All four professional groups reported details about the variety of ways their work with immigrant crime victims and LEP has become more difficult in the past two years. Judges reported on how immigration status is being used more frequently by litigants offensively against immigrant victims in a range of family and criminal court cases. Prosecutors similarly reported that defense attorneys are raising immigration status of crime victims in criminal cases and that immigrant victims' willingness to cooperate in criminal prosecutions is declining. Law

enforcement personnel observed a decline in immigrant victims' willingness to cooperate in criminal prosecutions as well an increase in difficulty of investigating criminal cases involving immigrant crime victims because of immigrant and LEP victims' reluctance to cooperate. Similarly, victim advocates and attorneys saw declines in the number of immigrant victims willing to file for civil protection orders and for VAWA and U visa immigration relief and the number of immigrant domestic violence victims willing to call the police for help.

This report is divided into five parts: part one concentrates on results from the *National Survey of Judges*; part two focuses on the findings of the *National Law Enforcement Survey*; part three provides the results and analysis of the *National Prosecutors Survey*; and part four examines the results of the *National Victim Advocates and Attorneys Survey*. Part five offers broad policy recommendations and conclusions based on the data from all four surveys.

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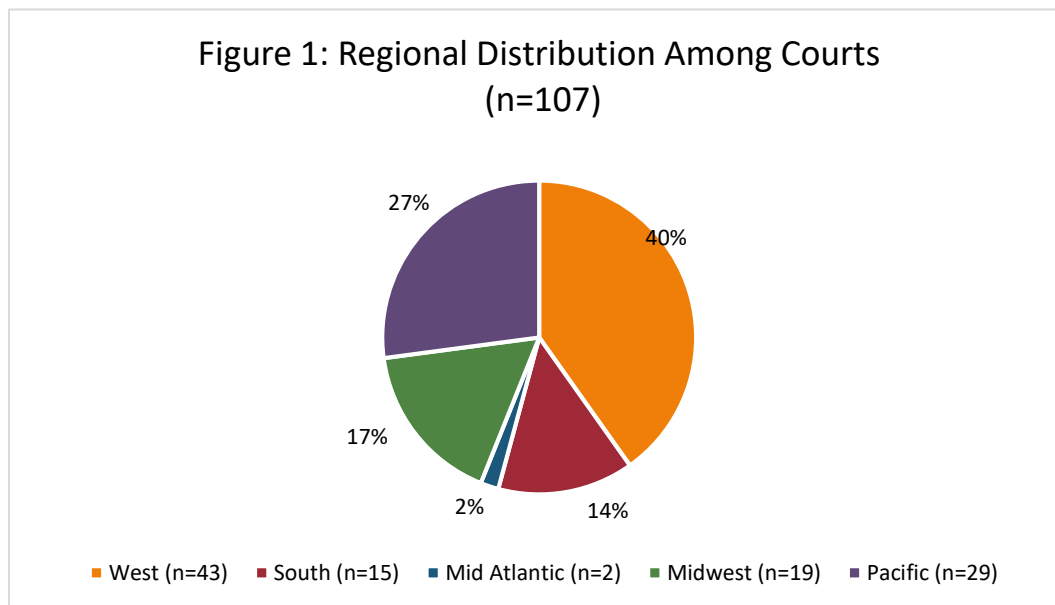
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Part One - National Survey of Judges

Findings from 2017 National Survey of Judges (Judicial Survey)

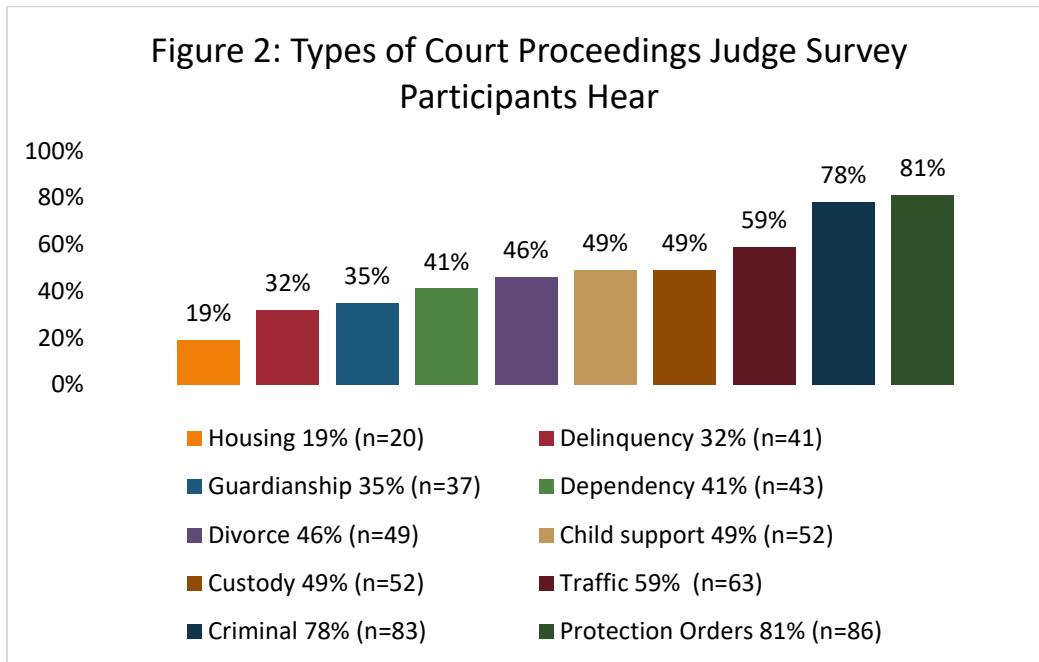
The National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law conducted a survey of 103 Judges and 3 court staff and 2 court administrators from 25 states during November and December 2017. The aim of the survey was to learn from judicial observations regarding cases that come before courts involving immigrant and LEP victims. The survey questions particularly examined the intersection of immigration status and immigration concerns with state family and criminal court proceedings. It also explored whether judges and court administrators are observing changes in the immigrant victims' willingness to participate in various types of court proceedings in 2017 relative to 2016.

Judges participating in the survey were from 25 different states. Figure 1 provides an overview of the regional² distribution among participating judges.³ Judicial survey participants presided over a wide range of different types of state court proceedings (See, figure 2).

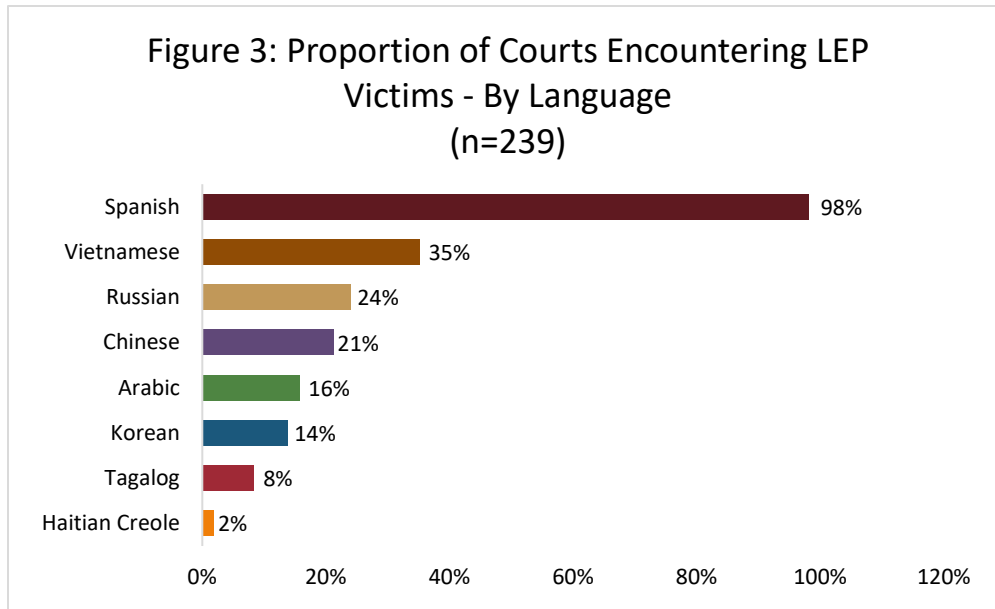


² The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

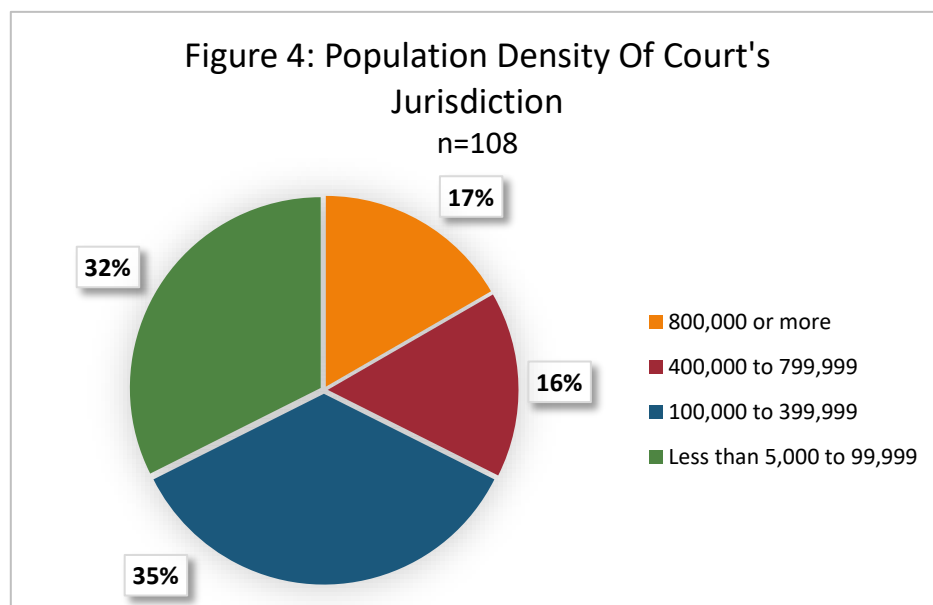
³ States participants in the Survey: Midwest (IN, IA, KS, MI, MN, NE, OH, WI); Mid Atlantic (DE, PA); Pacific (WA, OR, CA, AK); South (AR, FL, LA, NC, TN, TX); West (AZ, CO, NV, NM, UT)



Most judges (69%, n=75) reported that they have a large number of LEP residents living in their jurisdictions. Another 25% (n=27) of judges reported working in jurisdictions that did not have a large LEP population living in the court's jurisdiction, and 6% (n=6) of participants said they did not know. Those participating in the judicial survey routinely worked with LEP victims who spoke 29 different languages. The languages most commonly encountered after Spanish included: Vietnamese, Russian, Chinese, Arabic and Korean (Figure 3). Respondents (21%, n=23) indicated that their courts also encounter victims who speak other languages including: American Sign Language, Amharic, Cambodian, Cerundi, Chinese (Mandarin and Cantonese); Farsi, Hindi, Hmong, Kanjabal, Laotian, Mam, Nepali, Polish, Portuguese, Punjabi; Russian, Romanian, Somali, and Swahili.

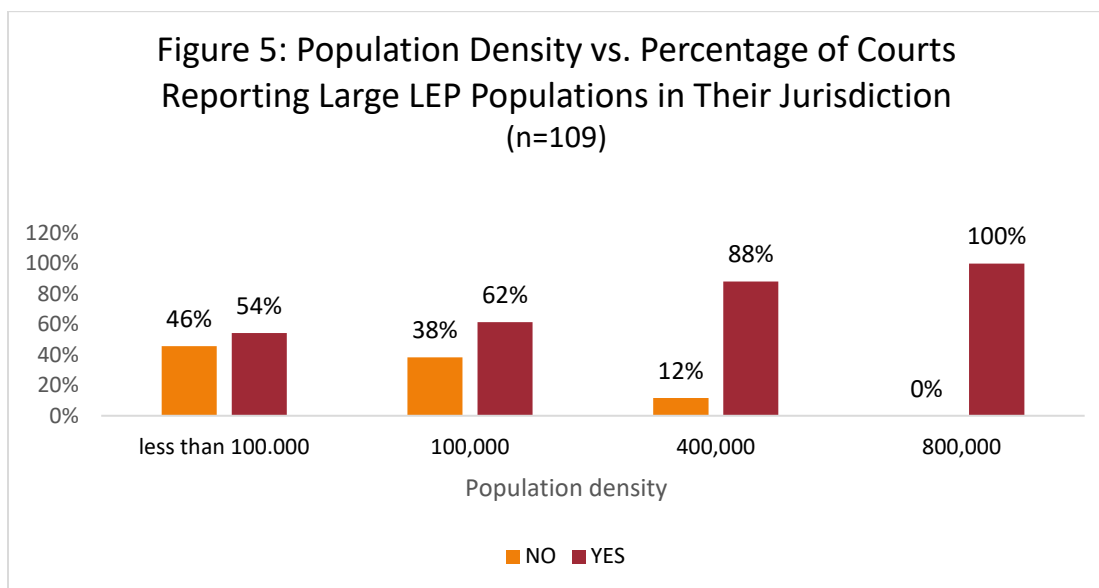


Survey participants worked in courts that served communities and jurisdictions with diverse population sizes (See, Figure 4). More of the judicial survey participants (67%, n= 73%) served rural and smaller jurisdictions (under 400,000) than served larger cities and metropolitan communities (33%, n=35). (See, Figure 4).



The survey respondents revealed the extent to which courts outside of large urban centers were encountering immigrant crime victims and children in court cases. The survey findings (see, figure 5) confirm what census data and a study commissioned by the Chicago Council on

Global Affairs⁴ show that there has been a shift in immigrant settlement trends in the United States from large cities and to locations outside of traditional immigrant gateway cities. A substantial number of those participating in the survey reported immigrant and LEP populations being served by courts in rural communities across the country.



Judges/Courts Signing U Visa Certifications, T Visa Certifications and Special Immigrant Juvenile Status (SIJS)

Participants in the judicial survey were asked to indicate whether judges in their courts signed U visa certifications in cases of immigrant crime victims, T visa certifications in cases involving immigrant human trafficking victim, and/or issued Special Immigrant Juvenile Status (SIJS) findings in cases of immigrant children who had suffered abuse, abandonment or neglect (“Signing Courts”). The majority (64%, n=66) surveyed indicated that judges in their courts do not sign U or T visa certifications and also do not sign SIJS findings (“Non-Signing Courts”). (See, figure 6).

Figure 6: Courts Signing U or T Visa Certifications or Special Immigrant Juvenile Status Findings (n=318)						
	U Visa Certifications		T Visa Certifications		SIJS Findings	
	#	%	#	%	#	%
Yes - Signing Courts	19	18%	6	6%	28	26%

⁴ The report shows that immigration is responsible for the population growth in five metro areas, including metro areas of Chicago, Rockford, and Akron. Additionally, the report shows growing immigrant populations outside traditional gateway cities. The immigrant population in cities like Champaign-Urbana had grown 8.1 percent in 2000 to 12.9 percent in 2015 and Minneapolis (7.7 to 11.9 percent). See Rob Paral, *Immigration a Demographic Lifeline in Midwestern Metros*, The Chicago Council on Global Affairs (March 23, 2017), <https://www.thechicagocouncil.org/publication/immigration-demographic-lifeline-midwestern-metros>.

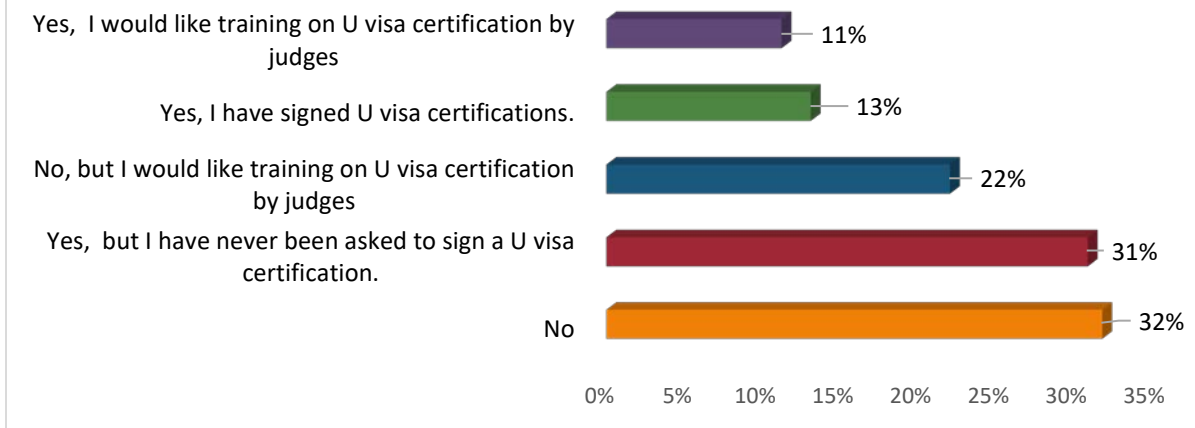
No – Non-Signing Courts	37	35%	43	41%	41	38%
Do not know	50	47%	56	53%	38	36%
	106	100%	105	100%	107	100%

Most Signing Courts signed in only one type of case. The following characterizes Signing Courts (which comprise where 36%, n=37 of the participants work):

- 23% (n=24) of these courts had judges who signed in only one case type (either U visas, T visas or SIJS findings); and
- 13% (n=13) of these courts sign more than one of the forms of certification or findings Congress has authorized state court judges to sign.

The survey sought to assess judges' knowledge about U visas and the judicial role as U visa certifiers. More than two-thirds of judges participating in the survey (55%, n=64) reported that they were signing U visa certifications, were willing to sign but had not been asked to sign or wanted more training on U visa certification by judges. The results show that there is a substantial percentage of judicial survey participants (44%, n=47) who were either signing U visa certifications or knew about certification but had not been asked to sign a certification. However, many judicial participants (32%, n=34) reported that they lacked knowledge about both U visas and certification. Additionally, there was a third group of judges (33%, n=36) who were interested in receiving training on U visas and certification. (See, figure 8). Both judges who were signing (11%, n=12) and judges who were not signing (22%, n=24) were interested in receiving training on U visa certification by judges. Responses to the question about whether there has been a change in the numbers of immigrant victims seeking U visa certification or T visa certification from courts between 2016 and 2017 showed no change in a large majority of courts (U Visa: 89%, n=64; T Visa: 99%, n=69). However, a small number of participants reported an increase in certification requests (U Visa: 10%, n=7; T Visa: 1%, n=1). (See, figure 7).

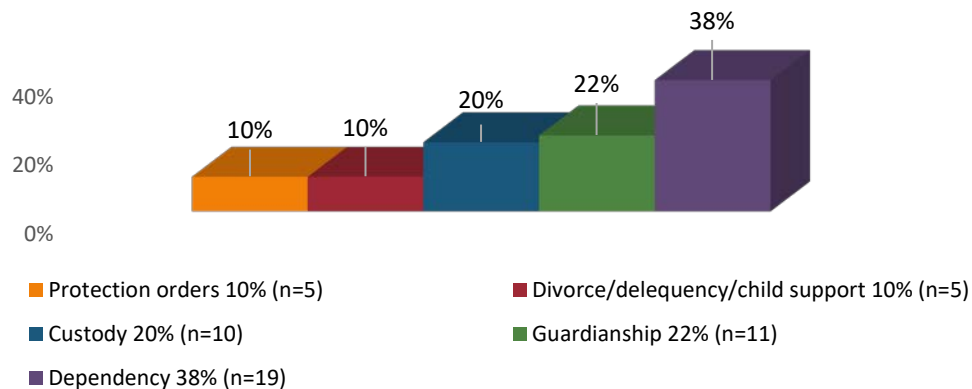
Figure 7: Do You Understand What a U Visa is and the Role of a Judge as a U Visa Certifier?
(n=117)



State courts are authorized by federal statute to sign SIJS findings in any state court proceeding where the court has jurisdiction to enter court orders regarding the custody or placement of a child. SIJS is a form of immigration relief that offers protection for immigrant children who have been abused, abandoned or neglected by one or both of the child's parents. In order to apply for SIJS, an immigrant child who has suffered one or more of the harms listed in the SIJS statute must obtain a state court order containing specific SIJS findings as a prerequisite to the child being able to file for SIJS immigration protections.

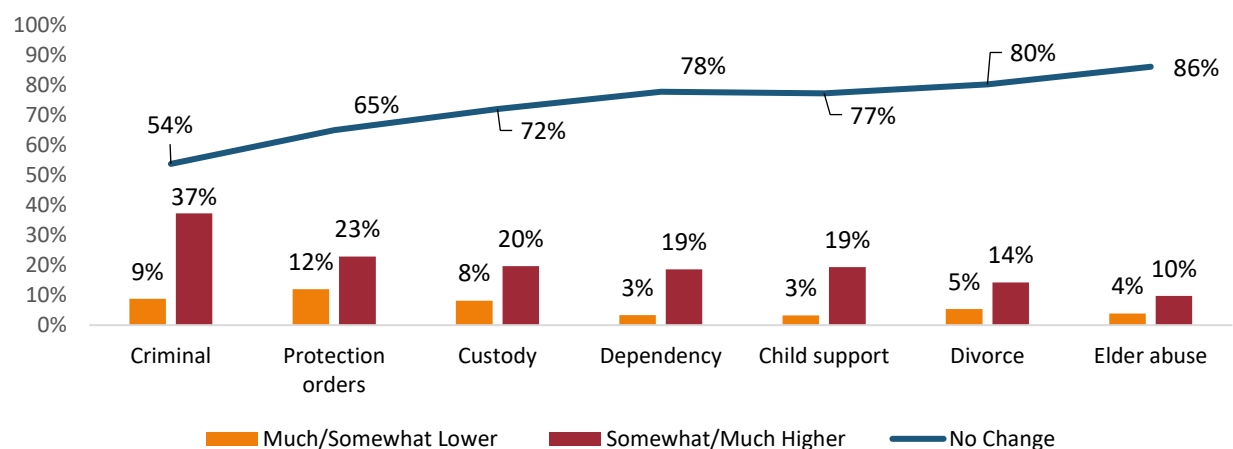
Over a quarter (26%, n=28) of survey participants reported that judges in their court issued Special Immigrant Juvenile Status (SIJS) findings and 38% (n=41) stated that their courts did not issue SIJS findings. Additionally, 36% (n=38) of responding court staff did not know whether SIJS findings were issued by judges in their courts. Those participating in the judicial survey reported issuing SIJS findings most commonly in dependency (38%, n=19), guardianship (22%, n=11), custody (20%, n=10), and protection order (10%, n=5) cases. Judges also reported issuing SIJS orders in divorce, delinquency and child support cases. (See, figure 8). Some participants (15% n=11) reported that requests for SIJS findings for abused, abandoned or neglected immigrant children went up in 2017 compared to 2016, but most participants (81%, n=59) reported no change.

Figure 8: Judges Issued SIJS findings In a Range of State Court Proceedings
(n=50)



Participants in the judicial survey were asked whether the number of cases involving immigrant or LEP victims changed in 2017 relative to 2016. Some judges reported an increase in immigrant victims coming to court in 2017 in several types of cases. Other judges reported a decline in victim participation in criminal, protection orders, and custody cases. (See, figure 9).

Figure 9: Judicial Survey Participants Reporting Changes in Numbers of Cases Involving Foreign Born/LEP Victims in 2017 relative to 2016
(n=463)



Signing Courts and Non-Signing Courts

Signing Courts differed from Non-Signing Courts in their comparisons of the number of cases involving immigrant or LEP victims appearing in state court proceedings in 2017 relative to 2016. Figures 10 and 11 summarize these results.

Figure 10: <i>Signing Courts Report Increases in Immigrant Victim Participation in Family Court Proceeding (in 2017 compared to 2016) Relative to Non-Signing Courts</i>	
Immigrant/LEP Victim Participation in Family Law Proceedings	Rate at Which Signing vs Non-Signing Courts Reported Increases in 2017 over 2016
Child support	3 times higher
Custody	2 times higher
Child Abuse/Neglect	1.8 times higher
Divorce	1.7 times higher
Civil protection orders	1.1 times higher

Figure 11: <i>A Higher Proportion of Non-Signing Courts Report Observing No Changes in the Rates of Immigrant Victim Participation in Family Court Cases (2016 to 2017) Compared to Signing Courts</i>	
Immigrant/LEP Victim Participation in Family Law Proceedings	Rate at Which Non-Signing Courts, Compared to Signing Courts, Report Observing <i>No Change In Immigrant Victim Participation</i>
Child Support	1.8 times higher
Civil protection orders	1.7 times higher
Divorce	1.7 times higher
Custody	1.6 times higher
Child abuse/neglect	1.4 times higher

For criminal proceedings, a substantial portion of those responding to the judicial survey 45% (n= 13) in Signing Courts and 35% (n=22) in Non-Signing Courts reported that they are seeing more criminal cases involving immigrant crime victims in 2017 compared to 2016. Among those from Signing Courts 20% (n=6) reported increases in U visa certification requests and 80% (n=24) reported no change in numbers of U visa certification requests received during 2017 and 2016. With regard to requests for SIJS findings, 30% (n=10) of Signing Court judges reported increases in SIJS requests in 2017 compared to 2016, and 64% (n=21) reported no change in the number of requests received.

In qualitative responses to the survey, participants in the judicial survey included information that provides insight into why “Signing Courts” are seeing increases in immigrant victim willingness to turn to courts for help. Some of their answers noted,

In qualitative responses to the survey, participants included information that provides insight into why Signing Courts are seeing increases in immigrant victims’ willingness to turn to courts for help. Some of their answers noted,

- Reasons that immigrant victims continued seeking protection orders at the same or higher rate in 2017 compared to 2016 include:
 - Judges have made it clear that attorneys cannot simply raise allegations regarding a party’s or child’s immigration status as a negative or positive

issue. This evidence is limited to cases where it is both relevant and a party presents evidence to support any claim with regard to immigration status.

- Participants in the judicial survey noted that protection order filings dropped during the first half of 2017 from immigrant and LEP victims. However, participants reported that as courts took steps to let immigrant community members know that ICE is not welcome in courthouses, particularly in family court and protection order cases, the number of immigrant victims seeking protection orders increased, including to levels beyond 2016 in some jurisdictions.

When victims are afraid to appear in court due to a fear that coming to court would lead to the victim being subject to immigration enforcement, courts have authorized victims to participate in protection order and divorce cases telephonically

Protections for Immigrant Crime Victims in Courthouses

The U.S. Department of Homeland Security (DHS) has several publications that help immigrant crime victims, their advocates and attorneys, the courts and law enforcement professionals to identify, screen for, and understand immigration protections designed to help immigrant victims of domestic violence, sexual assault, stalking, dating violence, human trafficking, and other criminal activities. These DHS materials include:

- DHS Infographic: Protections for Immigrant Victims⁵
- U.S. Citizenship and Immigration Service (USCIS), Immigration Options for Victims of Crime⁶
- U.S. Department of Justice, Domestic Violence and the International Marriage Broker Regulation Act⁷
- USCIS, Continued Presence: Temporary Immigration Status for Victims of Human Trafficking⁸
- USCIS, Immigration Relief for Abused Children: Special Immigrant Juvenile Status⁹

⁵ Dep't of Homeland Security, Protection for Immigrant Victims, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (January 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/>; Alexandra Brown, Leslye Orloff, *The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (February 2, 2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>; Translations available: Chinese, Portuguese, Spanish, Russian, and Thai. See NIWAP, *The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (February 2, 2017) <http://niwaplibrary.wcl.american.edu/dhs-protections-for-immigrant-victims/>.

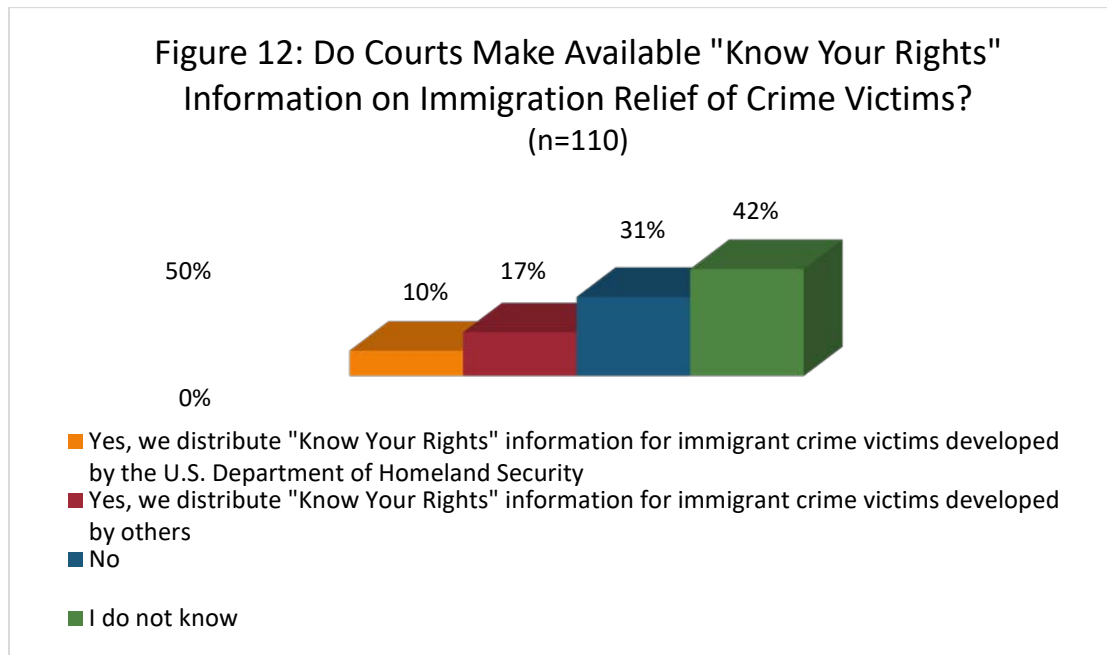
⁶ NIWAP, Multilingual Materials by Language, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT <http://niwaplibrary.wcl.american.edu/topic/multilingual-materials-language/>

⁷ Dep't of Justice, Domestic Violence and the International Marriage Broker Regulation Act, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2014).

⁸ Dep't of Homeland Security, Continued Presence Temporary Immigration Status for Victims of Human Trafficking, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (July, 2010), <http://niwaplibrary.wcl.american.edu/pubs/dhs-continued-presence-brochure/>, <https://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

⁹ Dep't of Homeland Security, Immigration Relief for Abused Children: Special Immigrant Juvenile Status, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (May 1, 2016), http://niwaplibrary.wcl.american.edu/pubs/uscis_sijs_brochure/.

The survey sought to learn about the extent to which these important informational brochures developed by U.S. government agencies were being included by courts in the “*Know Your Rights*” information that courts make available to the public. The survey also asked whether courts were making available know your rights information for immigrant crime victims developed by other entities. The majority of those participating in the judicial survey 76% (n=80) reported that either their courts do not include in the material available at courthouses “*Know Your Rights*” information on immigration law crime victim and children protections 31% (n=34) or that they did not know (42%, n=46) if these materials were include in the information their courts makes publicly available. (See, figure 12).



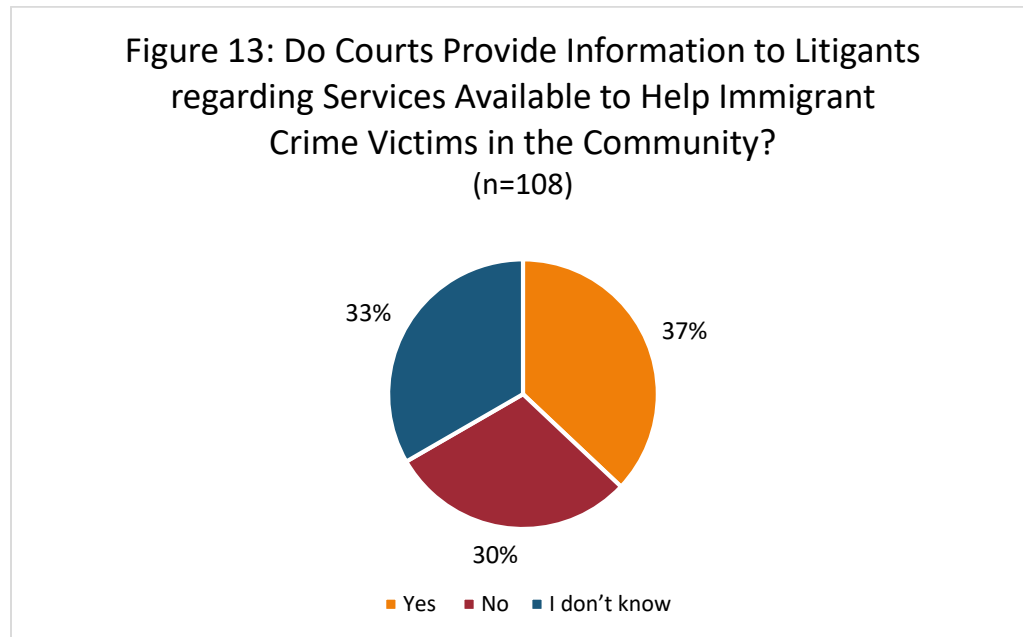
Connecting immigrant victims who come to court for help with victim and legal services organizations with expertise on the legal rights of immigrant crime victims and children as well as experience serving immigrant victims is an important role courts can play. In 2006 the *National Center for State Courts* conducted *National Institute of Justice* funded research on access to protection orders for LEP domestic violence victims which recommended that courts:

“Increase the courts’ collaboration with community-based organizations” and “Collaborate with community-based organizations to identify LEP communities that may have no access to court and to better understand the barriers to access faced by LEP persons, including those seeking protection orders.”¹⁰

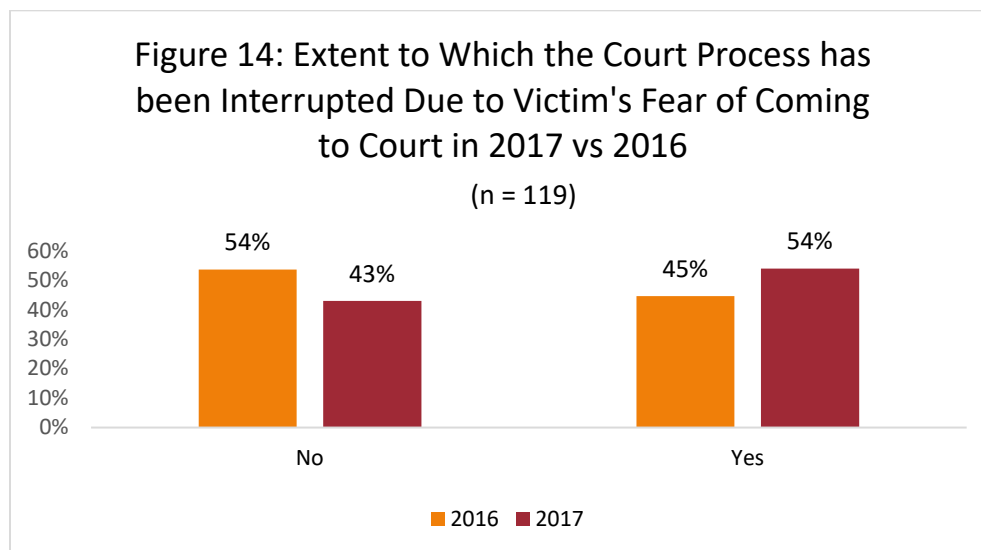
https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf.

¹⁰ BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>; BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS (2016), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>.

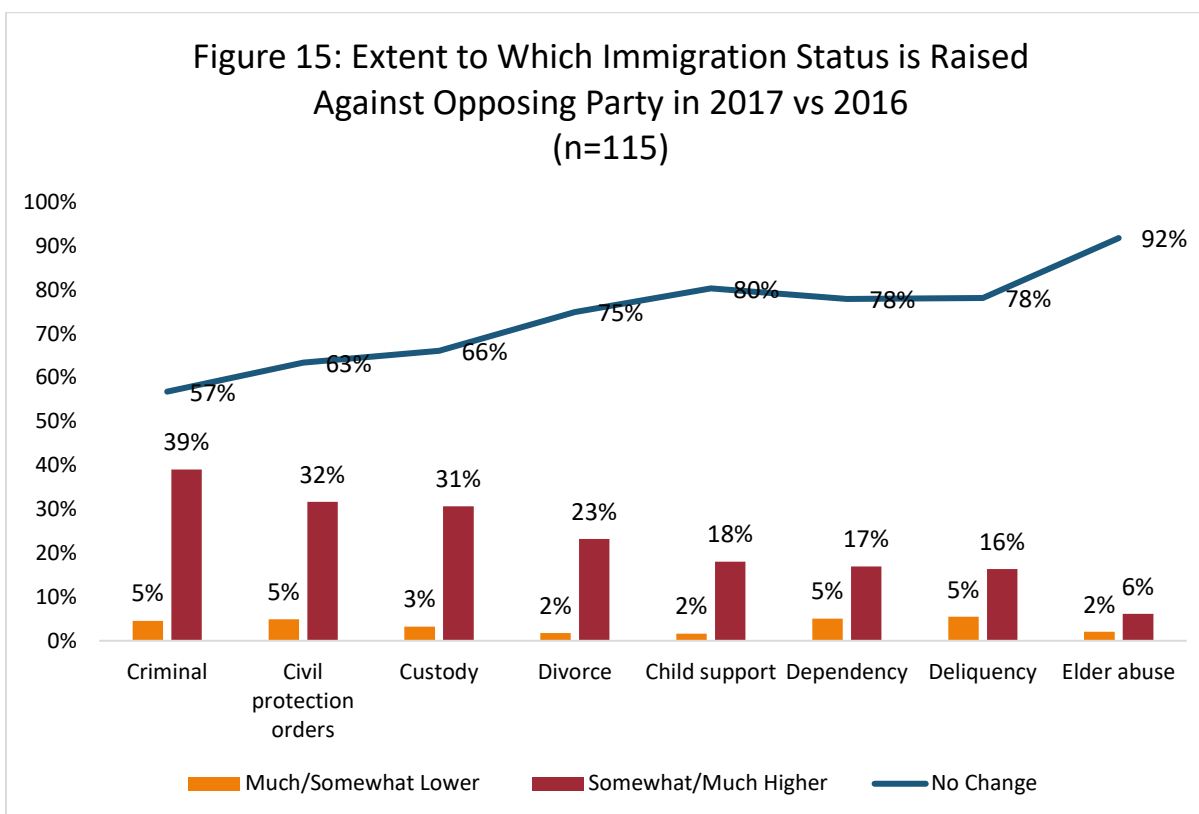
More than a decade later, this survey sought to learn the extent to which, in cases of immigrant crime victims, courts had established these relationships and were making referrals for immigrant victims to community-based programs with expertise serving immigrant and LEP victims. Thirty-seven percent (37%, n=40) of judicial survey participants reported that their courts were providing information to victims about community-based organizations with expertise serving immigrant victims. (See, figure 13)



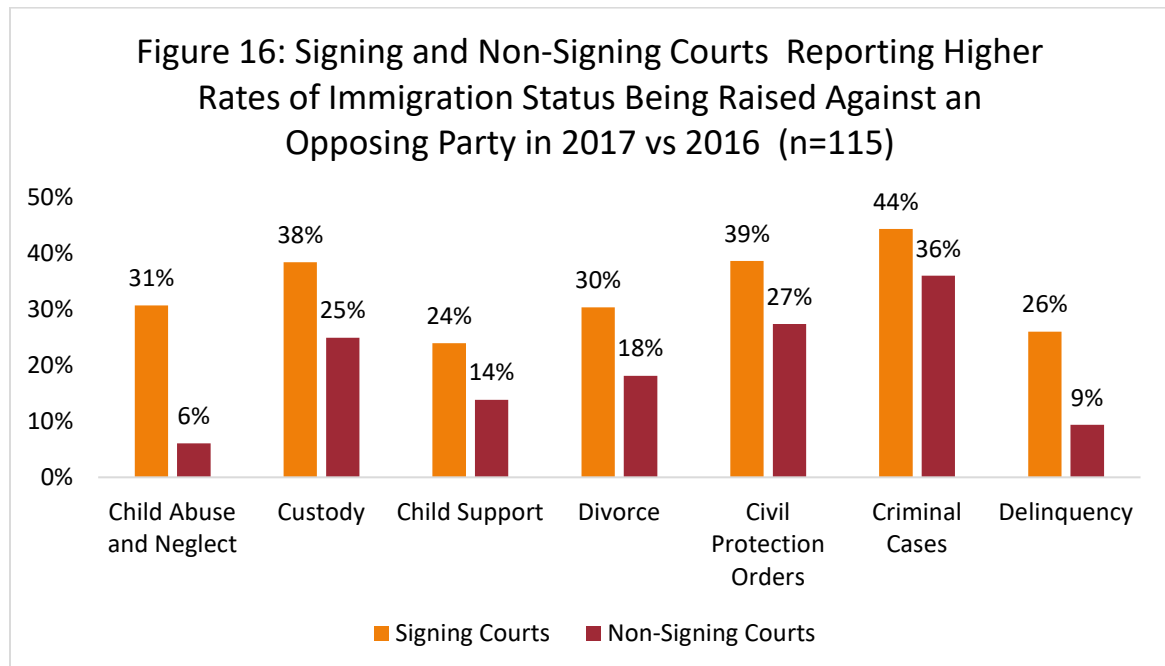
The survey also sought to learn about the extent immigration status of parties was affecting their willingness to participate in state court proceedings and whether the survey participants observed any differences between 2017 and 2016. A greater percentage of those participating in the survey reported that court cases were interrupted due to immigrant victims' fear of coming to court in 2017 than in 2016. The survey also sought to learn the extent to which parties' immigration status was affecting their willingness to participate in state court proceedings and whether the survey participants observed any differences between 2016 and 2017. A greater percentage of participants reported that court cases were being interrupted due to immigrant victims' fear of coming to court in 2017 than in 2016. (See, figure 14).



A substantial number of those participating in the judicial additionally survey reported that immigration status was being raised offensively by an opposing party in family court cases, against a victim in a criminal case, and against another parent in family and child abuse cases more frequently in 2017 compared to 2016. (See figure 15). Almost a third of judicial participants reported observing this occurring in civil protection order cases (32%, n=26) and custody cases (31%, n=19), and just under a quarter (23%, n=13) reported these strategies being used in divorce cases.



Judges were also asked to describe the kinds of issues that lead to immigration status being raised in the courts. Most of the judges who provided answers (n=7) indicated that immigration status was raised as a form of threat to inform authorities about a litigant's status. Deportation concerns were also raised in criminal cases (n=6) or as a form of threat in other cases (n=3). More Signing Courts reported hearing more cases in 2017 than in 2016 where parties raised the immigration status of an opposing party, victim, or parent than Non-Signing Courts. (See, figure 16).

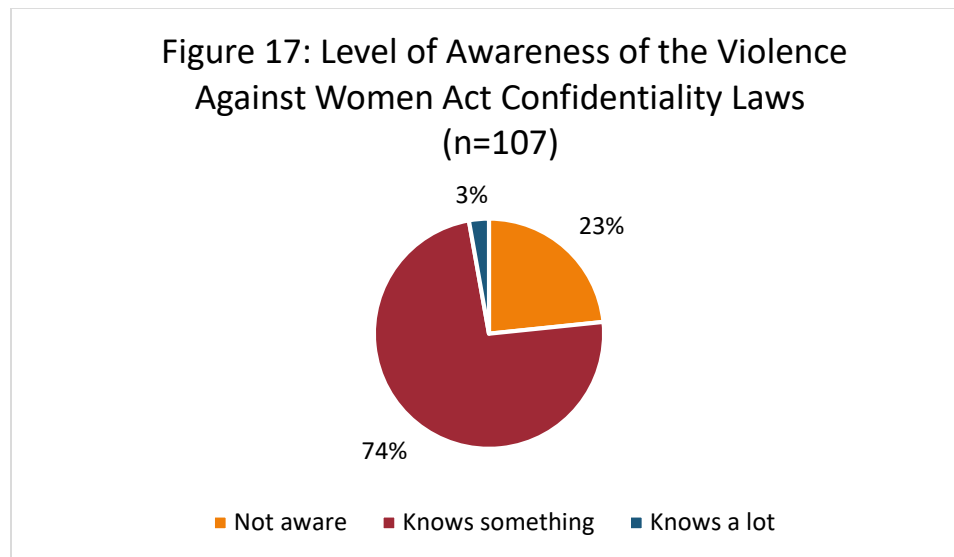


Those participating in the judicial survey shared descriptions illustrating how immigration related fears, threats, immigration related abuse, and immigration enforcement at courthouses have been impeding access to justice for immigrant and LEP victims and litigants. Judges reported:

- Examples of immigration related abuse include:
 - Taking and refusing to return a litigant's passport or other important document
 - Threats to kidnap children
 - Threats to report opposing party to ICE if they do not do what the threatening party wants
 - Threats by litigants to report the opposing party to immigration authorities for deportation. The judge further noted:
 - "While these threats to report to immigration are not new, immigrant victims and litigants believe that the abuser, crime perpetrator, or opposing party will be successful in getting ICE to act on these reports in 2017."
 - Parties and attorneys feel more comfortable raising immigration status offensively against an opposing party in 2017 than previously. "It's a disturbing trend."
 - Respondents in protection order cases use their control over the victim's immigration status as leverage and another form of emotional abuse

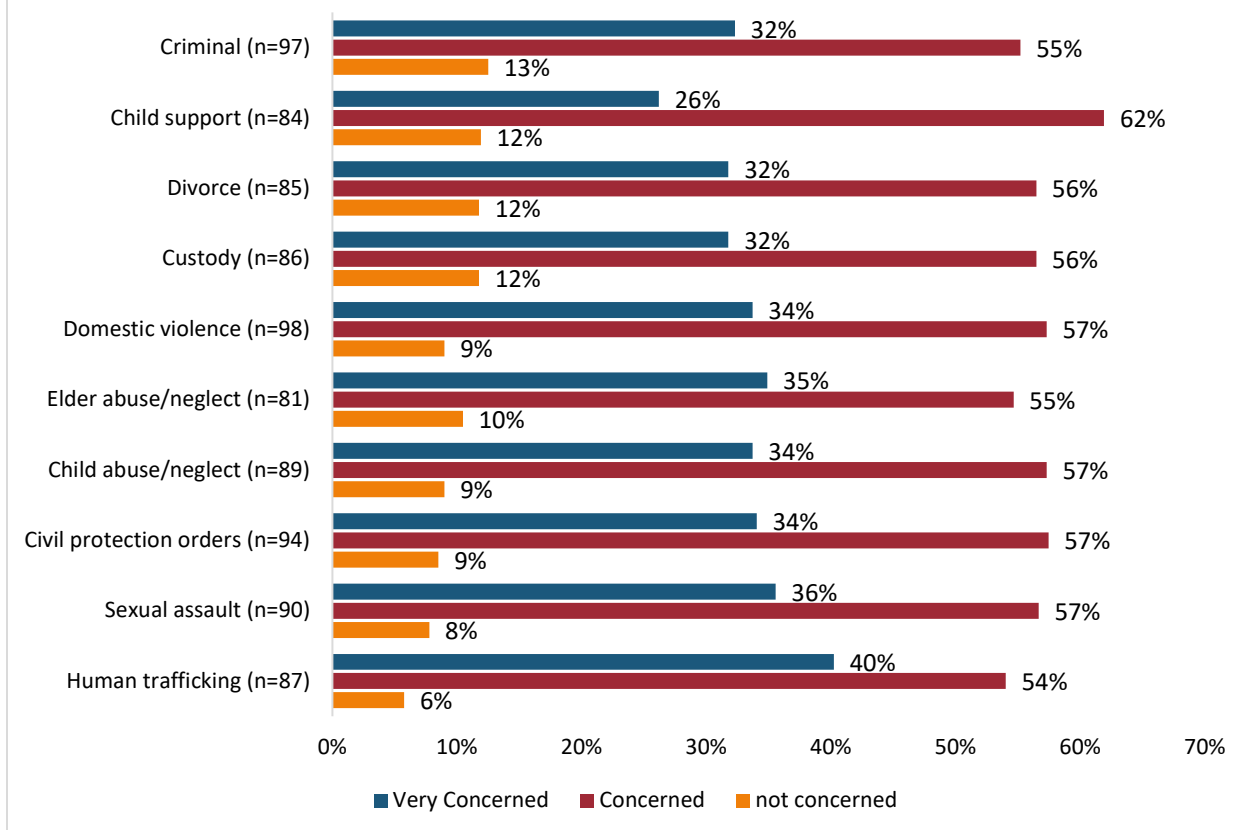
- Examples of how immigration status is coming up in criminal cases include:
 - Witnesses are afraid to come to court to testify
 - In some cases even victims compelled to testify as a material witness in a criminal case are afraid to come to court
 - Jurors asking about a party's immigration status
 - Defense attorneys raising the U visa as an attempt to undermine the testimony of sexual assault victims
- In custody cases the "immigration status of the mother is raised in a crude attempt to show instability in parenting."
- Judges are called upon more often to make rulings that preclude a litigant's ability to raise immigration status issues about another party or victim absent proof of probative value and relevance
- Parties in family court matters are concerned about the impact divorce could have on a party's immigration status and are concerned that coming to court in a family law case could force a victim or party to be separated from their family

Those participating in the judicial survey were asked if they were aware of the VAWA confidentiality laws that place limits on immigration enforcement actions permitted at courthouses. The majority 77% (n=82) reported knowing something about these VAWA confidentiality law protections and fewer (23%, n=25) noted that they were unaware about these VAWA confidentiality protections. (See, figure 17).



Across a wide range of civil, family and criminal court proceedings, the vast majority, (88% to 94%) of those responding to the judicial survey reported being concerned about the impact increased immigration enforcement could have on access to justice for immigrant and LEP victims and witnesses. A substantial percentage of these judges (26% - 40%) reported that they were very concerned about this issue. (See, figure 18)

Figure 18: Judges' Level of Concern About the Impact of Immigration Enforcement on Immigrant and LEP Litigants by Case Type



Participants in the judicial survey were asked to report the number and types of cases where officials from the DHS were involved in immigration enforcement activities in their courthouses. They reported on 47 cases (civil =18; criminal 29) when immigration enforcement activities were carried out at their courthouses in 2016 and 2017. The number of cases of immigration enforcement in courthouses increased by 47% from 2016 to 2017. (See figure 19). This increase included a 25% increase in incidents of courthouse enforcement in non-criminal cases and a 64% increase in courthouse enforcement in criminal cases.¹¹ The participants in the judicial survey also identified the type of cases in which enforcement actions occurred during 2016 and 2017 were as follows:

- Criminal cases – 29

¹¹ The judges' survey did not ask judges to distinguish between victims and offenders when discussing courthouse enforcement taken in criminal cases. However, as discussed in the result of the National Survey of Advocates and Attorneys below reporting on 22 immigration enforcement actions taken at courthouses against immigrant crime victims in court for criminal misdemeanor (n=18) and felony criminal (n=4) matters. (See, figure 115). It is not clear from the survey data whether the victims who were subject to immigration enforcement actions were in court as defendants or as victim in the criminal court cases. Under VAWA confidentiality laws, immigration enforcement against a victim at a courthouse in connection with any criminal, civil or family law case related to the domestic violence, sexual assault or other criminal activity the victim suffered would require a filing by Immigration and Customs Enforcement of an affidavit demonstrating that VAWA confidentiality was not violated in taking any part of an immigration enforcement action. See, INA Section 239, 8 U.S.C. 1229(e).

- Family court cases (protection order, custody, child welfare) – 14
- Employment and civil cases – 4

Figure 19: Instances of Immigration Enforcement at Courthouses in 2016 and 2017 Reported by Judges		
Types of cases/Year	2016	2017
Family	6	8
Employment	1	2
Criminal	11	18
Other civil	1	0
Total Enforcement Actions	19	28
Percentage Increase in 2017 relative to 2016	47%	
Percentage Increase in Criminal Cases in 2017 relative to 2016	64%	
Percentage Increase in Family Cases in 2017 relative to 2016	25%	

Judges reported courthouse enforcement in family or civil court cases in a wide variety of states across the country, including: California, Florida, Kansas, Louisiana, New Mexico, North Carolina, Oregon, Washington, and Wisconsin. In January 2018, ICE issued a new policy on courthouse enforcement that limits when and in which types of proceedings immigration enforcement officials can undertake immigration enforcement actions in courthouses.¹² This policy severely limits courthouse enforcement actions¹³ in non-criminal cases and requires that the Field Office Director, the Special Agent in Charge or their designee specifically authorizes courthouse enforcement in a non-criminal case against a particular individual immigrant.¹⁴ Immigrant crime victims who are entitled under federal law to VAWA confidentiality protections should be protected by this policy and VAWA confidentiality laws and policies for courthouse enforcement.¹⁵

One of the justifications the ICE courthouse enforcement policy provides for immigration enforcement at courthouses is that: “courthouse arrests are often necessitated by the unwillingness of jurisdictions to cooperate with ICE in the transfer of custody of aliens from their prisons and jails”.¹⁶ It is important to note that participating judges reported immigration

¹² U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

¹³ See *National Map of Local Entanglement with ICE*, IMMIGRANT LEGAL RESOURCE CENTER (Jan. 25, 2018), <https://www.ilrc.org/local-enforcement-map>; Bryan Griffith and Jessica M. Vaughan, *Maps: Sanctuary Cities, Counties, and States*, CENTER FOR IMMIGRATION STUDIES (Jul. 27, 2017), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

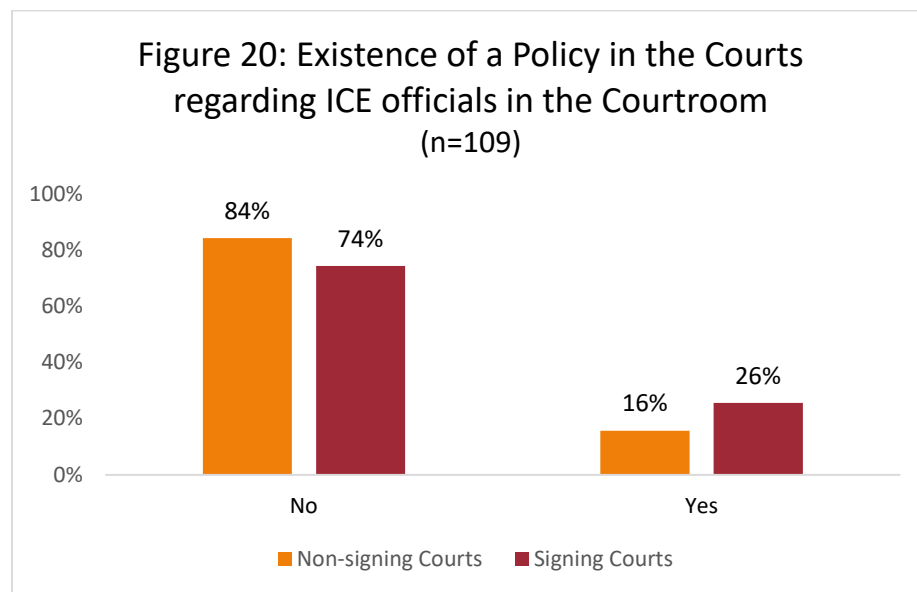
¹⁴ U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 2 (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

¹⁵ *ICE Courthouse Enforcement Policies and VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Jan. 31, 2018) <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>.

¹⁶ U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 1 (last updated January 31, 2018), <http://niwaplibrary.wcl.american.edu/pubs/ice-sensitive-locationcourthouse-faq/>.

enforcement at courthouses in 18 non-criminal cases in 2016 and 2017 and these cases included reports of immigration enforcement occurring in family and civil courts in states where there is a high level of cooperation between state and local law enforcement and federal immigration enforcement officials (e.g., North Carolina, Kansas, Florida, Wisconsin, and Louisiana).

Only 19% (n=21) of the judges and court staff participating in the survey reported that their courts had a policy addressing immigration enforcement at courthouses. Signing Courts (26%, n=10) were more likely than Non-Signing Courts (16%, n=11) to have adopted policies on steps courts should take if immigration enforcement officials come to judges' courtrooms. (See, figure 20). A small number of judges shared knowing about and/or observations of ICE officials in the parking lots outside courthouses (n=2) and ICE agents following interpreters into courthouse hallways (n=1).



Courts that had implemented policies regarding immigration enforcement at courthouses reported that their courthouse policies included but were not limited to the following provisions:

- Immigration officials are prohibited from taking any action in a courtroom absent a serious public safety issue. Whether or not the circumstances constitute a serious public safety issue is decided by the court not by immigration enforcement officials.
- Immigration enforcement officers are prohibited from interrupting a court proceeding for any reason.
- All law enforcement officers, including immigration enforcement officers, are prohibited from making arrests and from initiating of any immigration enforcement action of any person in open court unless and until the proceeding involving that person has been concluded.
- Each judge is permitted to restrict any activity that interferes with courtroom operations. If an immigration enforcement official fails to comply with judicial orders, the judge is permitted to contact court security and/or determine if contempt proceedings should be initiated against the immigration officer.

- Court policies prohibit immigration officials from entering courtrooms to conduct any of their official duties. If an immigration official enters a courtroom, the judges will ask them to leave and a Marshall will escort them out of the courtroom.
- Immigration arrests may not be preformed in the courthouse and court security are required to contact the local ICE District Office to report immigration officials who arrive at court to conduct immigration enforcement activities.

In Their Own Words: Judges Concerns in Cases Involving Immigrant or LEP Victims

At the end of the survey, participants in the judicial survey were asked to identify other concerns or challenges they have observed in cases involving immigrant or LEP victims that were not addressed in the survey. Several judges reported that fear of coming to court, worry, and distrust of the police, courts, justice system and getting involved with any government agencies impedes access to justice for immigrants (n=10). The suggestion was made by one judge that increased community outreach by the courts on the front end, will help immigrant victims and immigrant communities learn about help available to crime victims and children from the courts. Building relationships with community organizations serving immigrants could encourage more immigrant crime victims to report to police and courts about the abuse they have suffered.

Additionally, several judges (n=7) commented about the need for more qualified interpreters, the difficulty of obtaining qualified interpreters in rural areas and that access to qualified interpreters should not be limited to court proceedings. Judges noted that qualified interpreters are needed to assist in preparation for court (e.g., in clerks offices and other court services or court ordered programs). The concerns raised by judges regarding LEP litigants' needs for interpreters are consistent with best practices. Providing qualified interpreters to help LEP persons access the full range of court services including court clerks' offices and court ordered programs and services is both recommended¹⁷ and required.¹⁸

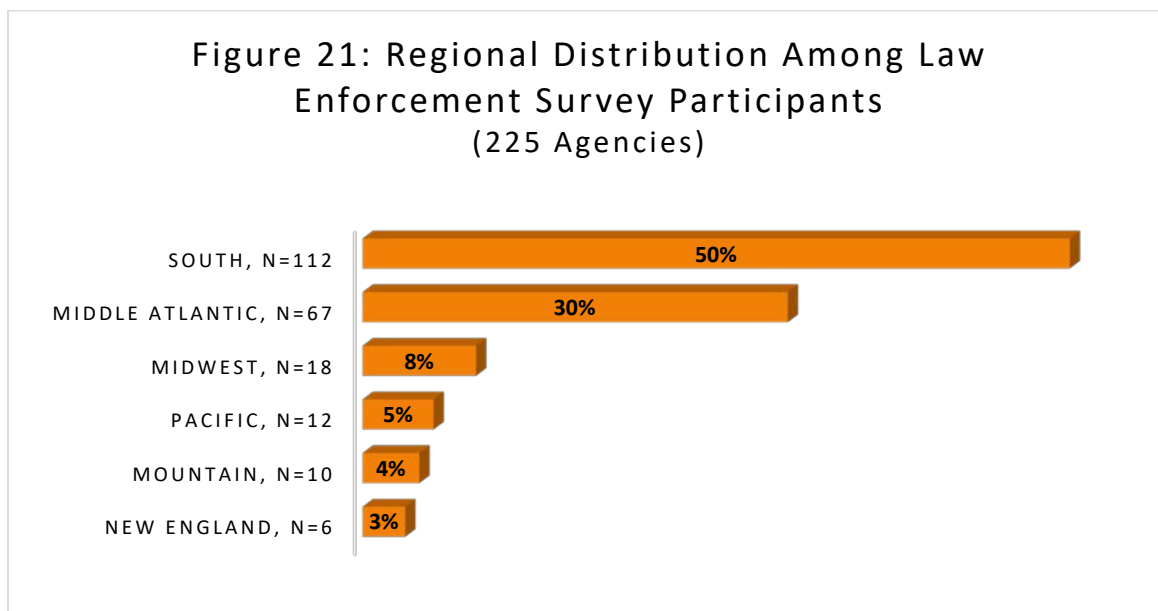
¹⁷ BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>;

¹⁸ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Dep't of Just., to Chief Justice/State Court Administrators, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (August 16, 2010), <http://niwaplibrary.wcl.american.edu/pubs/lang-access-doj-courts-letter/>

Part Two: National Survey of Law Enforcement Officials Findings from 2017 National Survey of *Law Enforcement Agencies*¹⁹

The National Immigrant Women's Advocacy Project (NIWAP), American University, Washington College of Law conducted a survey of 232 law enforcement officials in 24 states during October and November 2017. The aim of the survey was to understand changes in law enforcement officials' interactions with immigrant and LEP victims in their communities. More specifically, the survey sought to explore whether law enforcement officials are seeing changes in immigrant victims' cooperation and willingness to report crimes and in law enforcements' ability to investigate crimes involving immigrant and LEP victims in 2017 compared to 2016.

Law enforcement officials from 24 different states participated in the survey.²⁰ Figure 21 provides an overview of the regional distribution among participating law enforcement officials.²¹ Half (50%, n= 95) of those who participated in the survey were from the South. (See figure 1). Participants in the survey were employed by police departments (94%, n=210), sheriff's offices (4%, n=9), state police offices (1%, n=2), and by offices of the prosecutor or inspector general (1%, n=3).

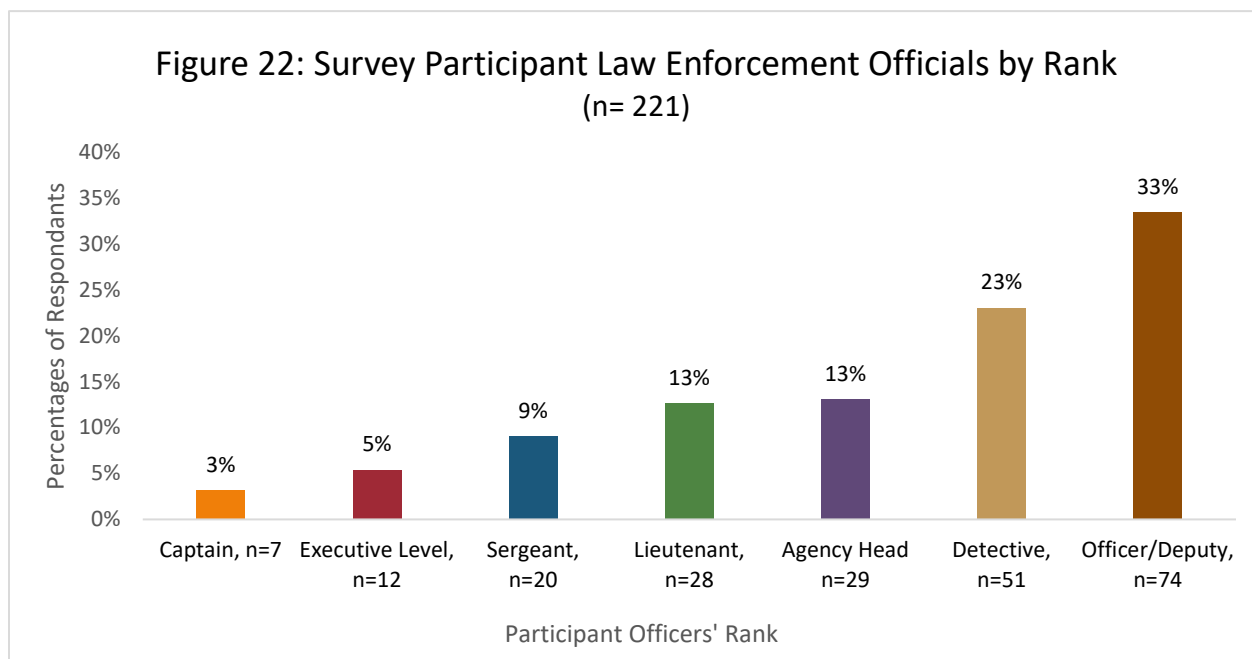


The law enforcement officials participating in the survey included a balanced mix of law enforcement professionals. Over half (57%, n=125) of the survey participants were patrol uniformed (officers/deputies) or detectives and another 43% (n=96) were law enforcement officials in supervisory or managerial roles. (See, figure 22).

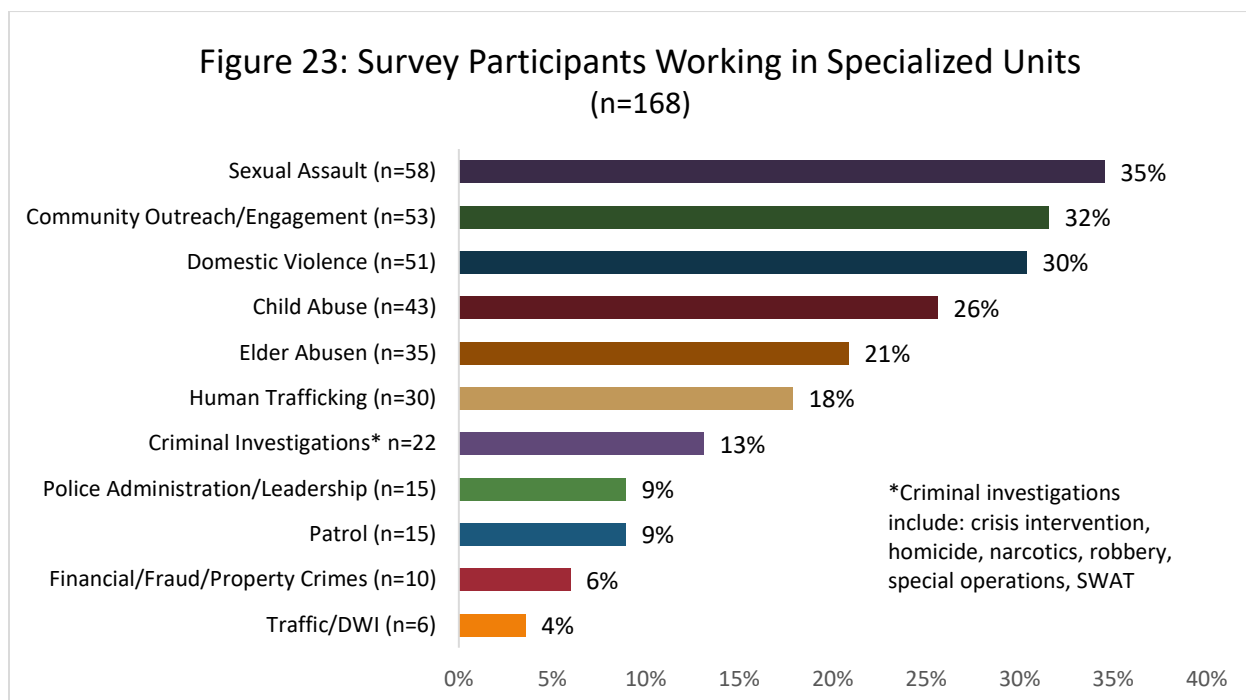
¹⁹ The authors wish to thank Stacey Ivie, Detective, Alexandria Police Department; Michael LaRiviere, Investigator, Salem Police Department; Detective Shelli Sonnenberg, Boise Police Department; and Antonio Flores, Sergeant Inspector, San Francisco Police Department for their assistance with this article.

²⁰ Prosecutors participated in the survey from the following states: AK, AZ, CA, CO, FL, GA, ID, IL, IA, LA, MD, MA, MI, NE, NM, OH, OR, PA, TN, TX, UT, VA, WV, WI

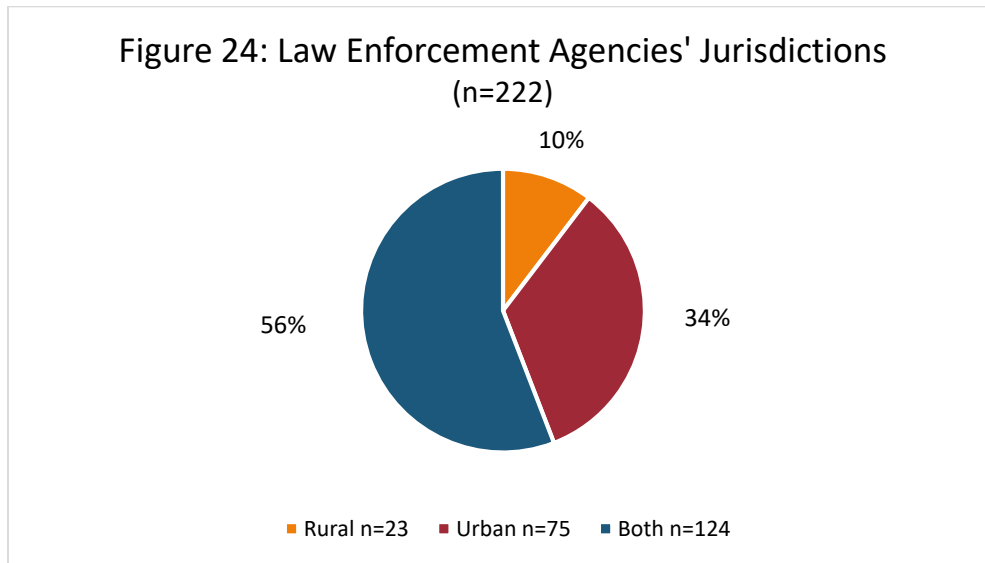
²¹ The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).



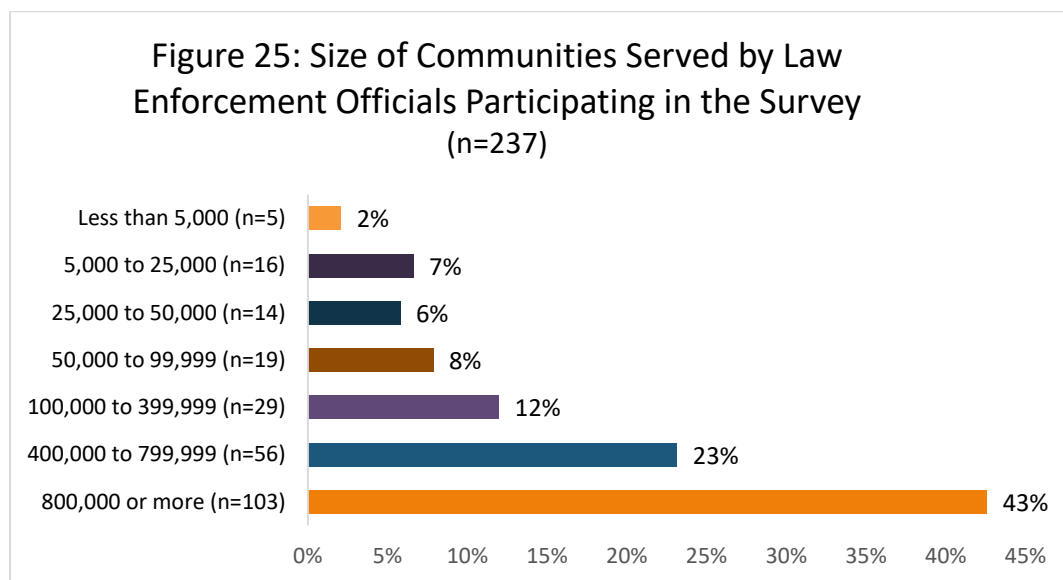
Seventy-two percent (n=168) of officers participating in the survey worked in a specialized unit. (See, figure 23).



The survey was successful in reaching law enforcement officials who serve communities of different sizes, and who officers characterized as rural (10%, n=23), urban (34%, n=75), or a combination of both (56%, n=124). (See, figure 24).

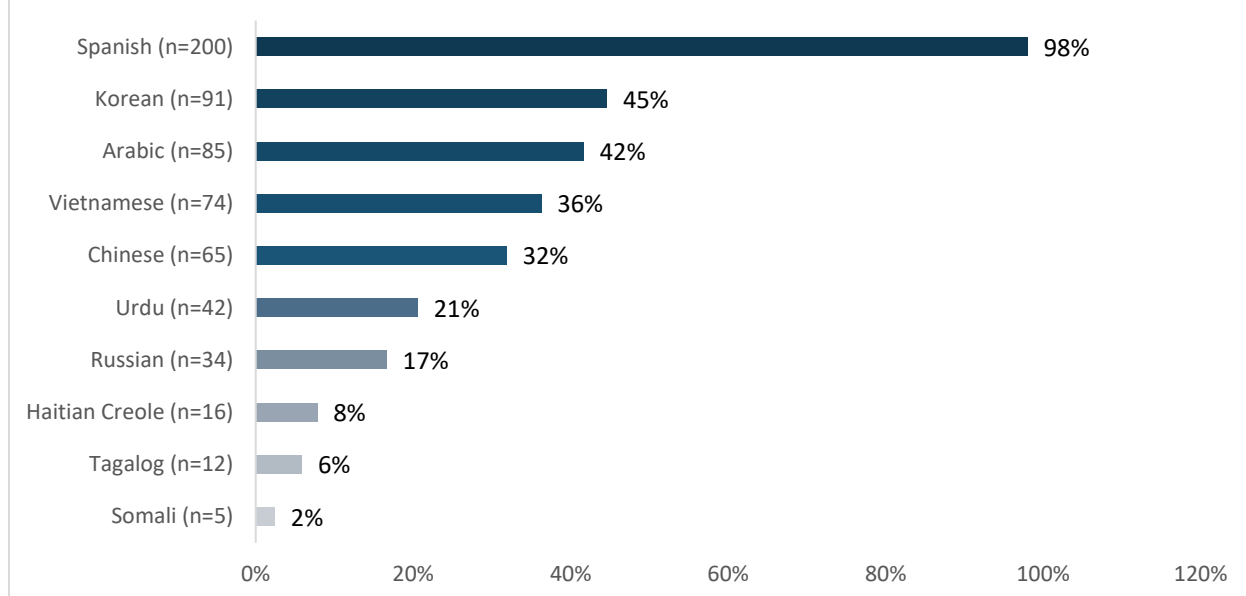


The majority of the participating law enforcement officers (68%, n=159) worked in larger cities and metropolitan areas. (See, figure 25).



Most of the law enforcement officials participating in the survey (86%, n=193), regardless of rank, unit assignment, or community population size, reported that they encounter large numbers of LEP victims living in their jurisdictions who require the services interpreters. Those LEP victims speak a wide variety of languages including, and in order of most to least spoken, Spanish, Korean, Arabic, Vietnamese Chinese, and Urdu. See, figure 26 for the top 14 languages law enforcement officials reported as encountering.

Figure 26: Top 10 languages encountered by Law Enforcement Officials



Several law enforcement officials (13%, n=25) provided details about other languages (in addition to those in figure 26) that immigrant and LEP crime victims and witnesses they encounter speak. These languages included: Amharic, American Sign Language, Farsi, Burmese, French, Hmong, Bosnian, French Creole, Hmong, Japanese, Karen, Khmer, Kirundi, Kinyarwanda, Kizigau, Laotian, Nepalese, Pashtu, Portuguese, Romanian, Somali, Sudanese Swahili, Twi, Ukrainian, Uzbek, and several indigenous languages from Guatemala.

Law Enforcement Agencies Signing U Visa Certifications and T Visa Certifications

Law enforcement officials were asked to indicate whether their agency signed U visa certifications and/or T visa certifications in cases of foreign-born or LEP crime or human trafficking victims. Over a third (35%, n=79) of law enforcement official respondents said that their agencies signed U visa certifications for LEP and foreign-born victims. (See, figure 27). The responses for T-visa certifications were lower showing that 16% (n=36) of the participants' agencies signed T visa certifications. (See, figure 28). There are important differences between the U and T visa programs that help explain why law enforcement officials report that more of their agencies are signing U visas compared to T visas. First, it is important to understand that obtaining a U visa certification is a statutory prerequisite²² to a victim's ability to file a U visa application. In a T visa application, the certification is not required, but is preferred and helpful.²³ As a result, although DHS encourages law enforcement agencies to sign T visa

²² INA 101(a) (15)(U); U.S. Citizenship and Immigration Services - DHS, 72 Fed. Reg. 53013, 53015 (Sep. 17, 2007) ("an alien victim must include a certification from such agency in support of his or her request for U nonimmigrant status"); 8 C.F.R. 214.14(c)(2)(ii).

²³ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 6 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

certifications,²⁴ advocates and attorneys working with U visa victims must obtain a certification. In a T visa case, although the T visa certification is preferred evidence by DHS, if a victim's attorney provides evidence to DHS that they requested the certification and one was not provided,²⁵ the immigrant human trafficking victim may proceed to file a T visa application and prove eligibility without providing a T visa certification.

Figure 27: Is your agency signing U Visa certifications in cases of foreign born or LEP victims?

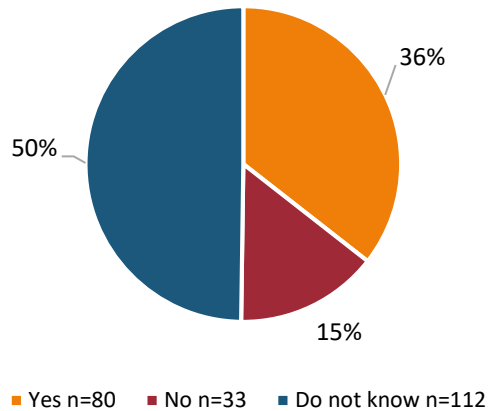
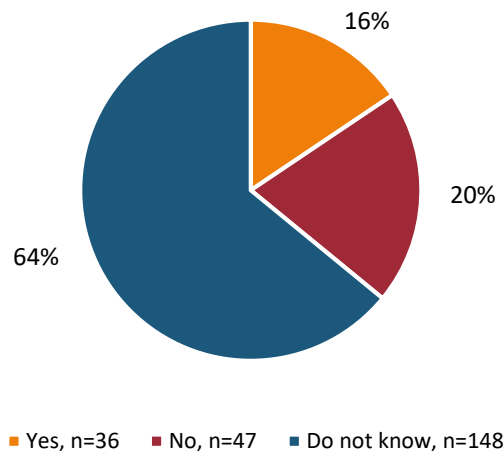


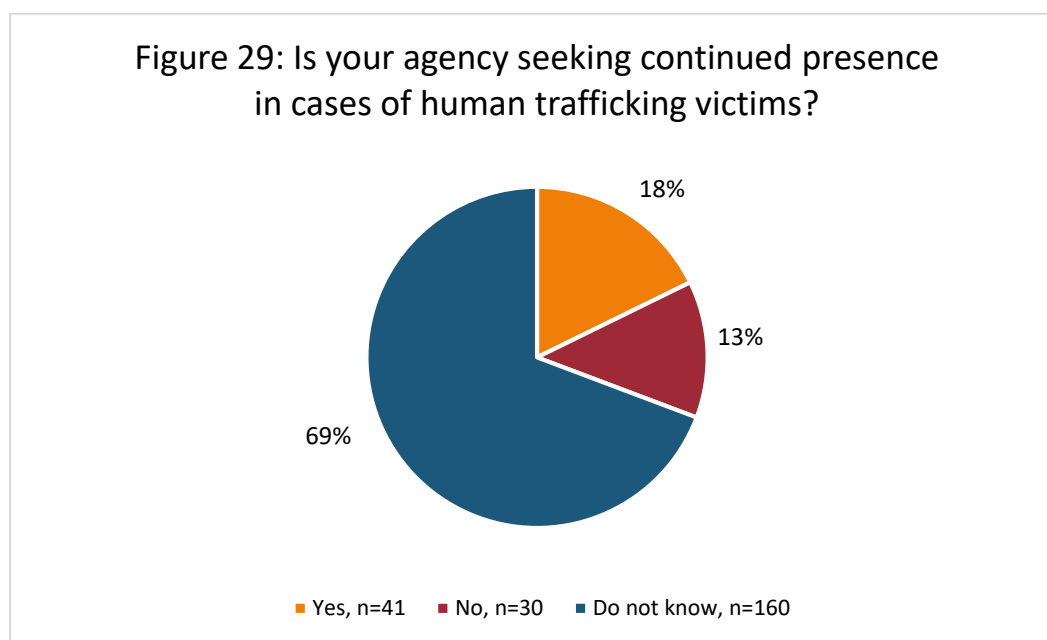
Figure 28: Is your agency signing T visa certifications in cases of human trafficking victims?



²⁴DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 6 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

²⁵ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 11 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>.

Although, immigrant human trafficking victims can file for a T visa when law enforcement agencies fail to certify, trafficking victims cannot obtain the special protections from deportation and economic support Congress designed for immigrant victims of human trafficking without assistance from law enforcement officials. Continued presence is designed to offer immediate help and protection to stabilize victims of severe forms of human trafficking who are potential witnesses in a trafficking investigation or prosecution.²⁶ The survey found that only 18% (n=40) of participating law enforcement officials' agencies seek continued presence for immigrant human trafficking victims. (See, figure 29). This is surprising in light of the U.S. DHS's encouragement of law enforcement officials to request continued presence from ICE officials on behalf of immigrants who are victims or potential witnesses in human trafficking prosecutions.²⁷



“Signing Agencies” Compared to “Non-Signing Agencies”

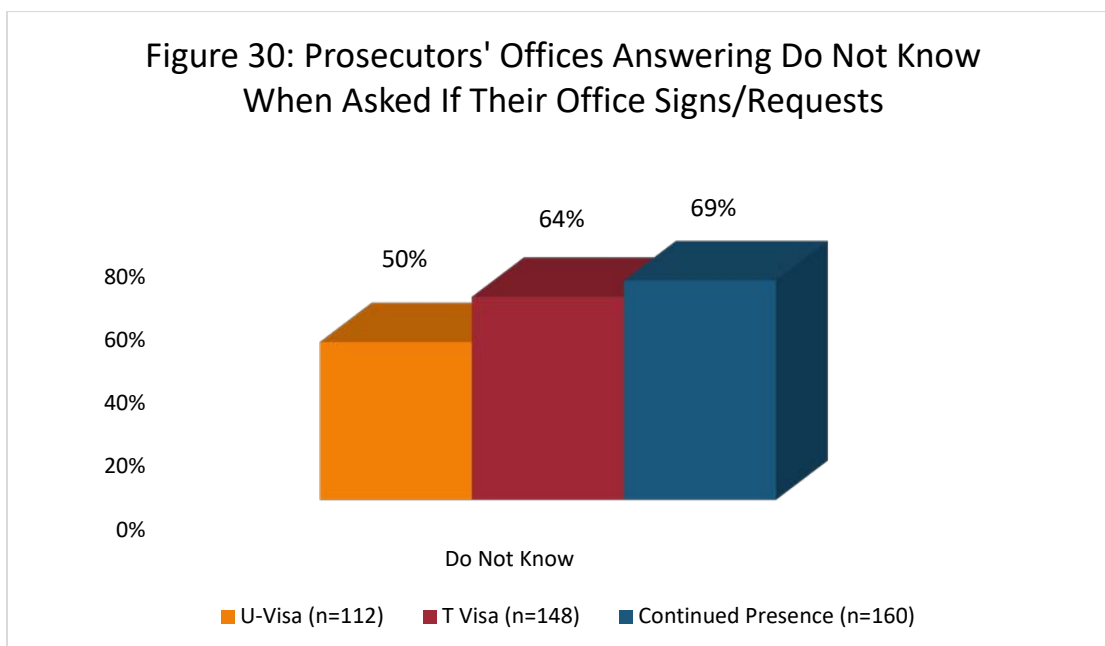
This report categorizes law enforcement agencies as either Signing Agencies or Non-Signing Agencies. Signing Agencies are law enforcement agencies that sign one or more of the following forms:

- U visa certification;
- T visa certification; or
- Requests for continued presence.

²⁶ NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, *DHS Roll Call Video on U Visa Certification and T Visa Endorsement by Law Enforcement (Part 2)*, YOUTUBE (Jul 18, 2013), https://www.youtube.com/watch?v=O3t0O2_vdCM.

²⁷ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jun. 2010), <http://library.niwap.org/wp-content/uploads/DHS-Continued-Presence-Brochure.pdf>; DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 27 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (An application for CP should be initiated immediately upon identification of a victim of human trafficking.)

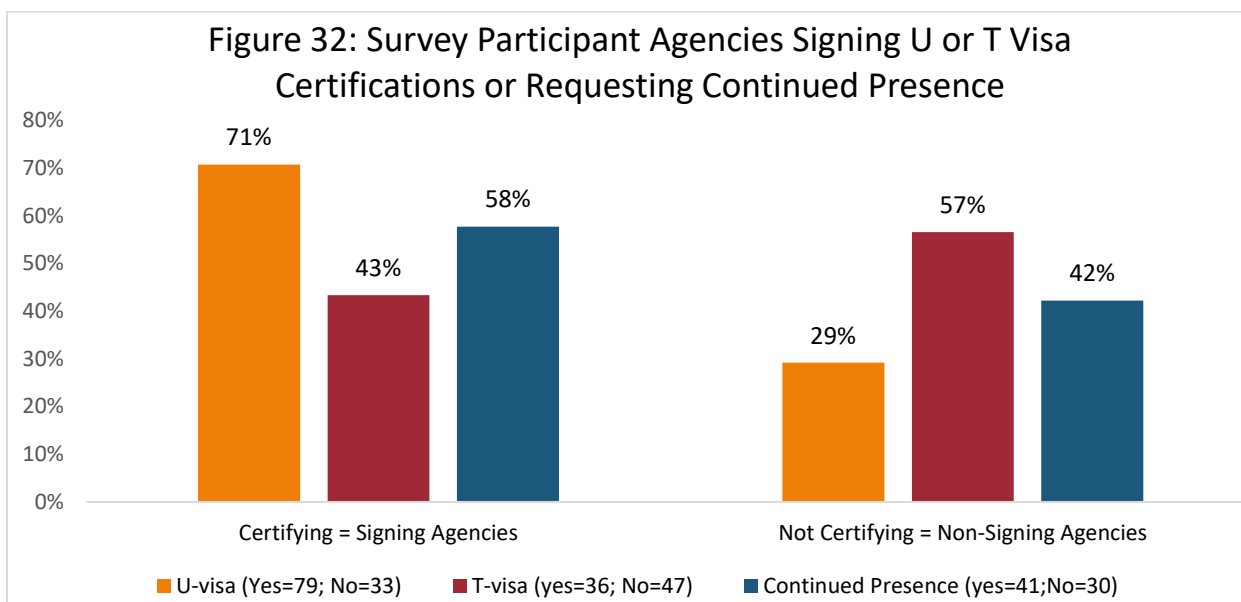
The classification of a law enforcement agency as one that does not certify includes law enforcement officials who reported that their agencies do not certify. Officials who reported that they do not know whether their agency signs U visas, T visas or seeks continued presence on behalf of immigrant victims of human trafficking are excluded from the Signing/Non-Signing classification. (See, figure 30). It is important to note the the number of law enforcement officers participating in the survey reporting that they did not know about their agencies certification policies or practices may be in part a reflection of the numbers of patrol officers who participated in the survey (33%, n=74). The fact that patrol officers may be less familiar about department certification practices and procedures than officers working in specialized units or with ranks of detective or higher, is not necessarily unusual. Also, the law enforcement officials working in smaller communities, particularly those that are more rural that have more recently experienced growth in the immigrant populations in their communities, may be less connected with their immigrant populations and the community-based advocates and attorneys organizations that serve immigrant crime victims.



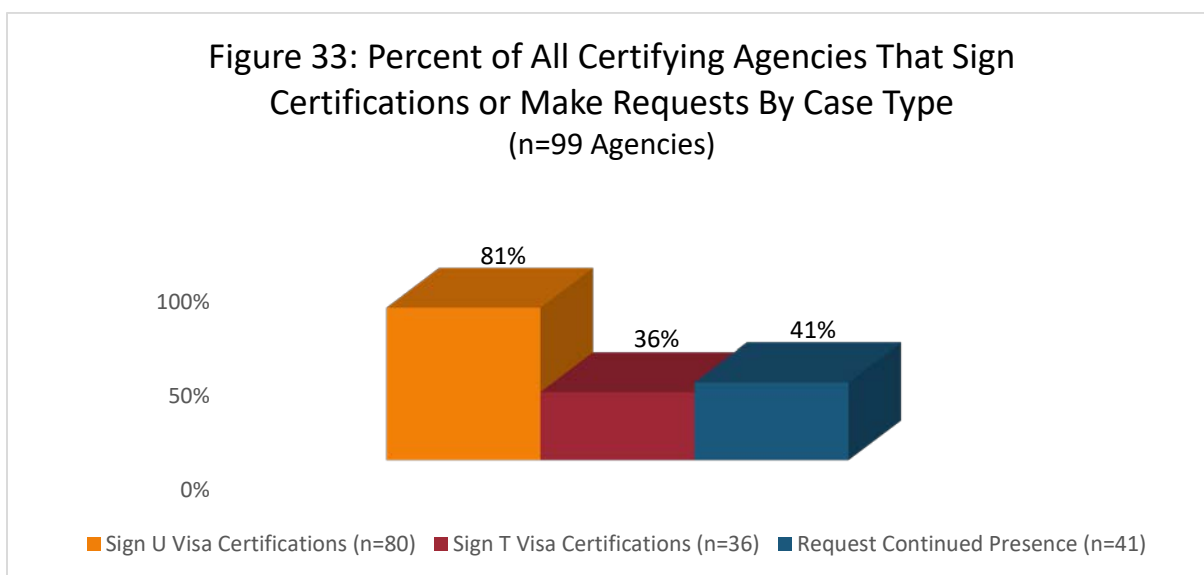
“Non-Signing Agencies” are agencies that do not sign any of these certifications or requests. Figure 31 provides an overview of the signing practices of the participating law enforcement officials.

Figure 31. Law Enforcement Agencies Signing U or T Visa Certifications or Requesting Continued Presence						
Does the Agency Sign?	U Visa Certifications		T Visa Certifications		Continued Presence Requests	
	#	%	#	%	#	%
Yes = Signing Agencies	80	36%	36	16%	41	18%
No =Non-Signing Agencies	33	15%	47	20%	30	13%
Do not know = Non-Signing Agencies	112	50%	148	64%	160	69%
Totals	225	100%	231	100%	231	100%

The majority of law enforcement officers participating in the survey do not know if their agencies sign U visa certifications (50%), T visa certifications (64%), or whether they seek continued presence from DHS on behalf of human trafficking victims (69%). Of the law enforcement officials who are aware of their agency's signing practices, the majority work for agencies that sign U visa certifications (71%, n=79) or make continued presence requests (58%, n=40). This is not the case for T visa certifications; the majority of law enforcement officials who are aware of their agency's signing practices do not sign T visa certifications (56%, n=46). (See, figure 32).



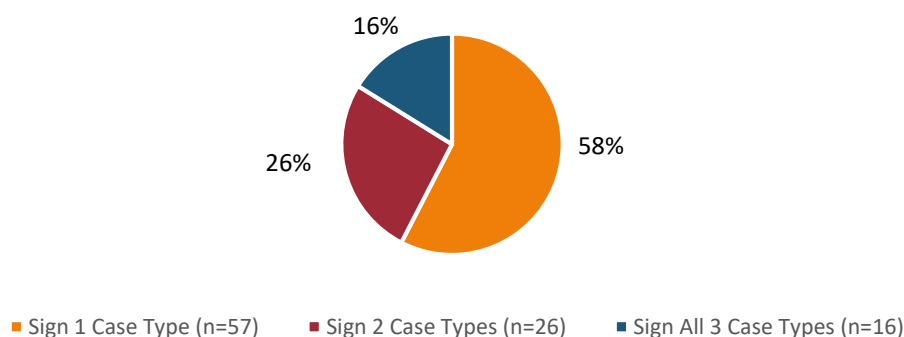
Additionally, it is important to note that of all survey participants (n=232), 43% (n=99) worked in signing agencies. Among Signing Agencies, the largest proportion signed U visa certifications (81%, n=80) and were less active in assisting human trafficking victims applying for T visas (36%, n=36) and seeking continued presence (41%, n=41).



Several signing agencies signed in more than one type of case. The following list and figure 34 present the survey findings regarding the extent to which Signing Agencies are signing or making requests on behalf of immigrant victims in multiple case types:

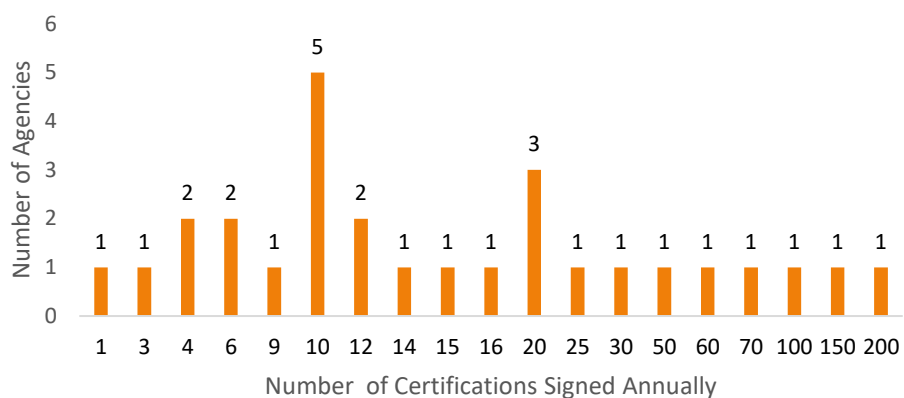
- 58% (n=57) signed in only one type of case: U visa certifications T visa certifications or requests for continued presence;
- 26% (n=26) signed in two of the three of these types of cases; and
- 16% (n=16) signed in all three types of cases - U visa certifications, T visa certifications, and requests for continued presence.

Figure 34: Agencies Signing One or More Case Type: U or T Visa Certification or Continued Presence Requests
(Signing Agencies = 99)



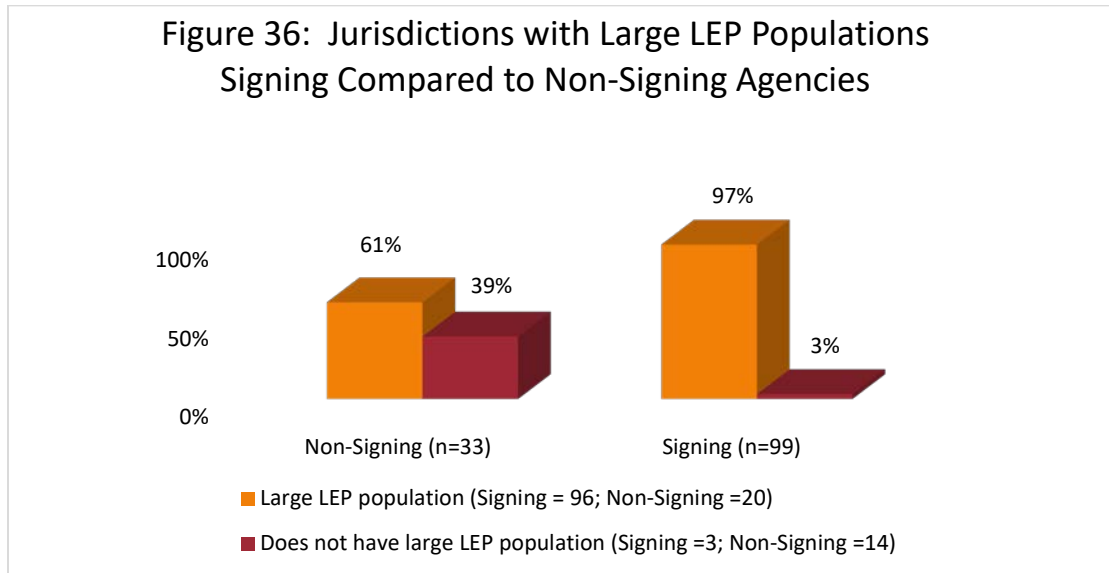
Just over a quarter (28%, n=28) of participating law enforcement officials working in Signing Agencies provided the number of U visa certifications their agency signs annually. The number of U certifications signed annually ranged from 1 to 200. Figure 35 provides details about the number of certifications signed annually by the survey participants' agencies (for those who reported such numbers).

Figure 35: Number of U Visa Certifications Signed Annually by Participating Agencies

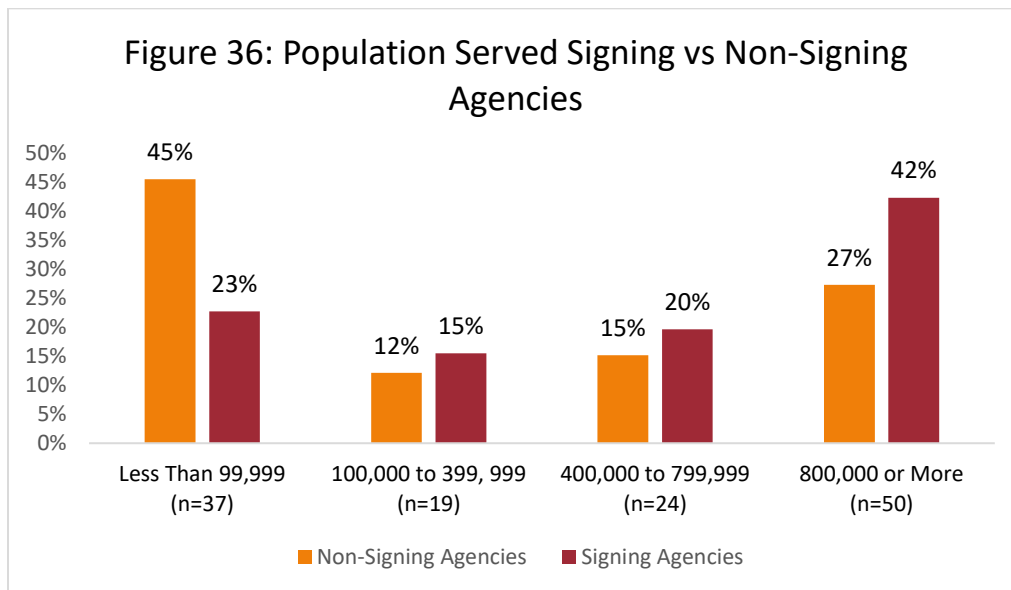


Populations served by Signing and Non-Signing Law Enforcement Agencies

The data collected by the survey allowed for an analysis of whether and how Signing Agencies differed from Non-Signing Agencies with regard to several topics explored in the survey. The majority of law enforcement officials working in Signing Agencies worked in jurisdictions with large LEP populations (97%, n=96). Among the 33 participants working in Non-Signing Agencies, 61% (n=20) worked in jurisdictions with large LEP populations and 39% (n=13) worked in jurisdictions that serve smaller LEP populations. (See, figure 36).



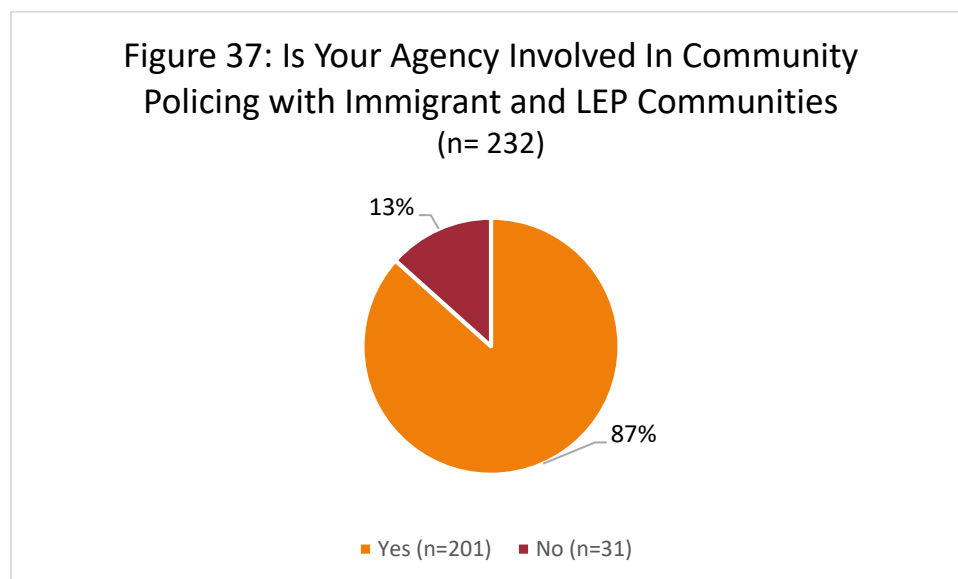
Law enforcement officials working in Signing Agencies reported that the population sizes of their jurisdictions vary widely. Signing Agencies were located in jurisdictions with population sizes of 800,000 or more (42% n=41), of 400,000 to 799,999 (20% n=19), of 100,000 to 399,999 (15% n=15) as well as small jurisdictions with less than 99,999 inhabitants (23% n=22). Almost half (45%, n=15) of the Non-Signing agencies, however, were located in small jurisdictions (less than 99,999). Similarly, 61% (n=20) of the law enforcement officials working in Non-Signing Agencies worked in large jurisdictions with over 800,000 inhabitants. (See, figure 36).



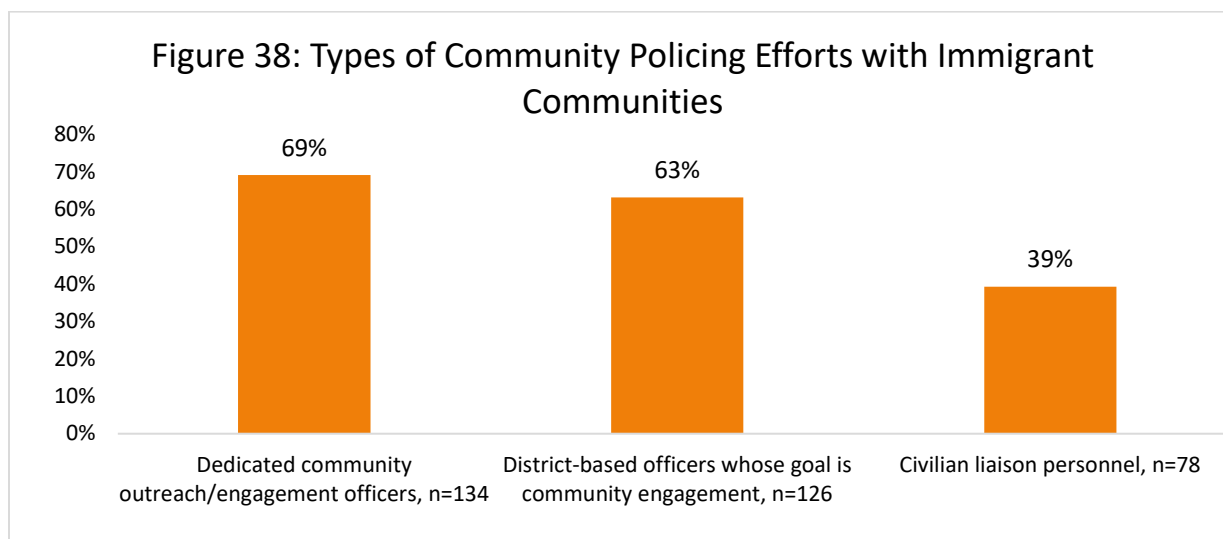
The Impact of Increased Immigration Enforcement and Community Policing

One of the objectives of this survey was to document whether and, if so, the extent to which increased immigration enforcement affected law enforcement's ability to protect and serve immigrant and LEP communities. Receiving information from community members about perpetrated crimes is important for effective policing.

The survey participants provided information about their agency's community policing efforts with immigrant communities in their jurisdictions. The majority of participants (87%, n=201) indicated that their agencies were involved in community policing efforts with immigrant and LEP communities. (See, figure 37).

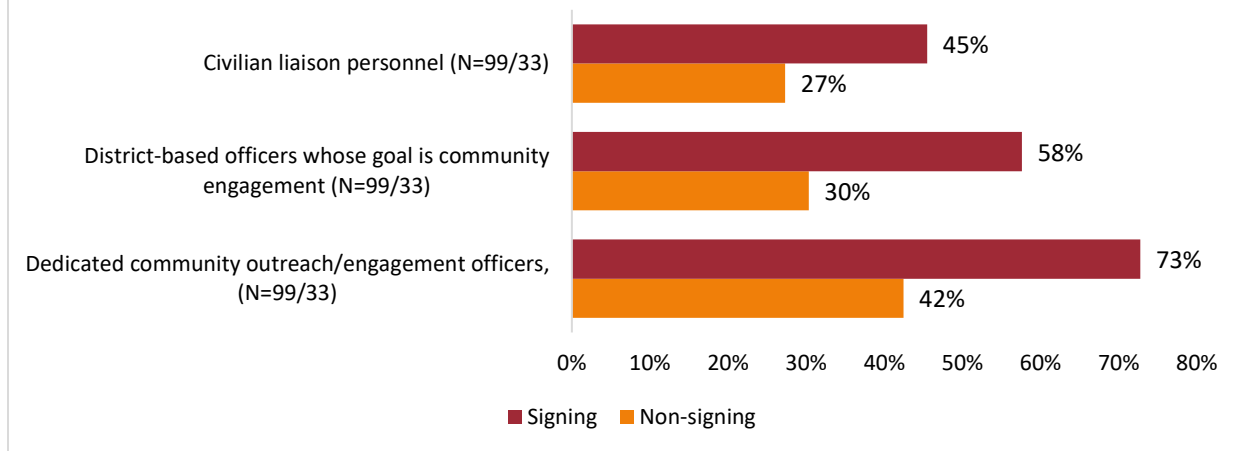


Police departments staffed community policing efforts with immigrant and LEP communities in different ways. Over half of the departments in which officials responding to the survey staffed these community policing efforts with dedicated community outreach/engagement officers (69%, n=134) and/or district-based officers whose goal is community engagement (63%, n=126). Civilian liaison personnel were involved in staffing community policing efforts with immigrant and LEP communities in 39% (n=78) of survey participants' departments. (See, figure 38).



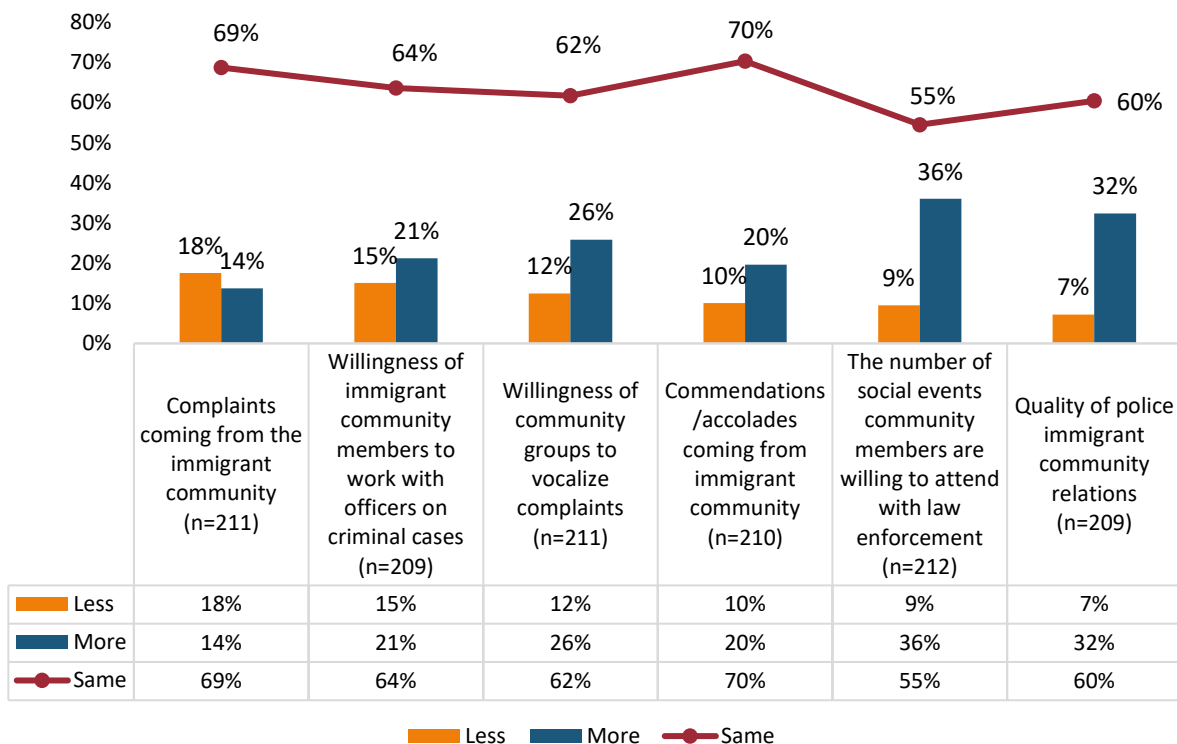
The data reveal differences between Signing Agencies and Non-Signing Agencies in their staffing of community policing efforts with immigrant and LEP communities. A greater proportion of Signing Agencies have dedicated community outreach and/or engagement officers than Non-Signing Agencies (73%, n=72 versus 42%, n=14). More Signing Agencies had civilian liaison personnel in the agency's community policing efforts, including bilingual victim advocates working for the law enforcement agency - almost twice as many Signing (45%, n=45) than Non-Signing Agencies (27%, n=9 civilian liaisons). Almost double the number of Signing Agencies had district-based officers in community engagement activities (58%, n=57 versus 30%, n=10) (See, figure 39).

Figure 39: Community Policing Efforts for Signing and Non-Signing Agencies



According to the law enforcement survey participants, some of their agencies experienced a decline in the number of immigrant community members who are willing to file complaints (18%, n=37) and who are willing to work with officials in criminal cases (15%, n=32) in 2017 compared to 2016 (See, figure 40). Some officials reported that immigrants in their communities were more willing to work with law enforcement on criminal cases (21%, n=45), vocalize complaints (26%, n=54), attend events planned by law enforcement (36%, n=76). Almost a third (32%, n=68) reported improved quality of police immigrant community relations. (See, figure 40).

Figure 40: Change From 2016 to 2017 in Specific Community Policing Work with Immigrant and LEP Communities (n=218)



When asked about the effects of community policing efforts in 2017 relative to 2016 greater proportion of signing agencies reported more cooperation from immigrant community members on criminal cases than non-signing agencies (27%, n=26; =vs 13%. n=4) . On questions regarding the overall quality of community policing, more law enforcement officers working in signing agencies than non-signing agencies reported improvements in the quality of immigrant community/law enforcement relationships in 2017 relative to 2016 (40%, n=38 vs 27%, n=8).

The narratives provided by law enforcement survey participants showed some detailed explanations of how and why this increase in their Signing agencies occurred. Officers reported that they have increased their community policing and outreach with immigrant and LEP communities specifically because they were seeing the decline in cooperation and a rise in fear of law enforcement. It appears that these community outreach activities combined with the fact that the law enforcement agencies were also Signing U visa certifications as well as in some cases T visa certifications and continued presence lead to the increase in the immigrant communities' willingness to work with them. This ability to increase the immigrant communities' willingness to work with the police can be attributed to the quality of police and immigrant community relations and has resulted in cooperation on criminal investigations. (See figures 41 and 42).

Figure 41: Signing Agencies - Changes in Effectiveness of Community Policing With Immigrant Communities 2017 Compared to 2016

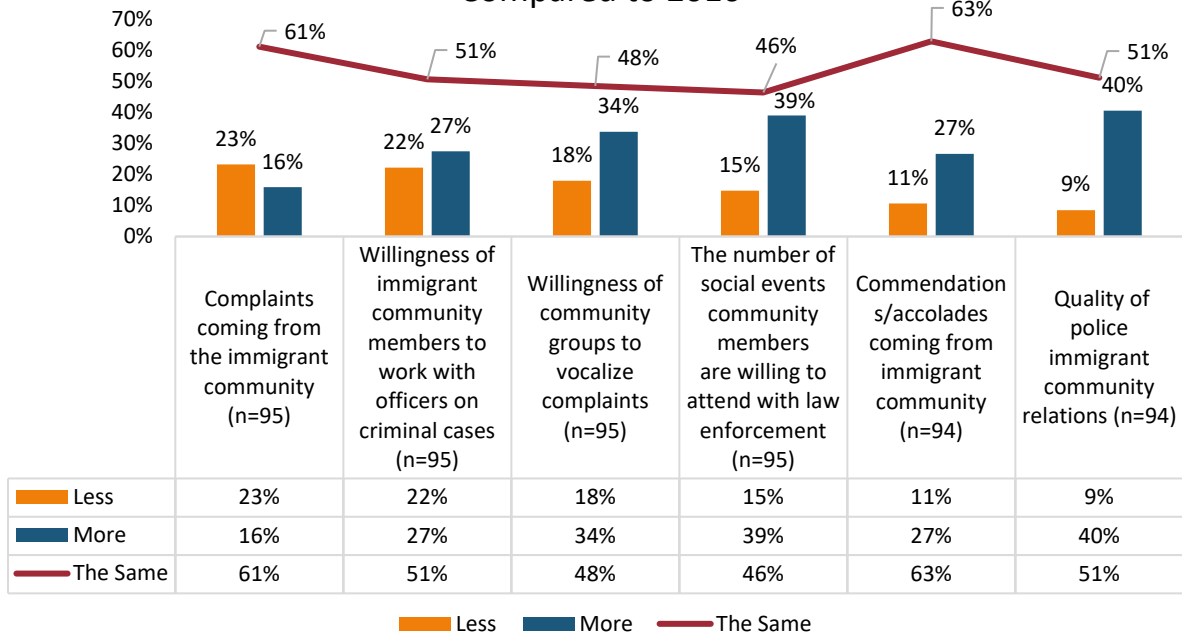
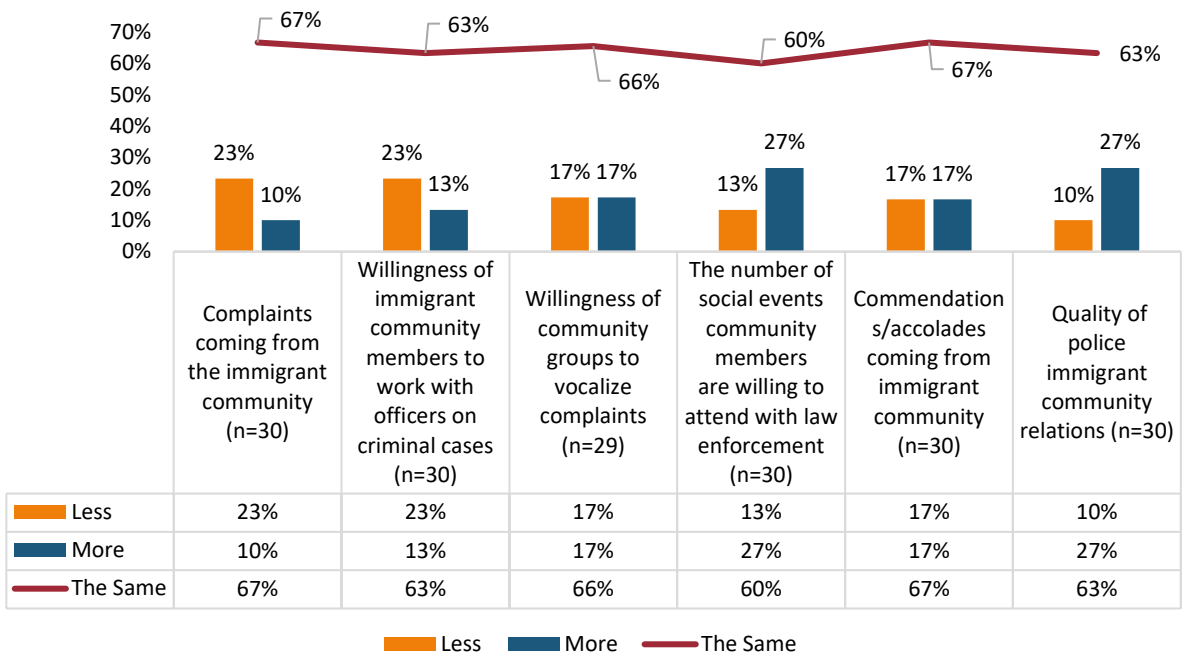
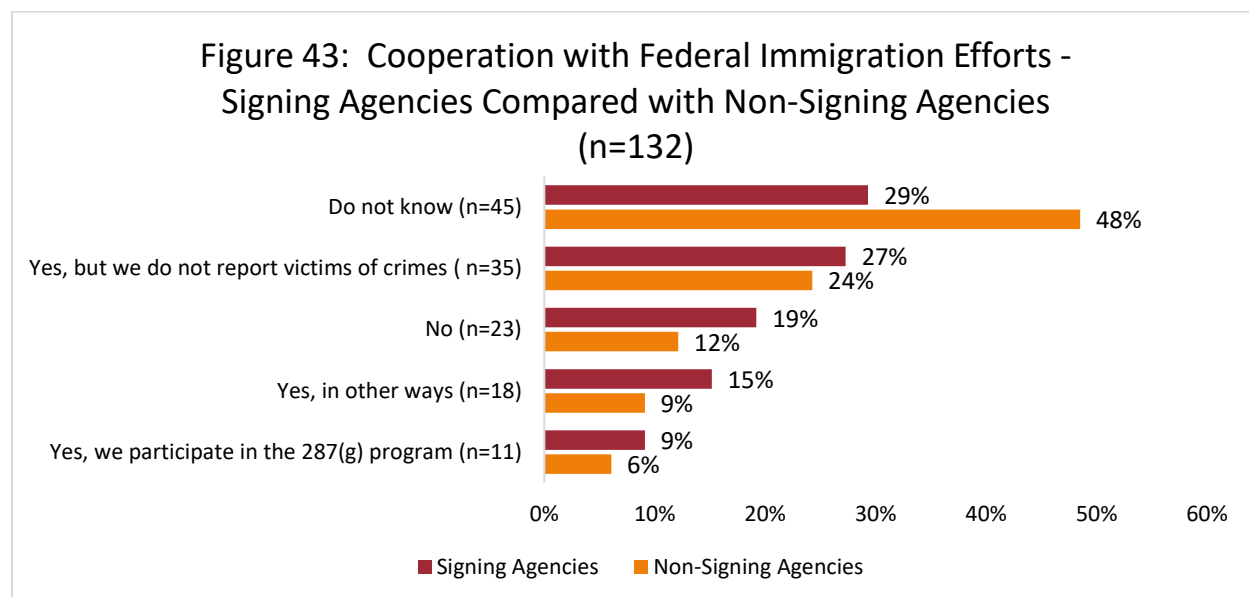


Figure 42: Non-Signing Agencies - Changes in Effectiveness of Community Policing With Immigrant Communities 2017 Compared to 2016



The Impact of Increased Immigration Enforcement, Relationships with Federal Immigration Enforcement Agencies and the Ability to Investigate Crimes Perpetrated Against Immigrant Victims

Law enforcement officials participating in the survey were also asked whether and how their agencies cooperated with federal immigration efforts, as portrayed in figure 43.

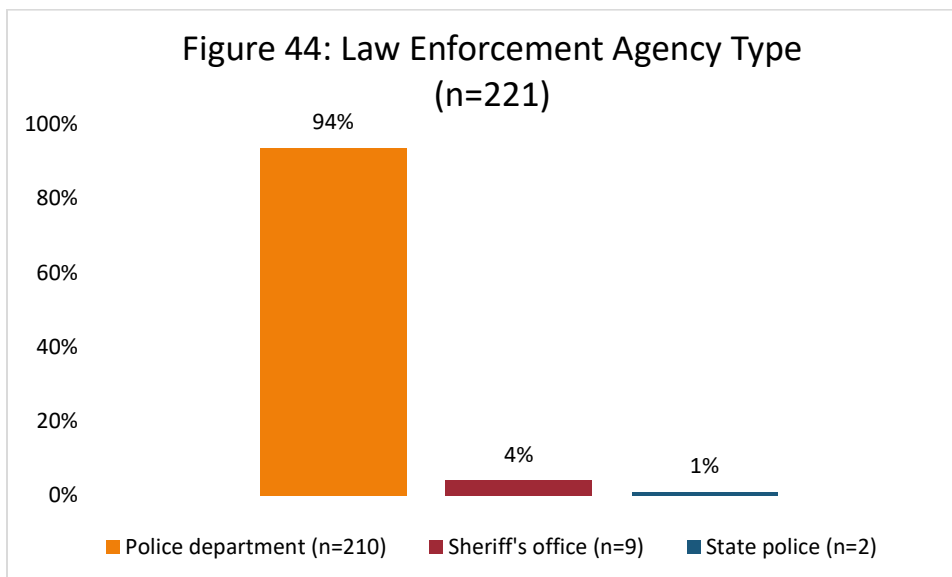


More than a quarter (27%, n=35) of law enforcement agencies reported that they do not cooperate with federal immigration enforcement efforts when the target of the enforcement action is a crime victim. Just as the data showed more cooperation from immigrant communities with Signing agencies, they show that a slightly higher proportion of Signing agencies (27%, n=27) than Non-Signing agencies (24%, n=8) affirmatively excluded immigrant and LEP crime victims from their agencies cooperation with federal immigration enforcement officials. Additionally, a greater percentage of law enforcement officers working in Non-Signing than Signing agencies did not know what their agencies policies or practices were with regard to cooperation with federal immigration efforts (48%, n=16 vs. 29%, n=29). The remaining 20% (n=22) of officers suggested that their agencies cooperated with federal immigration efforts in other ways including:

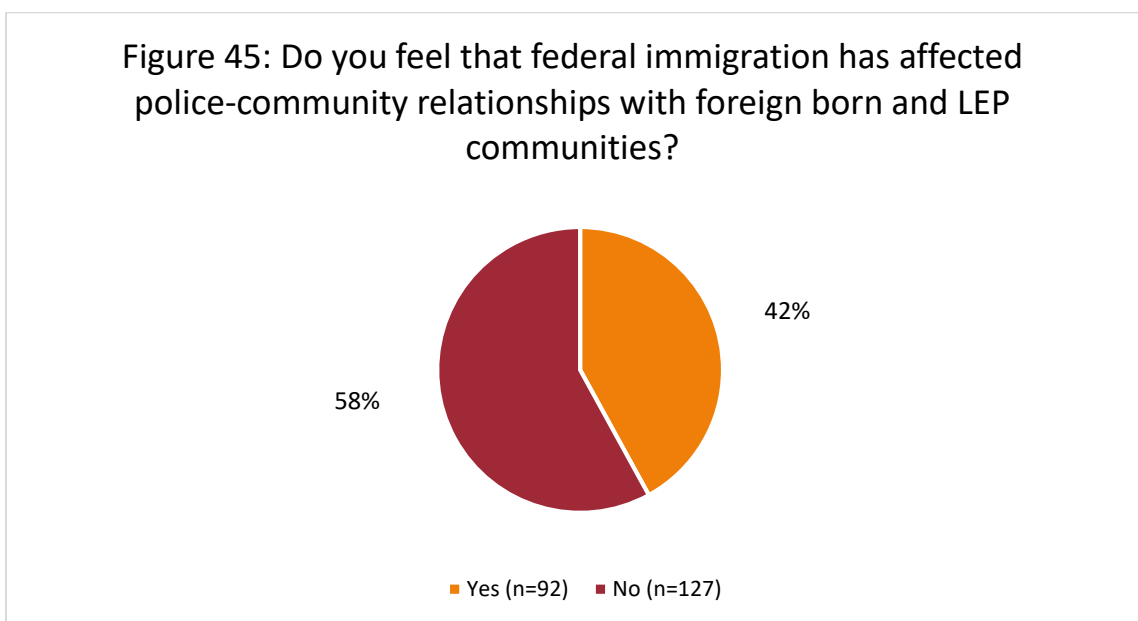
- Notifying Immigration and Customs Enforcement (ICE) when they encounter previously deported felons (n=4);
- Working with ICE on criminal investigations of gangs, drugs and human trafficking (n=3);
- Only communicating with ICE about persons have been arrested (n=3); and
- Assistance with service of federal judicial warrants, ICE warrants, jail holds, and notifying ICE about the release times and dates of perpetrators from jail (n=6).

The fact that a large majority of survey participant agencies were police departments (94%, n=210) as opposed to Sheriff's Offices (4%, n=9) may explain why the number of survey

participants reporting that their agency collaborates with Immigration and Customs Enforcement on warrants and jail holds may be low. (See, figure 44).

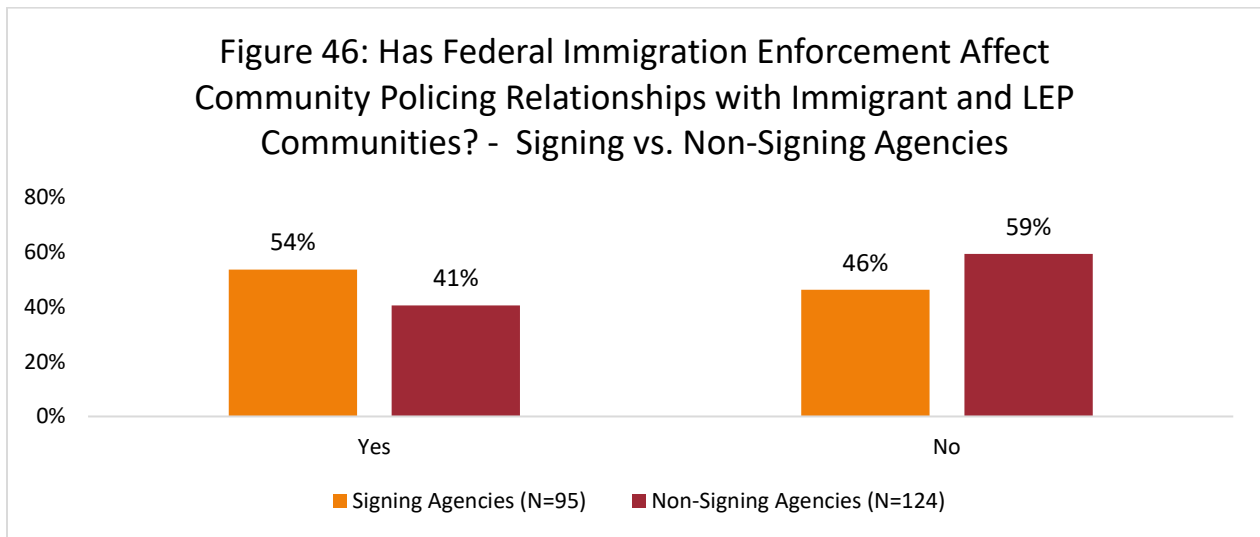


A number of questions in the survey asked law enforcement officials to compare their ability to investigate crimes perpetrated against immigrant and LEP victims in 2017 relative to 2016. Forty-two percent (42%, n=92) of all respondents felt that federal immigration had affected police-community relationships with foreign born and LEP communities, whereas 57% (n=127) felt it had not. (See, figure 45).

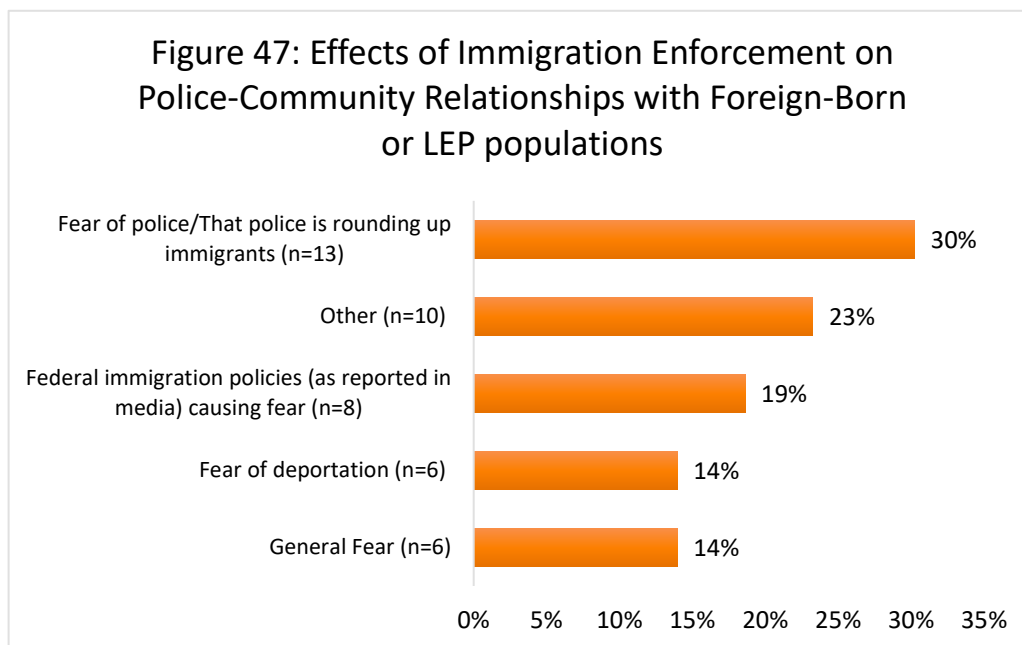


However, law enforcement officials from Signing Agencies reported that immigration enforcement is having a greater impact on their work with immigrant and LEP communities than Non-Signing agencies. Fifty-four percent (n=51) of Signing agencies observed an impact of

immigration enforcement on their relationships with immigrant and LEP communities compared to 41% (n=13) of Non-Signing agencies (See, figure 46).



The law enforcement officials participating in the survey were asked to explain the impact of immigration enforcement on their communities. Respondents who believed that federal immigration policies had indeed affected community-police relationships with foreign-born or LEP populations (n=43) were asked to elaborate on what they believed were the main causes for the changed relationships. The responses received fall into the five categories listed in figure 47.



The most frequently stated impact was that immigrant and LEP community members believed that local law enforcement and federal immigration enforcement agencies operate similarly. Immigrant victims and immigrant community members assumed that calling police for

help would result in law enforcement turning victims over to federal immigration enforcement officials. Many law enforcement officials respondent to the survey expressed their frustration that, despite their efforts to assist immigrant and LEP populations, many in the community are hesitant to reach out to law enforcement because they believe local law enforcement have the authority (and in some cases, the desire) to deport these individuals. Participants stated:

- That immigrant populations “fear the police is going to deport them when our primary goal is to assist them...[m]sot do not understand the difference in jurisdiction and responsibility,”
- “LEP communities many times do not realize that local level law enforcement are not directly involved in enforcing Federal Law,” and
“There is a sense of fear of communicating with police because they see us as an extension of ICE.”

Participants also suggested that:

- Members of their community “live in a daily and pervasive climate of fear” and
- Are “afraid to go to a doctor’s appointment, or even take their children to school. [T]hey are afraid to open their doors thinking that is immigration. I often hear moms concerned about deportation and leaving their children behind.”

Some participants in the survey discussed how they attempted to counteract the increased fear among the immigrant and LEP populations they serve by increasing community engagement efforts. One participant stated,

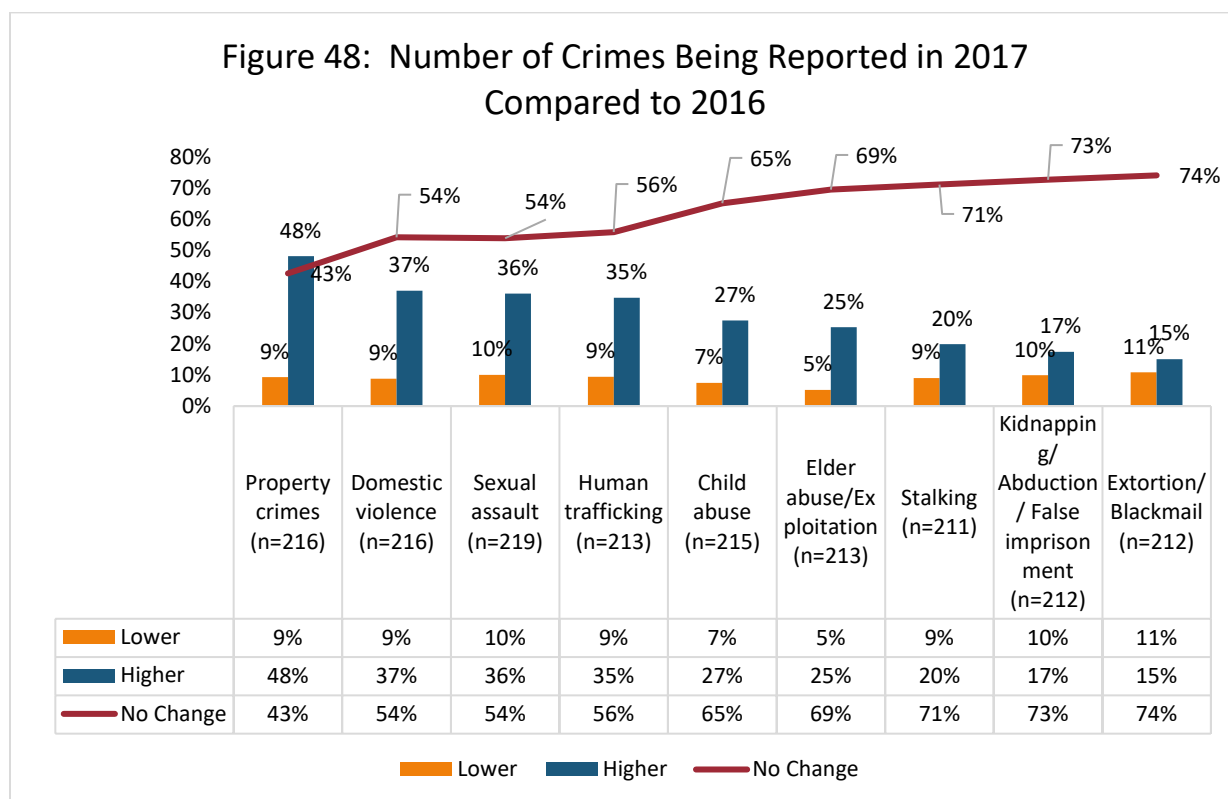
Although we have experienced and increase in willingness my impression is this is a result of the efforts we have made to reach the immigrant and LEP community and make it known we are available to help and they don't need to fear reaching out to us. The information the immigrant population is receiving from outside our community via media, personal contacts or federal government statements still keeps many from feeling safe reporting crimes to us.

Another explained,

The news created from the new Federal programs continues to affect our ability to be efficient and effective with community groups. We have had to increase our outreach and social events to put a stop to the false news stories and perceptions.

To better assess whether and how the experiences of immigrant and LEP victims may be different from crime victims generally in the communities served by law enforcement officers we asked officers to report their experiences with crime victim reporting by the population as a whole for certain crimes in their communities. The survey was particularly interested in learning about crimes covered by the U and T visa programs including domestic violence, sexual assault, child/elder abuse, human trafficking, stalking and other violent crimes. For comparison, the survey also added one common non-violent crime category, property crimes, to the survey list. Figure 48 illustrates that while for most crimes more than half of the officers responding to the survey are seeing no change in crime reporting among the general population between 2017

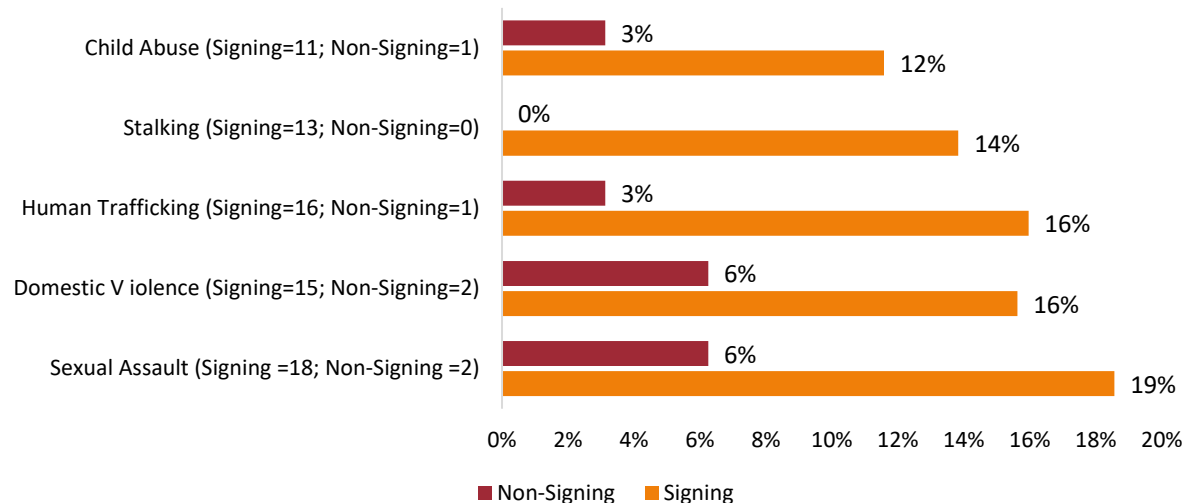
compared to 2016, over a third of the jurisdictions are experiencing higher levels of crime reporting in 2017 relative to 2016. These crimes include property crimes (48%, n=104), domestic violence (37%, n=80), sexual assault (36%, n=79) and human trafficking (35%, n=74).



This survey's findings regarding law enforcement agencies involved in effective community policing with immigrant and LEP communities and the immigrant and victim advocacy/attorney organizations serving immigrant crime victims (see, figures 37-42), may help explain why there are increases in crime reporting during 2017 compared to 2016 by a number of the law enforcement agencies participating in this survey. (See, figure 48).

The data show a difference between Signing and Non-Signing agencies regarding the numbers of agencies observing lower rates of crime reporting in their communities generally for certain crimes comparing 2016 with 2017. This was particularly clear for violence against women and family violence crimes (See, Figure 49). This question was not limited to immigrant victims. The level of analysis that has been able to be completed with the data to date has not included a more detailed analysis of this question by the size of the LEP and immigrant populations that survey participants who answered this question served. However, it appears from this data that Signing Agencies and agencies involved in community policing with immigrant communities may be more attuned to drops in reporting of violence against women crimes generally.

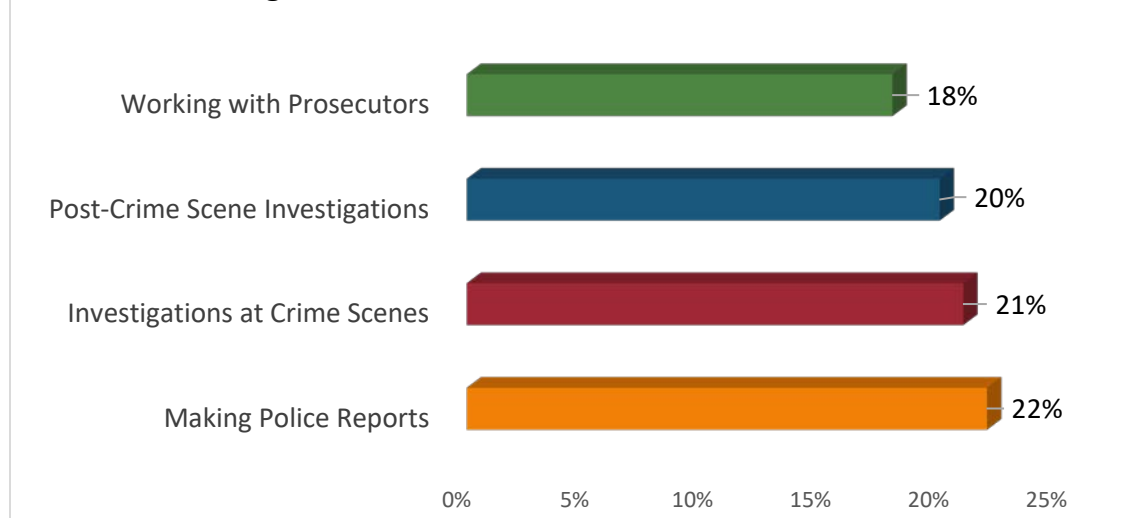
Figure 49: Non-Signing Agencies Reporting Lower Rates Declines in Reporting of the Family Violence and Violence Against Women Crimes in the Community Generally 2017 Compared to 2016



When asked to compare immigrant victims' willingness to cooperate in 2017 relative to 2016, several police officials reported decline in immigrant and LEP victim's willingness to cooperate with law enforcement in their jurisdictions. (See, figure 50). Officers reporting reductions in 2017 identified the following areas where immigrant and LEP victims were less willing to seek assistance:

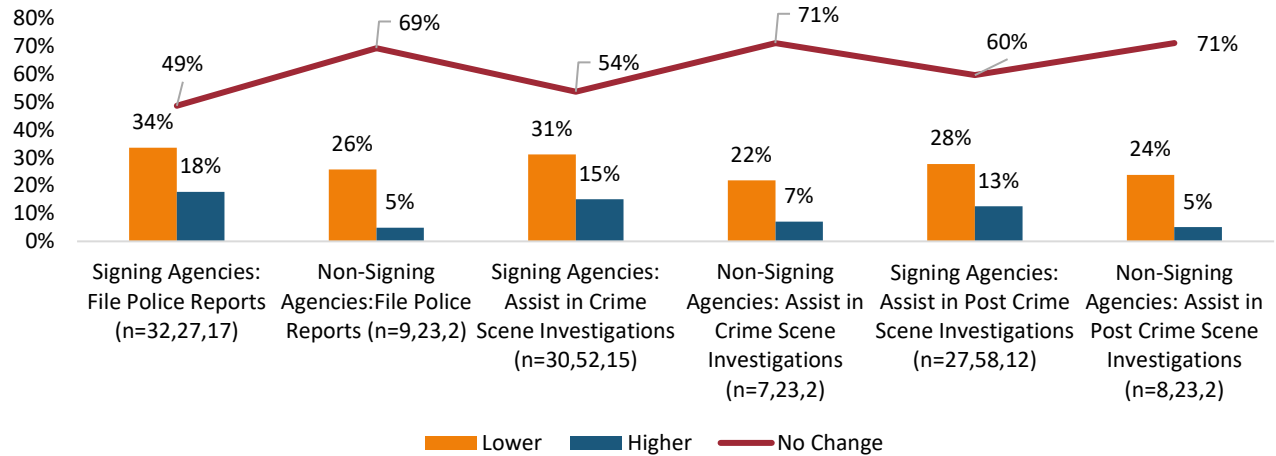
- Making police reports – (22%)
- Investigations when the police arrive at a crime scene – (21%)
- Post-crime scene investigations – (20%)
- Working with prosecutors – (18%)
- Working with victim witness advocates (13%)

Figure 50: Top Areas of Immigrant & LEP Victims' Reduced Willingness to Seek Assistance From Law Enforcement



The survey asked participating law enforcement agencies to report on the extent to which they were observing differences in the willingness of immigrant and LEP crime victims to assist law enforcement officials in criminal investigations and prosecutions in 2011 compared to 2016. With regard to crime scene investigations, willingness to make police reports, and willingness to work with police in post-crime scene investigations, examining the observations reported by law enforcement officials working at Signing Agencies and Non-Signing Agencies there were important differences between agencies' experiences. The survey found that Signing Agencies reported greater declines and greater increases in immigrant and LEP victim willingness to cooperate with law enforcement at each of these three stages of criminal investigation, than Non-Signing Agencies. (See, figure 51).

Figure 51: Signing Agencies Observe Both More Decline and More Increase in Cooperation From Immigrant and LEP Victims Than Non-Signing Agencies in 2017 compared to 2016



These differences between the experiences of Signing vs. Non-Signing Agencies were found across a wide range of criminal cases including, domestic violence, sexual assault, and child abuse. Figures 52-57 provide details regarding law enforcement survey participant's observations of immigrant victim cooperation in criminal cases in 2017 compared to 2016 by the type of criminal case. Examining these findings together with the answers to the qualitative survey questions reported on pages 40-41 of this report, it appears that as Signing Agencies observed drops in immigrant crime victims' willingness to participate, these agencies increased their community policing outreach and this lead to increases in the willingness of immigrant victims to cooperate with law enforcement investigating crimes committed against immigrant victims.

Figure 52: Immigrant And LEP Victim's Willingness Assisst With Crime Scene Investigations In 2017 Vs 2016 - Signing Agencies

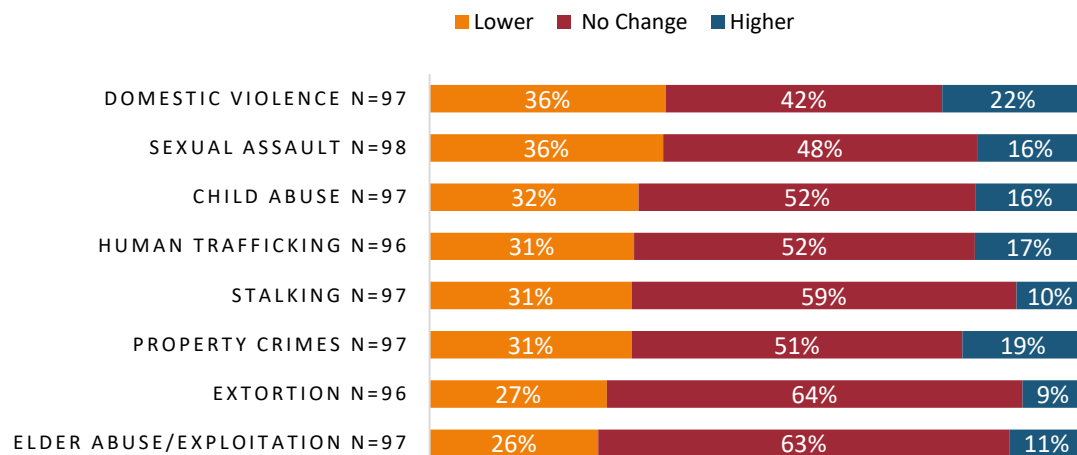


Figure 53: Immigrant And LEP Victim's Willingness Assist With Crime Scene Investigations in 2017 vs 2016 - Non-signing Agencies

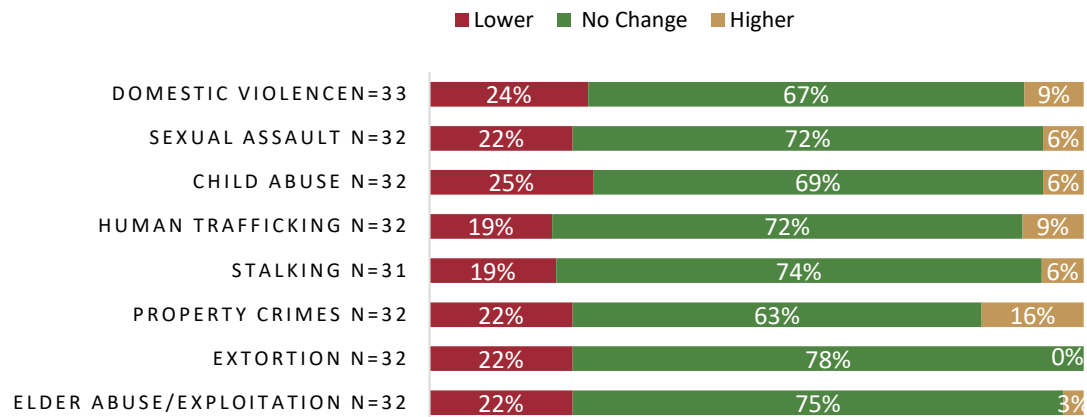


Figure 54: Immigrant And LEP Victim's Willingness to file Police Reports In 2017 Vs 2016 -Signing Agencies

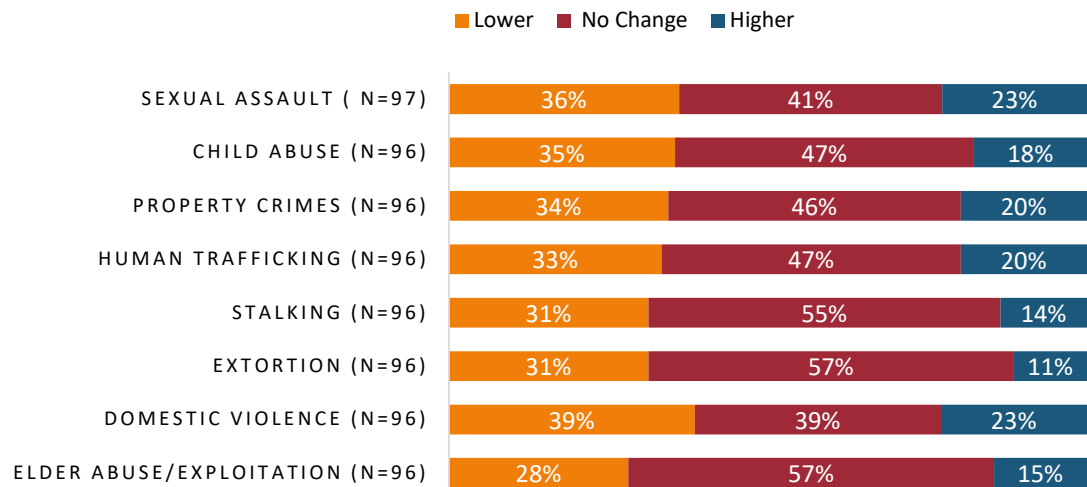


Figure 55: Immigrant And LEP Victim's Willingness To File Police Reports In 2017 Vs 2016 - Non-signing Agencies

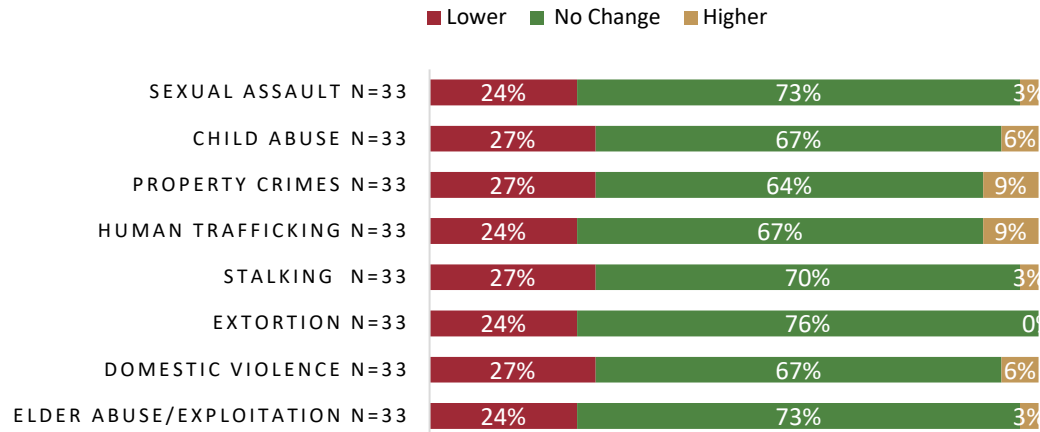


Figure 56: Immigrant And LEP Victim's Willingness Assist With Post-crime Scene Investigations In 2017 Vs 2016 -Signing Agencies

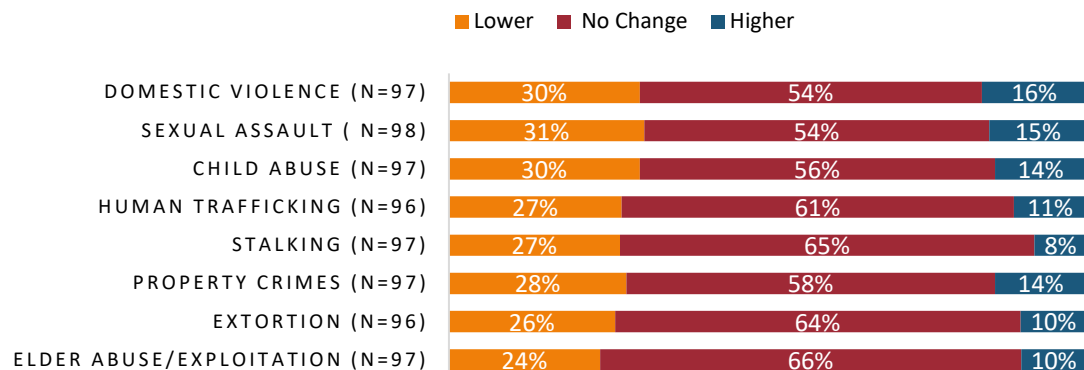
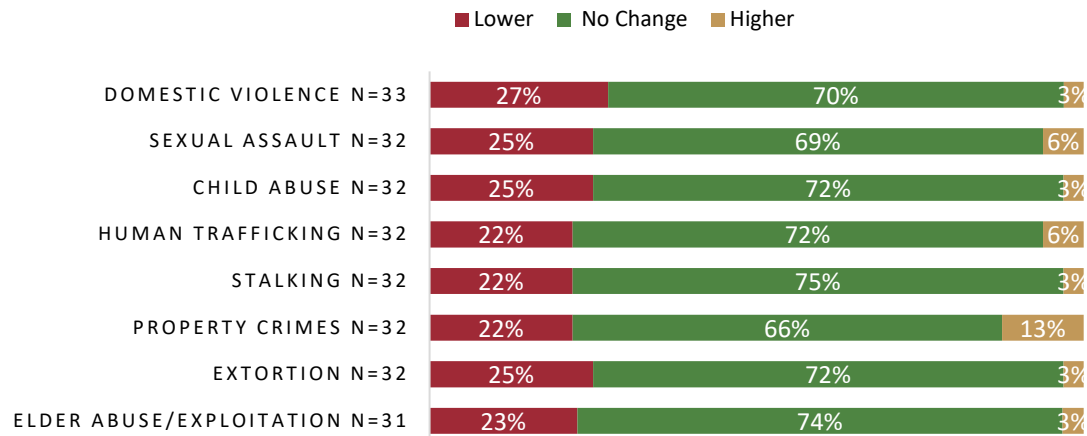
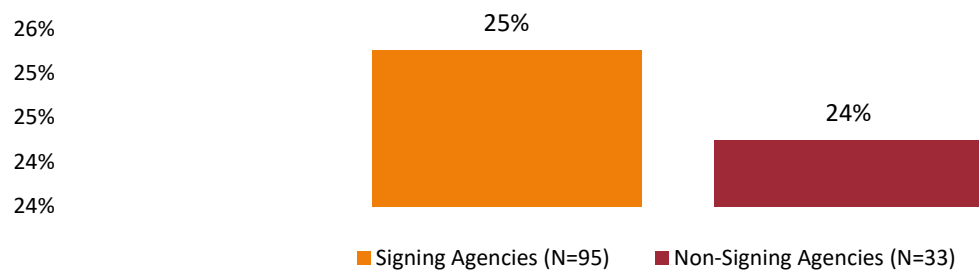


Figure 57: Immigrant And LEP Victim's Willingness Assist With Post-crime Scene Investigations In 2017 Vs 2016 -Non-signing Agencies



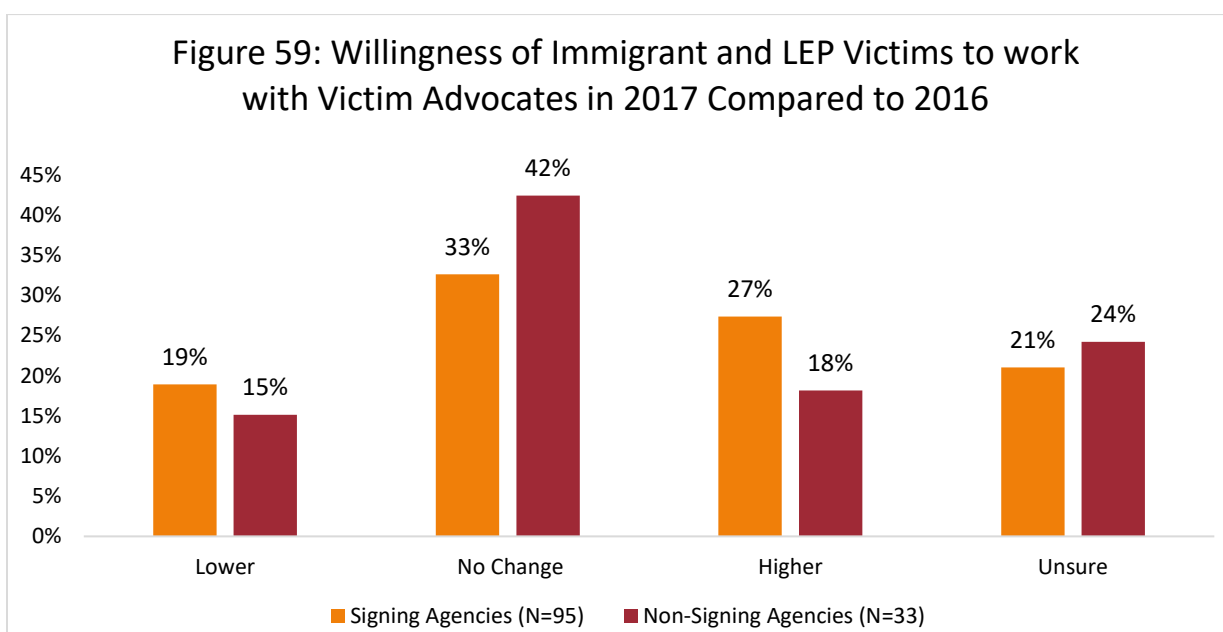
About a quarter of both Signing and Non-Signing agencies reported declines in immigrant and LEP crime victim willingness to work with prosecutors on criminal investigations and prosecutions. (See, figure 58).

Figure 58: Percent of Law Enforcement Agencies Reporting That in 2017 Compared to 2016 Immigrant and LEP Victims are Less Willing to Assist Prosecutors



Some of these differences between Signing and Non-Signing jurisdictions may be attributed to the fact that Signing jurisdictions appear from the community policing data discussed above and in figures 38-42 to be more involved with the immigrant communities they serve than Non-Signing jurisdictions. This allowed Signing Agencies to gauge the changes with the immigrant and LEP population that was on their radar and they responded. Also, Signing agencies' certification practices bring officers working for these agencies in more frequent contact with immigrant and LEP crime victims who communicate with officers about victims' fears and concerns.

This trend in the data is reinforced by the differences between Signing and Non-Signing Agencies with regard to the willingness by immigrant and LEP victims to work with police departments' based victim advocates and victim witness staff. Signing agencies more frequently reported increases in immigrant victim cooperation with victim witness staff than Non-Signing agencies (27%, n=26 vs 18%, n=6). Also, consistent with the community policing data and the qualitative responses provided by law enforcement survey participants, a slightly higher percentage of Signing agencies than Non-Signing agencies to saw a decline in immigrant victims' willingness to work with victim advocates police department staff (19%, n=18 vs 15%, n=5) (See, figure 59)



Law enforcement officials were asked to report on the reasons most commonly given to them by immigrant and LEP crime victims for not cooperating or not continuing to cooperate with law enforcement as the criminal case moves from a crime scene investigation, to a police report, to the post-crime scene investigation, and potentially to a prosecution. Immigration status related concerns were three (3) of the top six (6) concerns victims had and reasons victims provided for non-cooperation (See, figures 60 and 61)

It is important to note that access to legal immigration status brings with it access to legal work authorization. As a result in cases of immigrant domestic violence or work place sexual assault victims, concerns about the victim's inability to support herself and her children if she leaves leads immigrant victims to stay in abusive employment and homes for until the victim obtains legal work authorization through the victim's VAWA or U visa immigration case.²⁸ Figure 30 lists the top six concerns law enforcement officials reported as concerns immigrant victims have shared with them. Additionally, figure 61 provides more details about the range of

²⁸ Leslye E. Orloff, National Survey on Timing of Access to Work Authorization by Immigrant Victim VAWA Self-Petitioners and U-Visa Applicants, LEGAL MOMENTUM (Sep. 28, 2011), <http://niwaplibrary.wcl.american.edu/pubs/imm-qref-timingaccessworkauthoriz9-28-11/>.

immigrant victims' concerns and reasons for their non-cooperation with numerous justice system officials as reported by the participants in the law enforcement survey. Many of the factors listed are similar to all crime victims who experience family violence, sexual assault, stalking, and human trafficking.

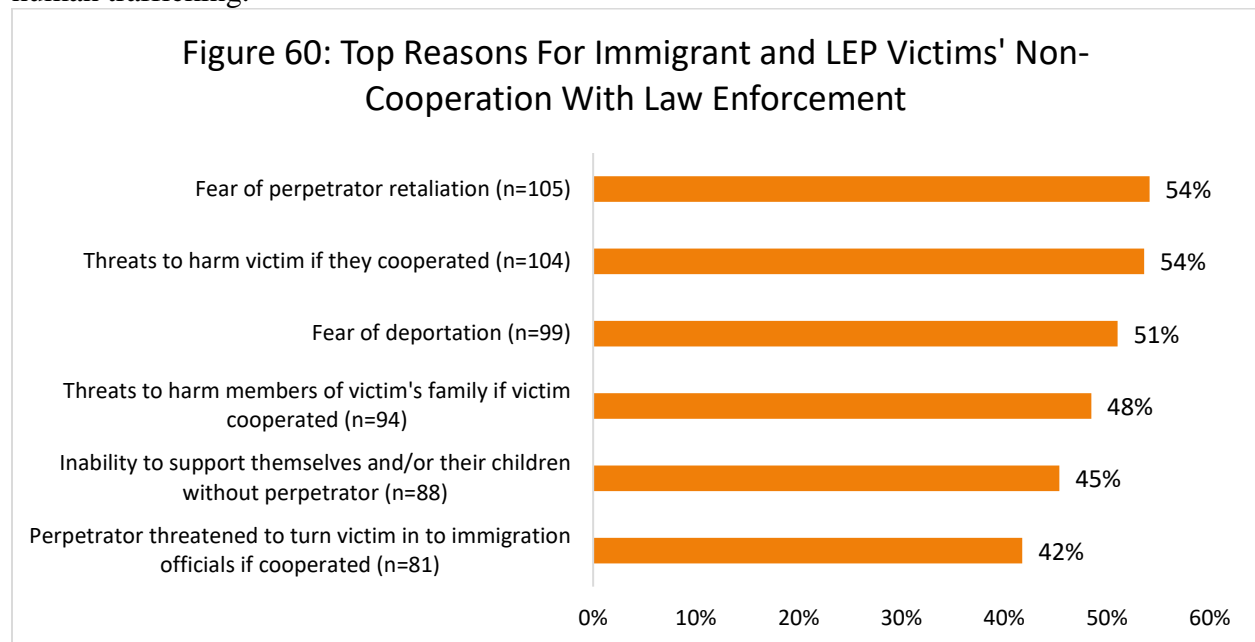
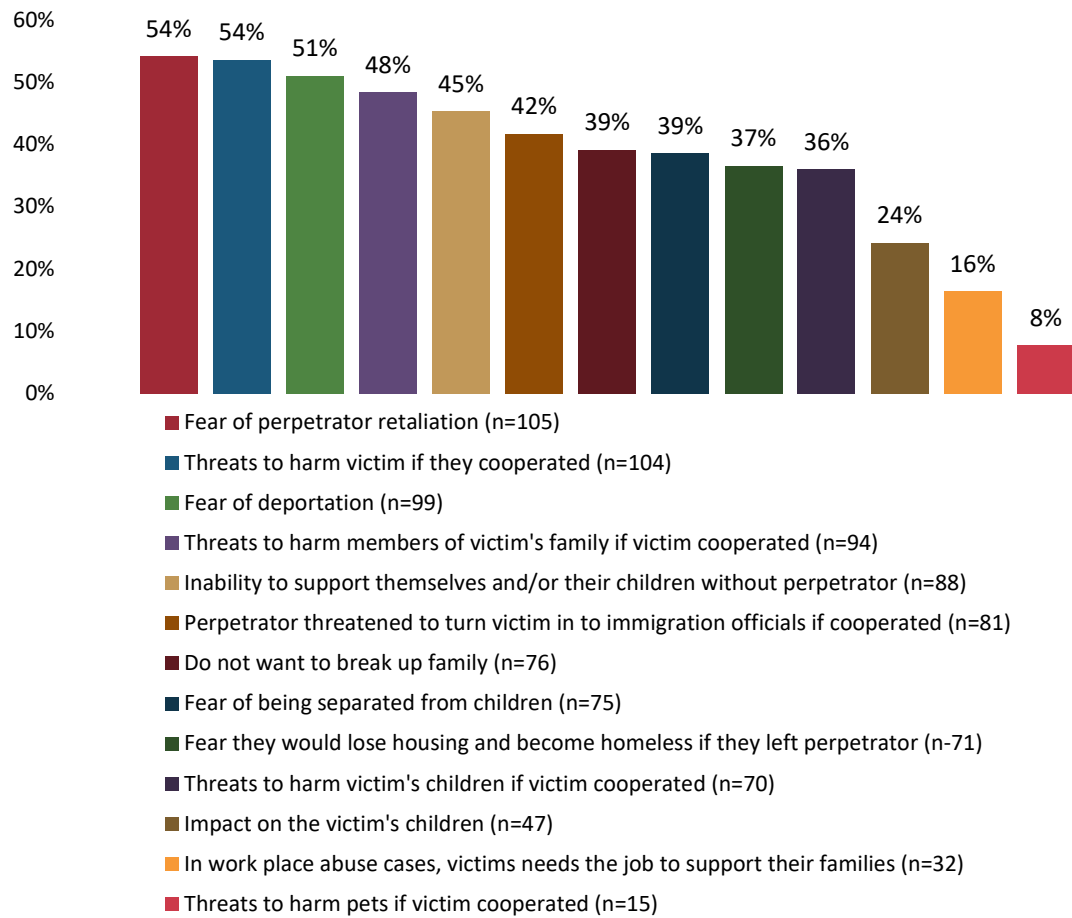
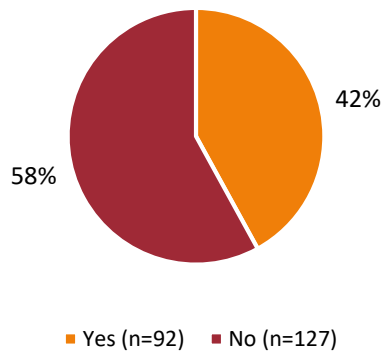


Figure 61: Reasons Immigrant and LEP Victims gave Law Enforcement for Non Cooperation



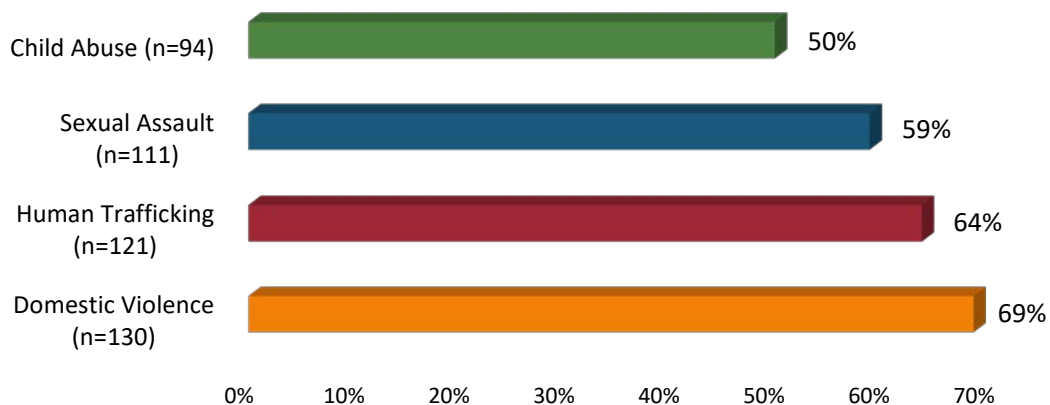
Moreover, the survey showed that police officers are facing increased challenges in investigating crimes involving immigrant and LEP victims in 2017 relative to 2016. A significant percentage (42%) of law enforcement officials felt that federal immigration enforcement practices were affecting police-community relationships with foreign born and LEP communities. (See, figure 62).

Figure 62: Have Federal Immigration Enforcement Effected Your Agencies' Community Policing Relationships with Foreign Born and LEP Communities



A large proportion of law enforcement officials taking the survey reported that some crimes involving immigrant and LEP victims were becoming harder to investigate in 2017 compared to 2016 due to victim non-cooperation. Fears, threats, and concerns that victim cooperation will trigger the victim's deportation are important factors in victim's non-cooperation decisions. (See, figure 63).

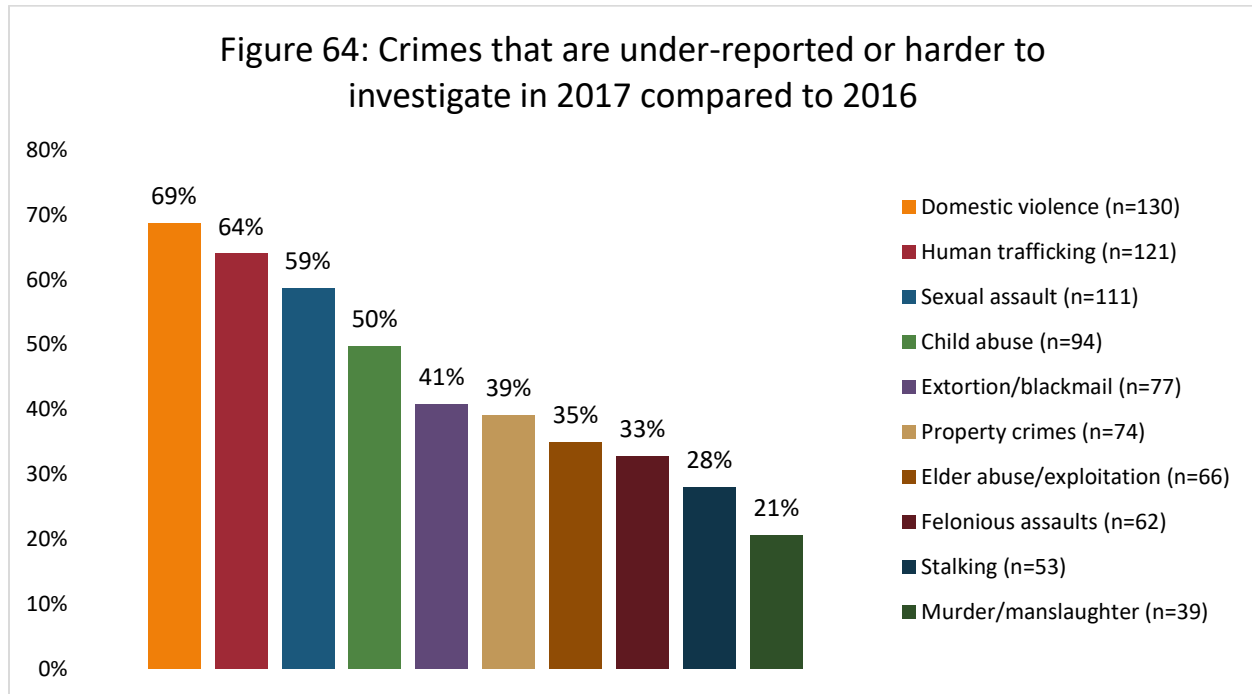
Figure 63: Top Crimes Harder to Investigate Due to Non-Cooperation with Law Enforcement



Law enforcement officials reported that a wide range of crimes go unreported and have become harder to investigate when the victims are immigrant or limited English proficient. Figure 64 lists the crimes many officers reported have become more difficult to investigate and prosecute in 2017 compared to 2016. These include:

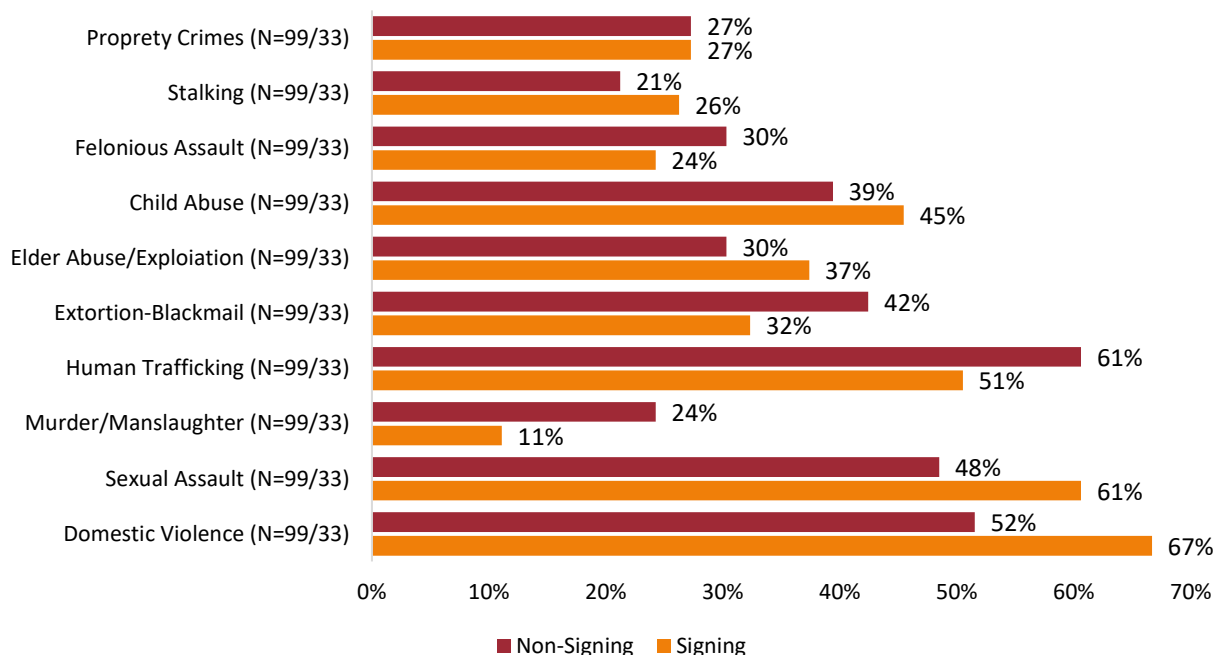
- Domestic violence – (69%)

- Human trafficking – (64%)
- Sexual assault – (59%)
- Child abuse – (50%)
- Extortion-Blackmail – (38%)
- Elder abuse and exploitation (34%)
- Felonious assaults – (33%)



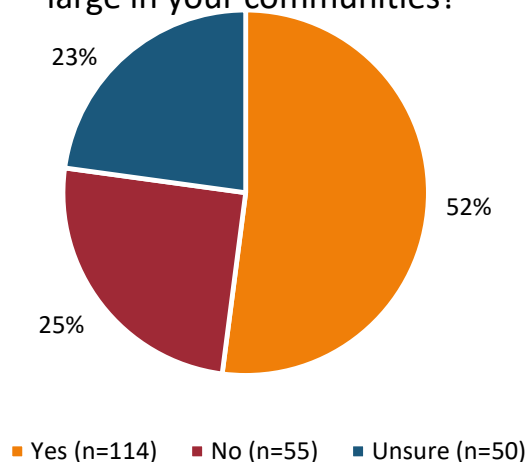
The responses of the law enforcement officials employed by Signing agencies indicating that various crimes were becoming underreported and/or harder to investigate differed greatly from those employed by Non-Signing agencies (See, figures 63 and 64). The crimes that substantial numbers of law enforcement officers working in Signing agencies report have become harder to investigate include domestic violence (67%, n=66 vs 52%, n=17) and sexual assault (61%, n=60 vs 48%, n=16). A greater proportion of law enforcement officers in Non-Signing agencies indicated that murder/manslaughter has become underreported/harder to investigate than Signing agencies (24%, n=8 vs 11%, n=11). A slightly higher percentage of officials from Non-Signing than Signing agencies reported that human trafficking and extortion/blackmail is becoming underreported/harder to investigate (61%, n=20 vs 51%, n=50; 42%, n=14 vs 32%, n=32) (See, figure 65).

Figure 65: Crimes That Have Become Underreported or Harder to Investigate in 2017 vs 2016 by Signing and Non-Signing Agencies

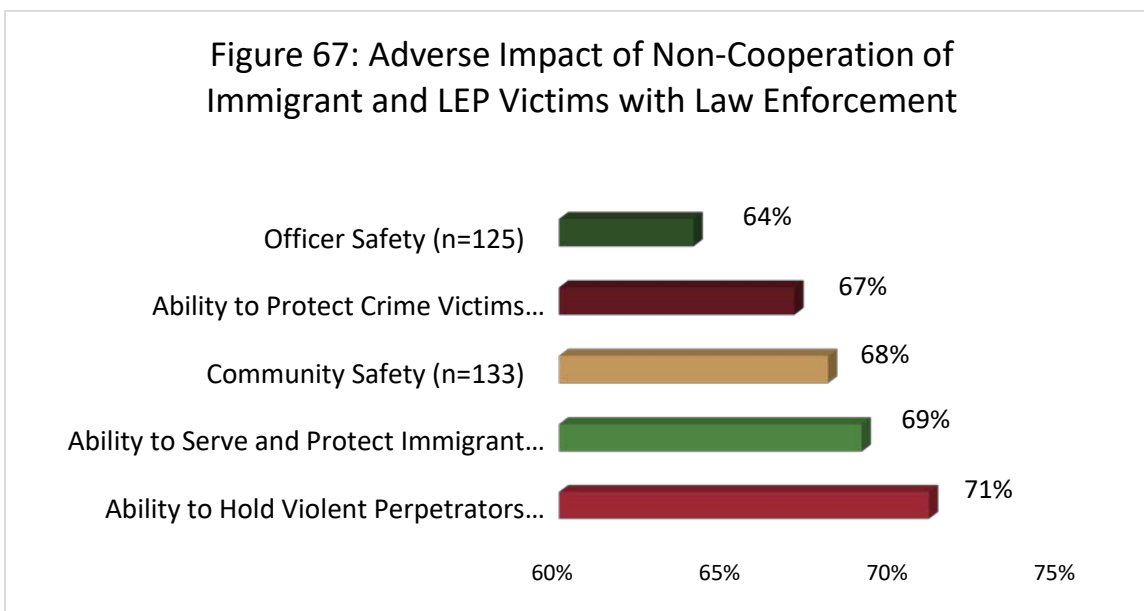


Importantly, almost 52 % of law enforcement officials participating in the survey reported that barriers facing LEP and immigrant victims resulted in greater numbers of perpetrators at large in their communities. (See, figure 66).

Figure 66: Do the barriers facing LEP and immigrant victims result in greater numbers of perpetrators at large in your communities?

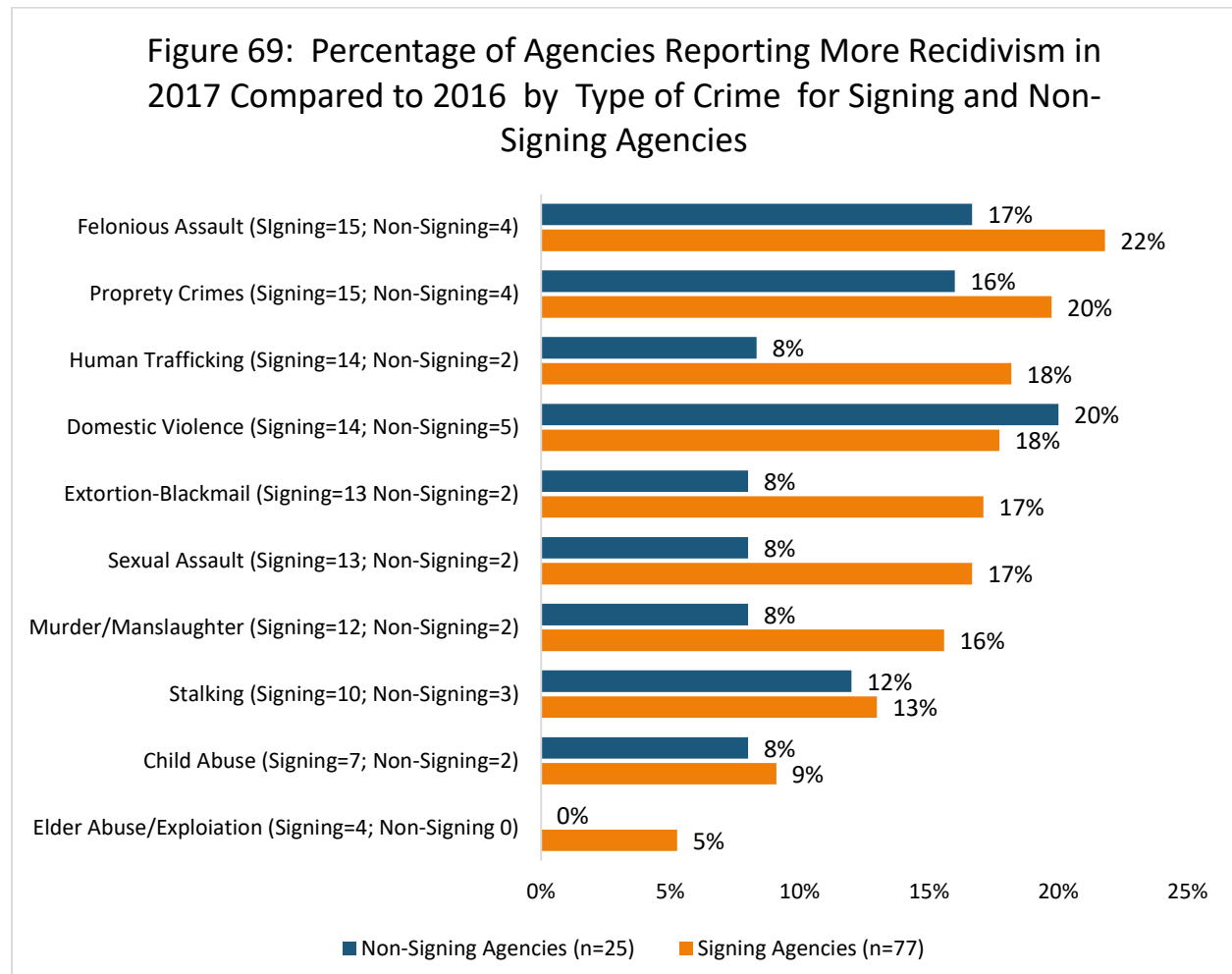


Survey participants provided more detail on the impact of this when asked whether the barriers affecting immigrant and LEP victims had adverse effects. (See, figure 67). A significant number of those participating in the survey reported an adverse impact on victim, community and officer safety. Higher proportions of Signing Agencies reported impacts on community safety and their ability to hold offenders accountable than Non-Signing Agencies. (See, figure 68).



Law enforcement officials also reported that the decline in immigrant victim cooperation is leading to increased recidivism by perpetrators of a range of crimes in their communities, including domestic and sexual violence crimes. A greater proportion of law enforcement officials from Signing agencies reported increased recidivism than those from Non-Signing

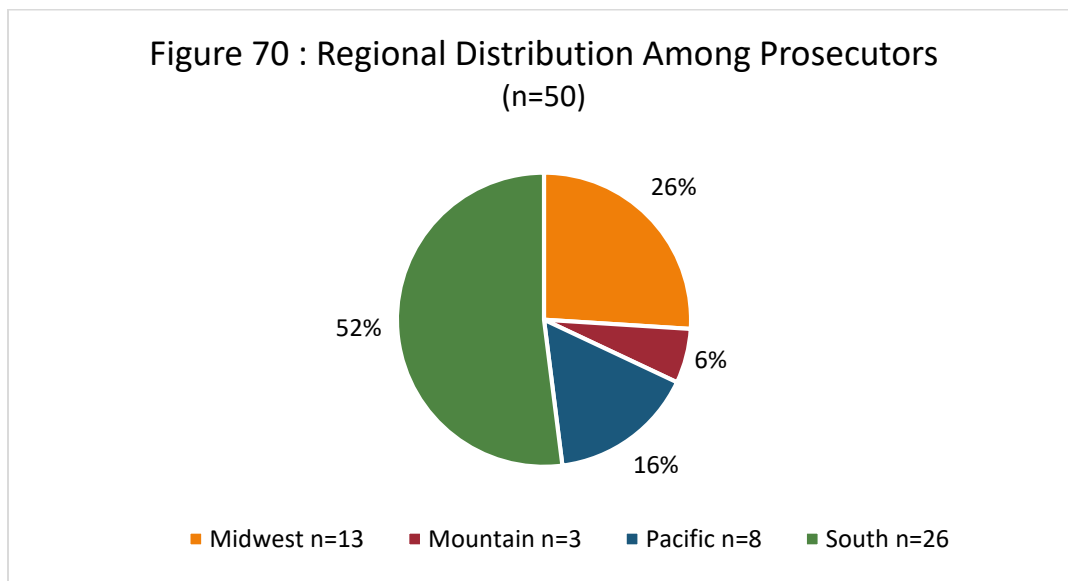
agencies in 2017 compared to 2016 including with regard to felonious assault (22% vs. 17%) property crimes (20% vs 16%), and human trafficking (18% vs 8%). (See, figure 69).



Part Three: National Survey of Prosecutors
Findings from 2017 National Survey of Prosecutors

Introduction to the Participating Prosecutors

A total of 50 prosecutors participated in the survey from 19 states.²⁹ Figure 1 provides an overview of the regional distribution among the participating prosecutors.³⁰ More than half of those who participated in the survey were from the South of the United States and more particularly from the state of Virginia (n=13). (See, figure 70).

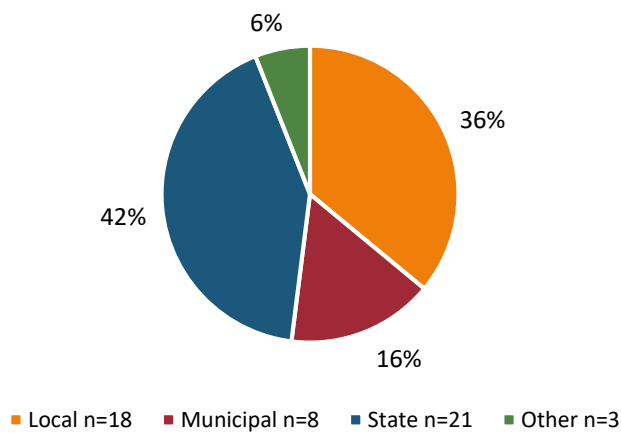


Most survey participants worked for local, municipal, or county prosecutor offices (56%, n=28) and another 42% (n=21) worked for state prosecutor's offices. (See figure 2).

²⁹ Prosecutors participated in the survey from the following states: AZ, CA, FL, GA, HI, ID, LA, MI, MN, MO, NC, NM, OH, OK, OR, TN, VA, WA, WI

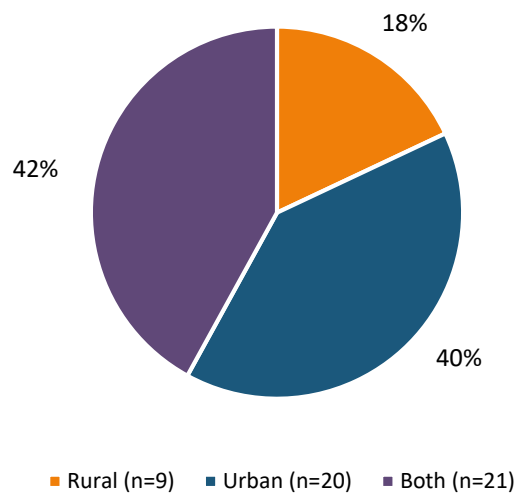
³⁰ The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest: (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

Figure 71: Type of Prosecutor's Office
(n=50)



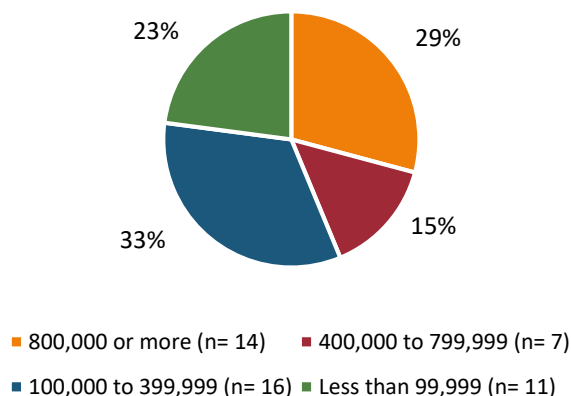
Survey participants worked in prosecutor offices that serve jurisdictions with diverse population sizes. (See, figure 73). The largest number of survey participants (42%, n=21) served jurisdictions that are both urban and rural. Another 40% (n=20) served only urban jurisdictions and 18% (n=9) served jurisdictions that were exclusively rural. (See, figure 2).

Figure 72: Type of Jurisdiction
(n=50)



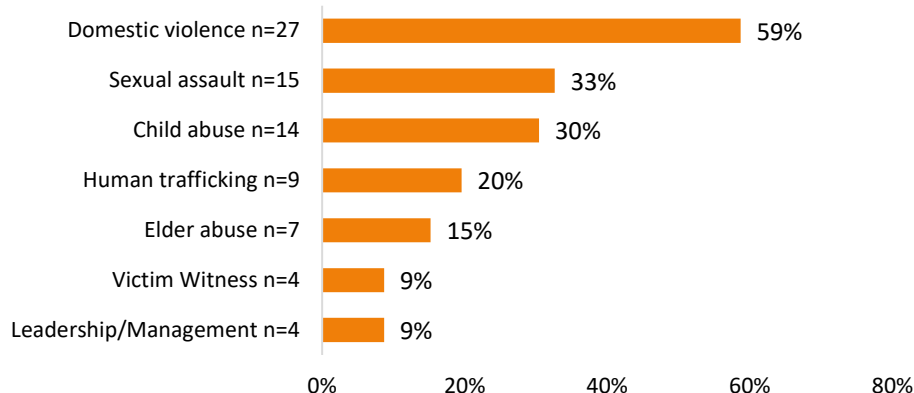
Over half (56%, n=27) of the prosecutors participating in the survey reported serving smaller jurisdictions with populations under 399,000. A little more than quarter (29%) of the prosecutors participating in the survey serve large cities with populations of more than 800,000. (See figure 73).

Figure 73. Population Density Of Prosecutors Office's Jurisdiction
(n=48)



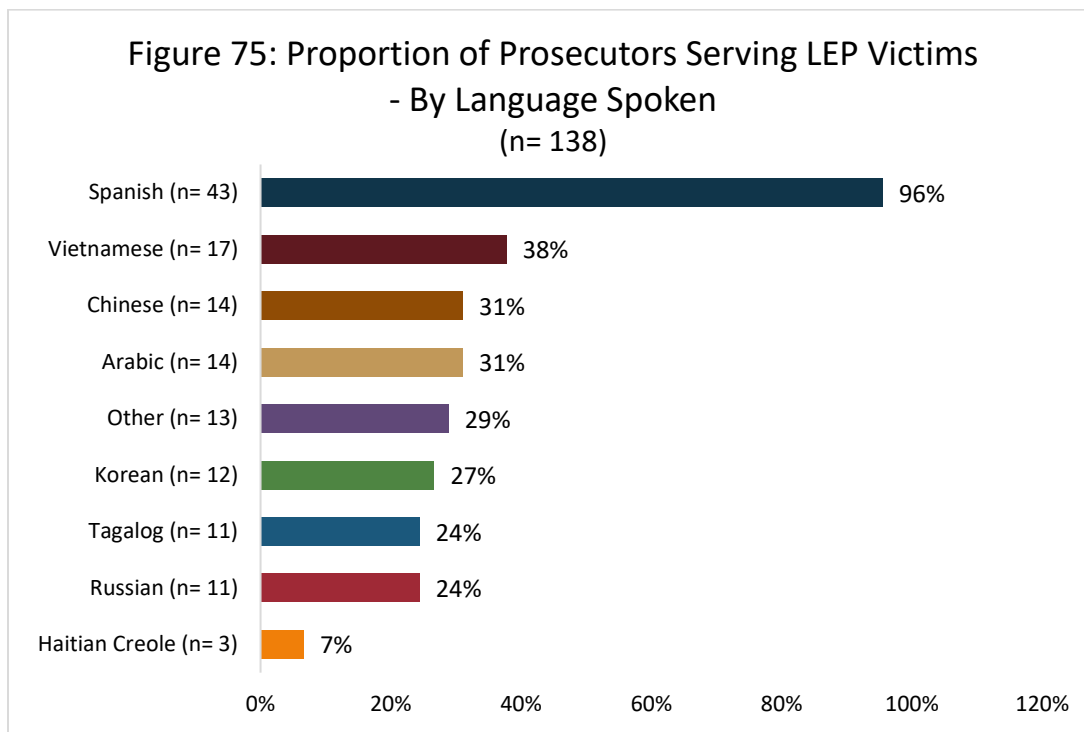
Most of the participants worked in a specialized unit. Fifty-nine percent (n=27) worked in a domestic violence unit, thirty-three percent (n=15) worked in a sexual assault unit, thirty percent (n=14) in a child abuse unit, and twenty percent (n=9) in a human trafficking. (See, figure 74).

Figure 74: Survey Participants Working in Specialized Units
(n=80)



The majority (71%, n=35) of participants in the survey indicated that their jurisdiction has a large number of Limited English Proficient (LEP) residents. The eight languages most encountered by the prosecutors are listed in figure 6. In order of most to least spoken these languages are: Spanish (96%, n=43), Vietnamese (38% n=17), and Chinese (31%, n=14) were the three most commonly encountered languages. (See, figure 6). Twenty-nine percent (n=13) of prosecutors reported that they commonly encounter languages that are not included in the top 8 languages listed in figure 75. These prosecutors provided additional details about which languages the crime victims and witnesses they encountered speak. The languages included

Amharic, American Sign Language, Chuukese, Farsi, H'mong, Ilocano, Japanese, Korean, Marshallese, Nahuatl, Somali, Samoan, and several indigenous languages from Guatemala.

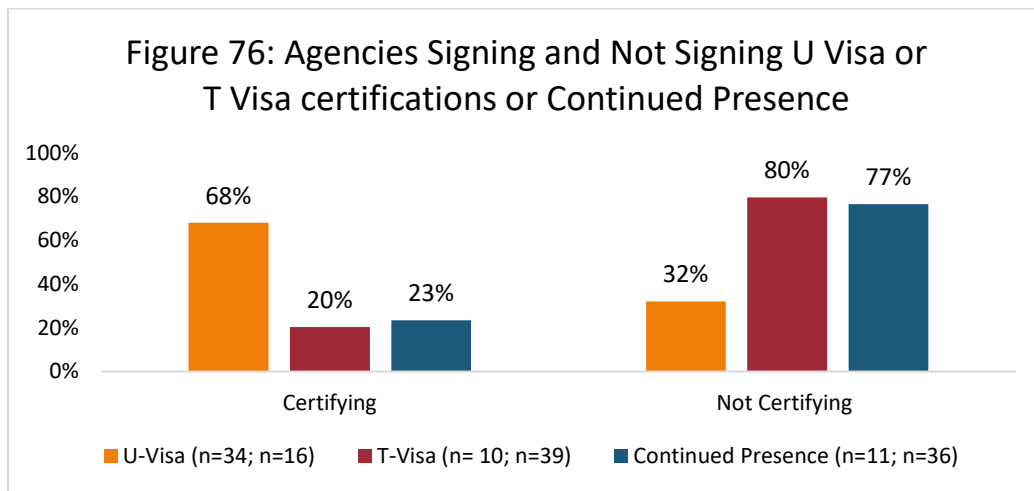


Prosecution Agencies Signing U Visa Certifications, T Visa Certifications and/or Requesting Continued Presence

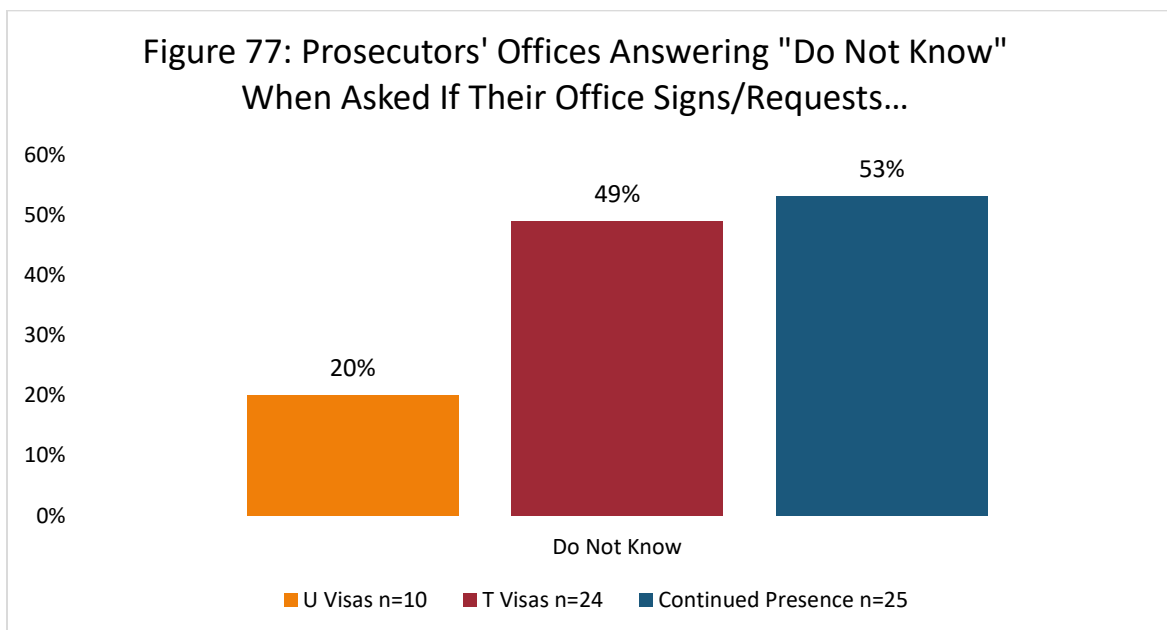
Prosecutors were asked to indicate whether their agency signed U visa certifications and/or T visa certifications in cases of foreign-born or LEP crime victims or human trafficking victims. The majority indicated that their agencies (68%, n=34) sign U visa certifications for LEP and foreign-born victims. For T-visa certifications, only 20% (n=10) of prosecutors reported that their offices signed T visa certifications. The U.S. Department of Homeland Security encourages prosecutors to seek continued presence from immigration and Customs Enforcement (ICE) officials on behalf of immigrants who are victims or potential witnesses in human trafficking prosecutions.³¹ Less than a quarter (23%, n=11) of the participants in the survey indicated that their prosecutor offices seek continued presence for human trafficking victims.

³¹ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jun. 2010), <http://library.niwap.org/wp-content/uploads/DHS-Continued-Presence-Brochure.pdf>; DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 27 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> (An application for CP should be initiated immediately upon identification of a victim of human trafficking.)

The majority of prosecutors reported³² that their agencies do not sign T-visas (80%, n=39), and are not seeking continued presence (77%, n=36). The majority of prosecutors reported that their agencies are Signing U Visa certifications (68%, n=34). (See figure 76).



Of those who are included in the do not certify category, many reported that they do not know whether their agency is Signing U visa certifications, T visa certifications, or was requesting continued presence on behalf of immigrant crime victims and human trafficking victims. (See, figure 77).

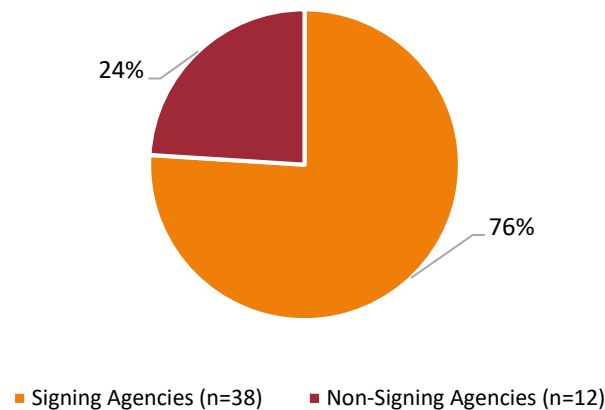


³² This includes prosecution offices who reported that their agencies are not signing and survey participants who reported they did not know whether their agency was certifying or requesting continued presence.

“Signing Agencies” Compared to “Non-Signing Agencies”

A significant majority (76%, n=38) of the agencies where the prosecutors participating in the survey worked are “Signing Agencies”. The remaining 24% (n=12) participating in the survey worked in “Non-Signing Agencies”. (See, figure 78).

Figure 78: Participants Working in Prosecutors Offices that are Signing U or T Visa Certification and/or Seeking Continued Presence



Signing agencies were defined as prosecutors’ offices that signed at least one of the following:

- U visa certifications
- T visa certifications
- Requests for continued presence

Most prosecutors participating in the survey signed U visa certifications (68%, n=34). Details about survey participant prosecutors practices of signing U and/or T visa certifications and/or continued presence requests are reported in Figure 79.

Figure 79: Prosecution Agencies Signing U or T Visa Certifications or Requesting Continued Presence						
Does the Agency Sign?	U Visa Certifications		T Visa Certifications		Continued Presence Requests	
	#	%	#	%	#	%
Yes = Signing Agencies	34	68%	10	20%	11	23.5%
No = Non-Signing Agencies	6	12%	15	31%	11	23.5%
Do not know = Non-Signing Agencies	10	20%	24	49%	25	53%
Totals	50	100%	49	100%	107	100%

Among the 76% (n=38) of prosecution agencies who reported working in Signing Agencies:

- 48% (n=24) signed only one type of visas: U visas, T visas, or requests for continued presence;
- 22% (n=11) signed two of the three types of cases - U visa certifications, T visa certifications or seeking requests for continued presence; and
- 6% (n=3) signed in all three of the case types -U visa certifications, T visa certifications and seeking requests for continued presence.

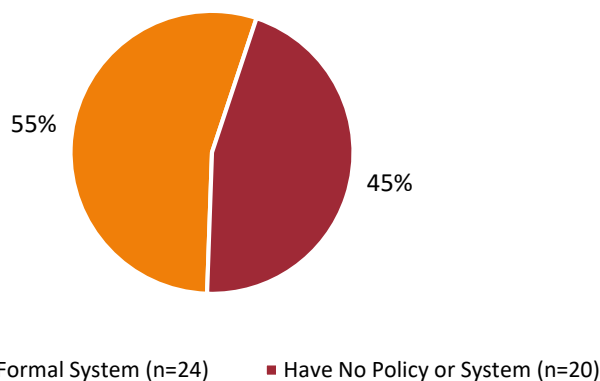
Practices of U Visa Certifications, T Visa Certifications and Seeking Requests for Continued Presence.

The survey also asked questions about visa certification practices employed by prosecutor's offices. The following are details about the U visa, T Visa, and requests for continued presence practices.

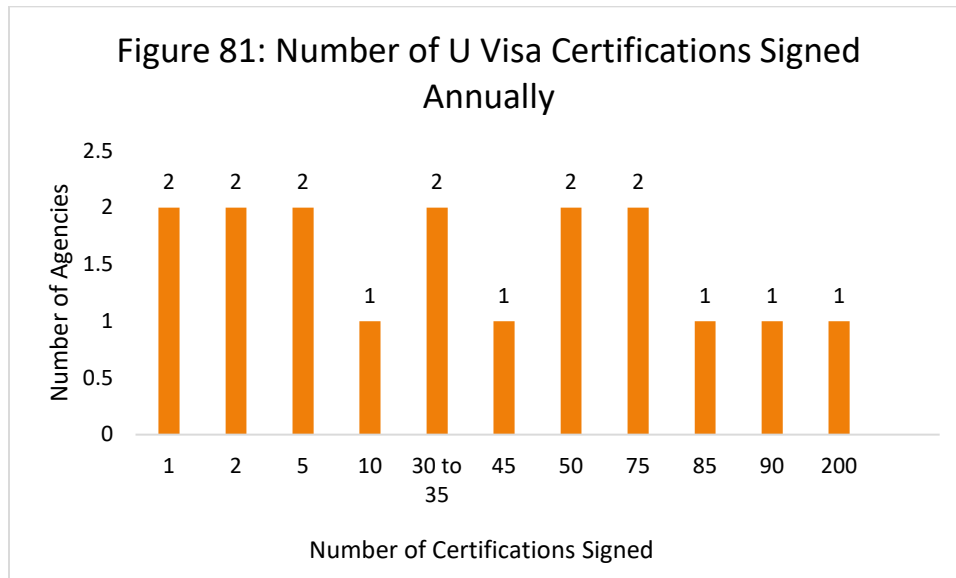
U Visa Certification Practices

Among survey participants, 45% (n=20) reported having a formal U visa certification policy or system in place. (See, figure 80).

Figure 80: Agencies That Have Implemented a Policy or Formal System for Processing U Visa Certification Requests (n=44)



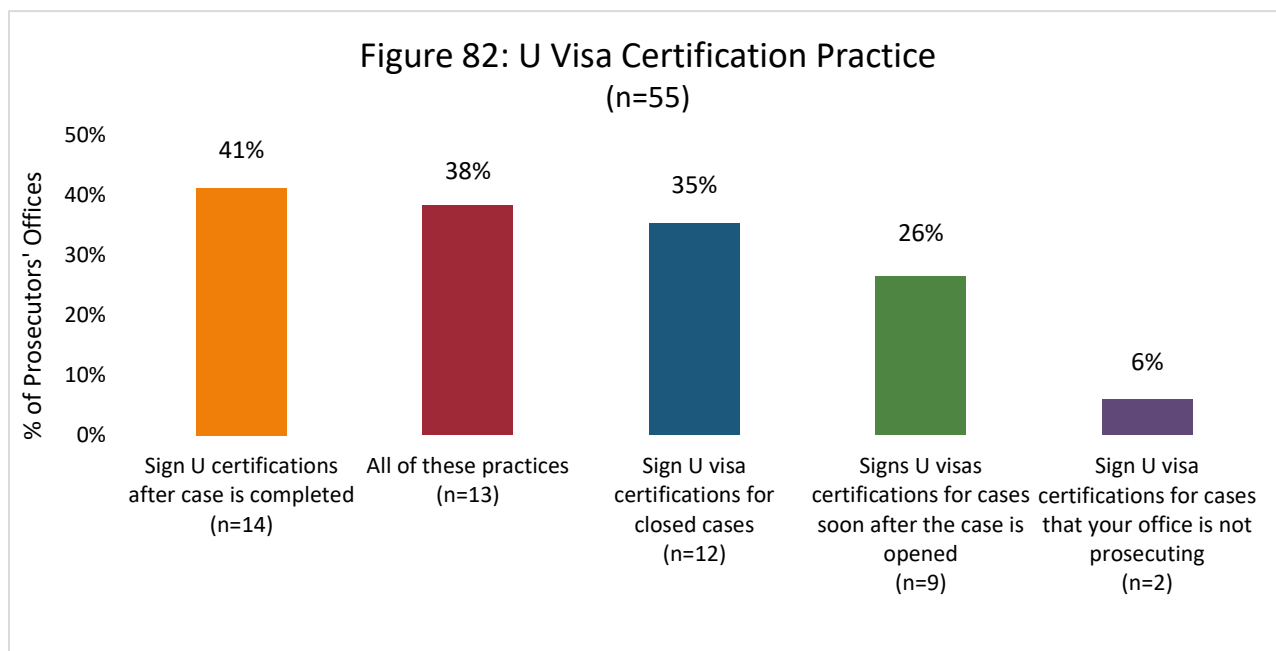
Eighteen of the thirty-four (36%) prosecutors participating in the survey who work in agencies that sign U visa certifications reported the numbers of visas they sign annually (See, figure 81). These prosecutors' 18 agencies reported signing a total of 761 U visa certifications annually. The number of U visa certifications signed ranged from 1 to 200.



Many prosecutors who work in Signing Agencies reported that they have implemented best practices recommended for U visa certification by the U.S. Department of Homeland Security (DHS).³³ Examples of recommended practices include: signing U visas soon after the agency receives the case (26%, n=9 implemented this), certifying based on detection including when their office decides not to prosecute (6%, n=2), and signing certifications in closed cases (35%, n=12). However, the survey also found certification practices that are not recommended or required by DHS. A substantial percentage of respondents (41%, n=14) sign U visa certifications after the criminal case is completed.³⁴ Many prosecutors' offices (38%, n=13) reported that employ both of these practices. (See, figure 82).

³³ See DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 18 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> ("There is no required time when you may or may not sign a certification. It is possible to sign a certification at any stage in the case, including at the point of detection, during an investigation, when the prosecutor initiates a prosecution, before a trial, whether or not the victim is needed to testify, and after the case is concluded").

³⁴ Training tools for prosecutors on best practices for prosecutions in cases involving immigrant victims can assist prosecutors' offices in developing case strategies that both remove barriers and address concerns that lead prosecutors to delay certifications and promote a higher probability of attaining convictions in these cases. Tools can be accessed at: <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>



Although it can be helpful for prosecution agencies to implement U visa certification policies, they are authorized to certify without having to implement a certification policy under federal regulations.³⁵ Prosecutor's offices can initiate certification practices with certifications being signed by the head of the prosecution agency (e.g. the elected prosecutor or District Attorney) or by prosecutors with supervisory authority whom the agency head designates.³⁶

Survey participants working in agencies that had established U visa certification policies or practices provided the following examples of their U visa practices:

- The U visa certifications are all routed to and processed by a dedicated team of prosecutors and support staff designated as U visa certifiers;
- Each prosecution branch has designated deputies that sign U visa certifications for victims in their respective case load;
- Several senior prosecutors are designated as U visa certifiers for the agency;
- Victim advocates and victim witness staff are involved in reviewing and preparing U visa certification requests for final review by the U visa designated prosecutor certifier (agency head or designated certifier);
- U visa certification requests are U reviewed by the prosecutor who prosecuted the victim's case who drafts the U visa certification and sends it to the agency's U visa certifier for signature; and/or
- Agency staff conduct a thorough case review, speak with prosecutors and law enforcement officials involved in the case, in some cases may interview the victim,

³⁵ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, 16 NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

³⁶ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 15 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

collect and verify information about the victim's helpfulness including but not limited to police reports, 911 calls, investigative interviews with police and prosecutors and provide this information to their prosecution agency certifiers.

T Visa Certification Practices

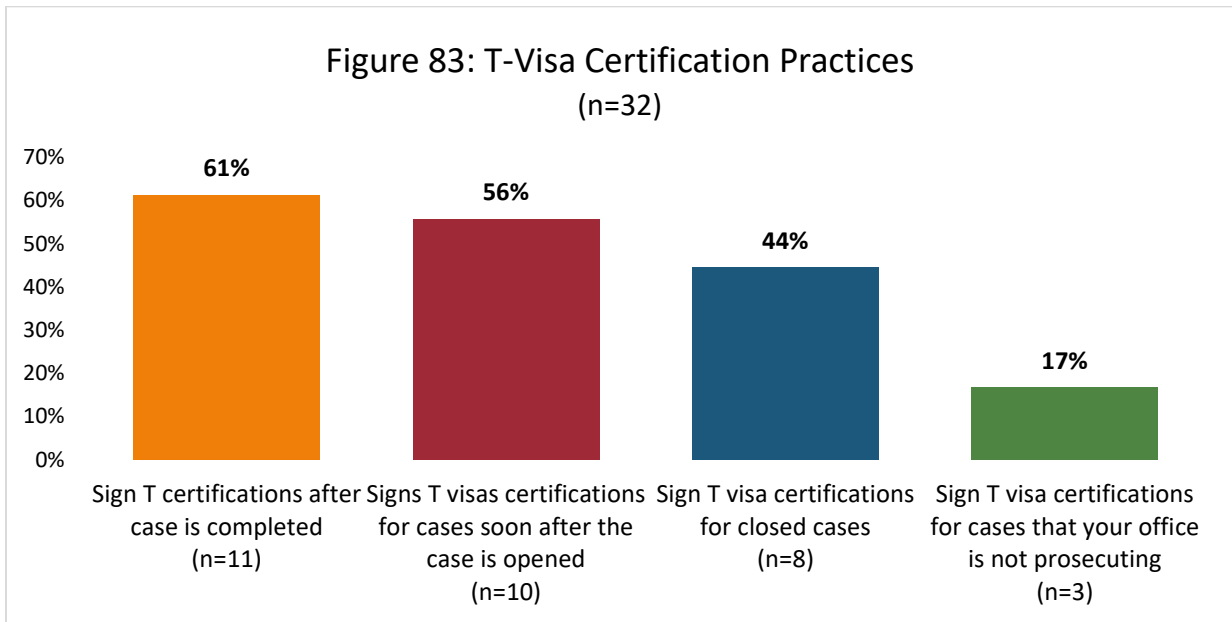
Over half (56%, n=10) of the participating prosecutors reported employing the DHS supported best practices³⁷ of signing T visa certifications soon after the case is opened. They are also signing U visa certifications for closed cases (44%, n=8), and in cases their office has decided not to prosecute (17%, n=3). As discussed above, in addition to these T visa certification practices, less than a quarter (23%, n=11) of the prosecutors surveyed were also requesting continued presence for human trafficking victims from federal immigration authorities for victims and witnesses of human trafficking criminal investigations and prosecutions.

However, the majority (61%, n=11) of the prosecutors participating in the survey reported that they often wait to sign T visa certifications until after the case is completed (See, figure 12). The data shows that among the prosecutors participating in the survey, the percentage waiting to sign T visas until after prosecution is complete is higher than for U visas (61% vs 41%). As discussed above regarding U visas, prosecutors of human traffickers could improve outcomes of trafficking prosecutions by employing prosecution strategies that include early certification for T visa victims.

Early certification practices should be part of a pre-trial strategy that prepares prosecutors to be ready to respond effectively when defense counsel raises the immigration status of the victim or U or T visa certification in the criminal case. If the victim's credibility is challenged by the defense using the U or T visa, prosecutors can introduce the victim's prior consistent statements in the criminal case. This evidence becomes admissible evidence to rehabilitate the victim, showing that the victim's testimony at trial is the same as the statements the victim made to law enforcement and prosecutors before the victim learned about the U or T visa program.³⁸

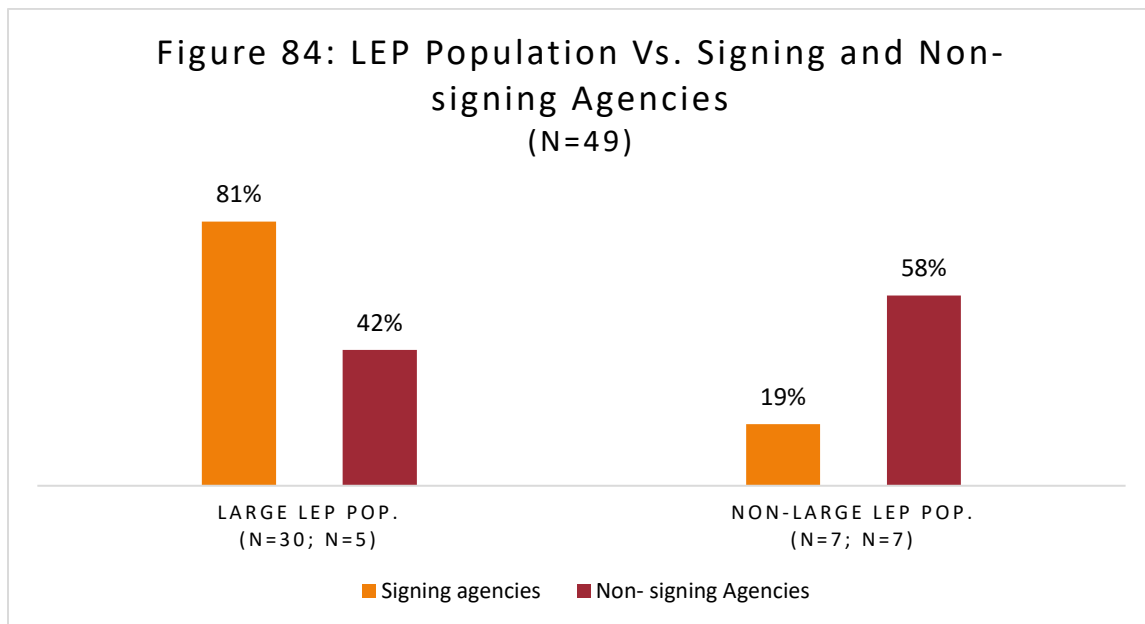
³⁷ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 18-19 (November 30, 2015), <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/> ("It is possible to sign at any stage of the case including at the point of detection...and after the case is closed."); ("may sign when the prosecutor decided not to prosecute").

³⁸ Training tools for prosecutors on best practices for prosecutions in cases involving immigrant victims can assist prosecutors' offices in developing case strategies that both remove barriers and address concerns that lead prosecutors to delay certifications and promote a higher probability of attaining convictions in these cases. Tools can be accessed at: <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>



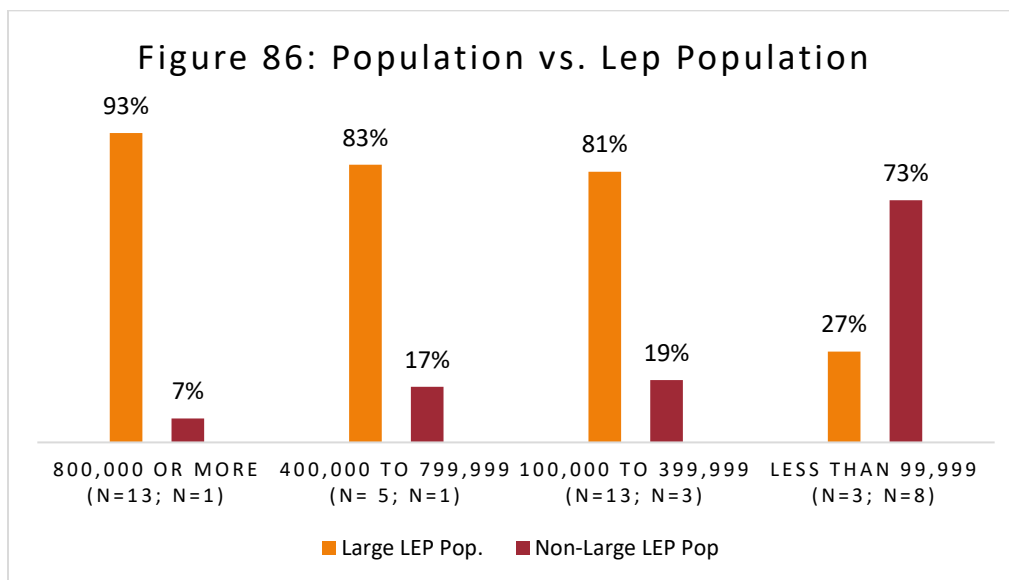
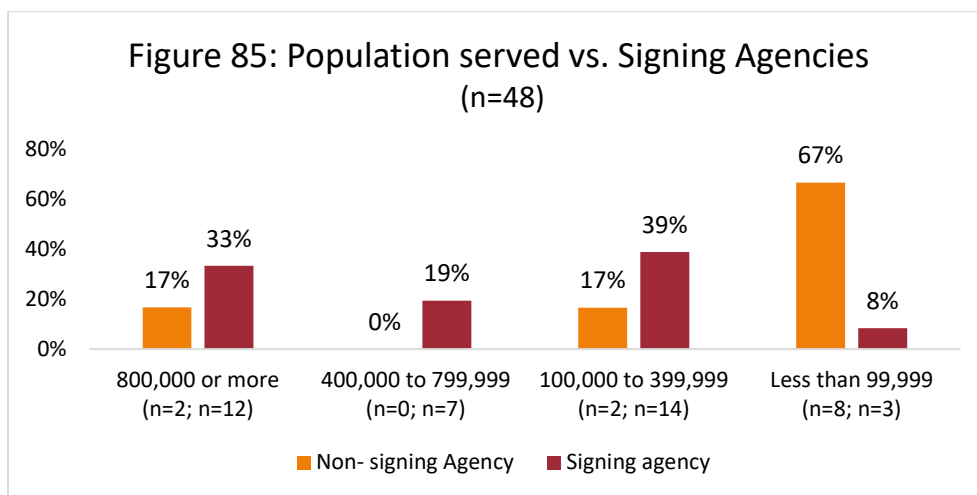
Populations served by Signing and Non-Signing Prosecutors' Offices

The survey data enabled the analysis of whether and how Signing Agencies and Non-Signing Agencies differ. The majority (81%, n=30) of prosecutors in the 37 “Signing Agencies” worked in jurisdictions with large Limited English Proficient (LEP) populations. Among the 12 “Non-Signing Agencies,” 42% (n=5) reported that they worked in jurisdictions with large LEP populations and 58% (n=7) reported that they worked in jurisdictions that serve small LEP populations. (See, figure 84).



The prosecutors in Signing Agencies served jurisdictions with a wide range of population sizes. Signing Agencies were located in jurisdictions with population sizes of 800,000 or more (33% n=12), of 400,000 to 799,999 (19% n=7), of 100,000 to 399,999 (39% n=14) as well as

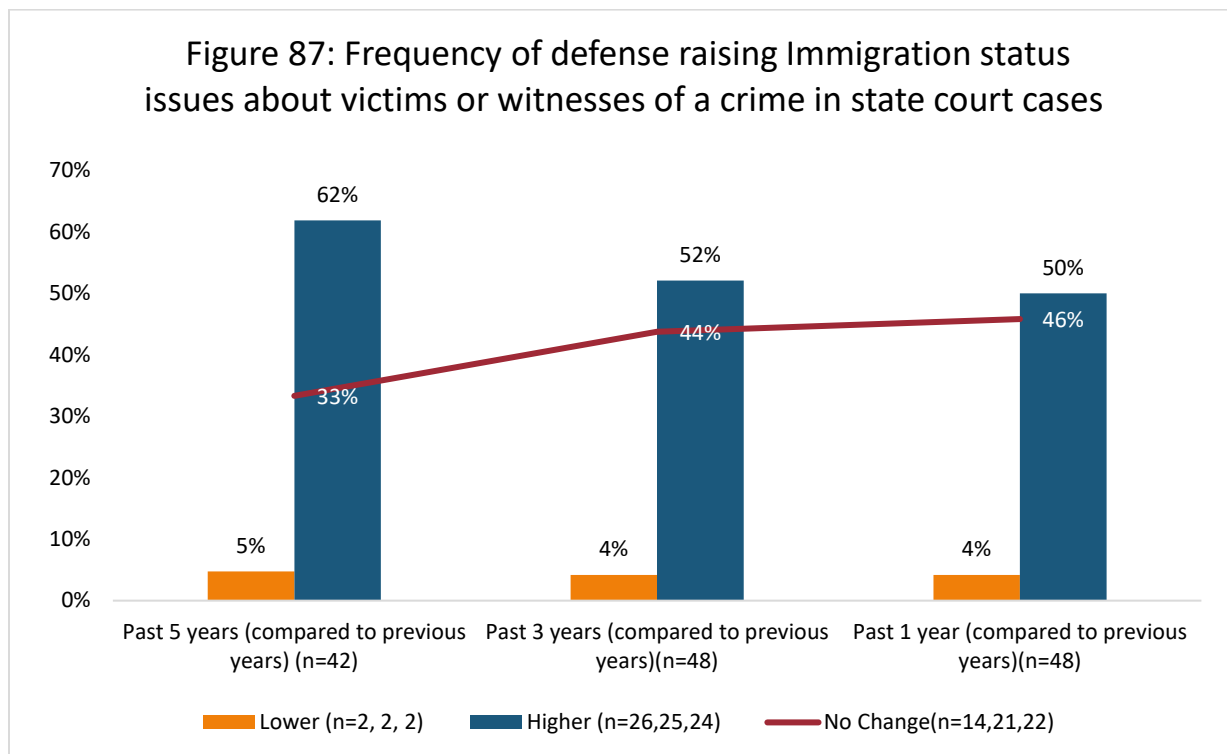
small jurisdictions with less than 99,999 inhabitants (8% n=3). In contrast, the majority of prosecutors working in Non-Signing Agencies (67% n=8) worked in small jurisdictions with populations of less than 99,999 (See, figure 85). The data also showed that prosecutors working in signing agencies were not limited to larger jurisdictions with significant LEP populations. Figure 86 illustrates that many of the prosecutors working in signing agencies were working in smaller communities with smaller LEP populations.



Immigration Status Issues in Criminal Prosecutions

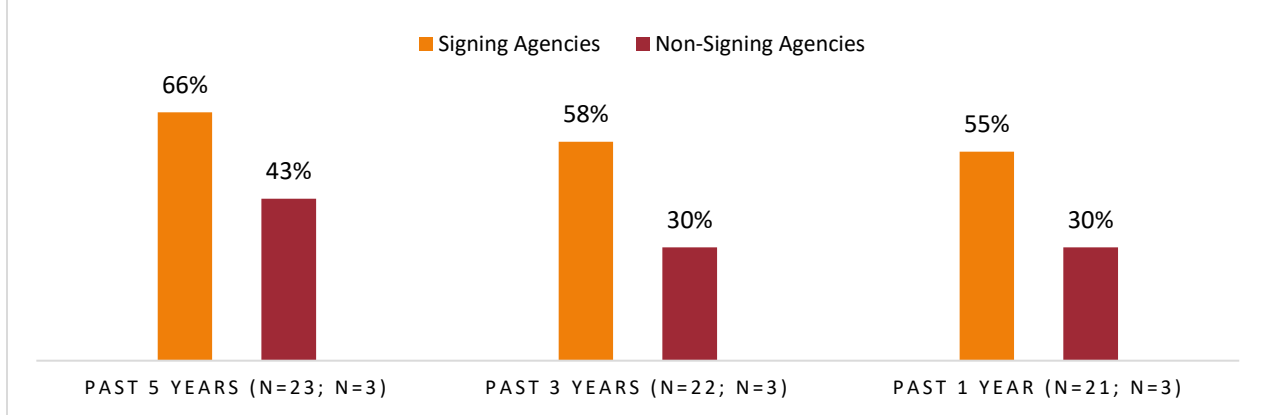
The survey explored whether the frequency of defense raising immigration status issues about victims or witnesses of a crime in state courts has changed in the past five, three, and one year(s). The majority of participating prosecutors (62%, n=23) indicated that immigration status issues were raised in state criminal courts cases more frequently in the past five years than ever

before. However, the extent to which immigration issues were raised about a crime victim or witness appears to be dropping slightly with time. Nevertheless, at least half of prosecutors responding to this question (n=25) reported that the cases where defense counsel is raising immigration status of the victim in criminal prosecutions remains high. The percent of prosecutors reporting higher rates of this defense counsel raise the immigration status of the victim as a defense strategy in the past 3 years compared to prior years was 52% (n=22) and in the past year compared to prior years was 50% (n=21). (See, figure 87).



The survey also sought to examine the extent to which prosecutors working in both Signing Agencies and Non-Signing Agencies were encountering criminal defense counsel raising immigration status of victims in a criminal prosecution. Although prosecutors in Signing Agencies reported encountering cases where defense counsel attempts to raise the immigration status of a victim in a criminal prosecution more frequently than non-signing agencies, the number of prosecutors encountering this appears to be declining slightly over the past 5 years (See, figure 88).

Figure 88: Percentage Of Prosecutors (Signing Vs Non-signing) Who Reported A Higher Frequency Of Defense Raising Immigration Status Issues About Victims Or Witnesses Of A Crime In State Court Cases



One contributing factor to this decline of defense attorneys raising the victims' immigration status could be the training that prosecutors are receiving on best practices for prosecution of criminal cases involving immigrant crime victims. In a growing number of jurisdictions prosecutors are successful in arguing that raising the immigration status of a victim or witness in a criminal case is prejudicial and irrelevant, and should be excluded from the criminal case.³⁹ In cases involving immigrant crime victims and witnesses, prosecutors should consider this approach in addition use of prior consistent statements and VAWA confidentiality laws as strategies to educate the jury and limit the impact of immigration-status questions or evidence on the jury.

In cases where the prosecutor is not able to keep immigration status issues out of the criminal case altogether, an alternate strategy is successfully being employed by prosecutors. If the defense counsel questions the witness or presents evidence attacking the credibility of the immigrant victim witness alleging that the victim is lying about the crime victimization to gain access to immigration status, prosecutors can set out a timeline describing when the victim learned about immigration relief and then introduce the victim's prior consistent statements as rebuttal.⁴⁰ As prosecutors take this approach in jurisdictions across the country, they are more successful in gaining convictions and the number of cases in which defense counsel raises the U or T visas as a defense tactic in criminal case often declines.

- NIWAP and AEquitas, the Prosecutors Resource on Violence Against Women, have been training prosecutors on these best practices for prosecutors' response when defense attorneys raise any of the following three issues in a prosecution involving an immigrant victim or witness: The victim's immigration status be raised by the defense attorney by during cross examination of the immigrant victim or witness, by presenting evidence in the case or other means

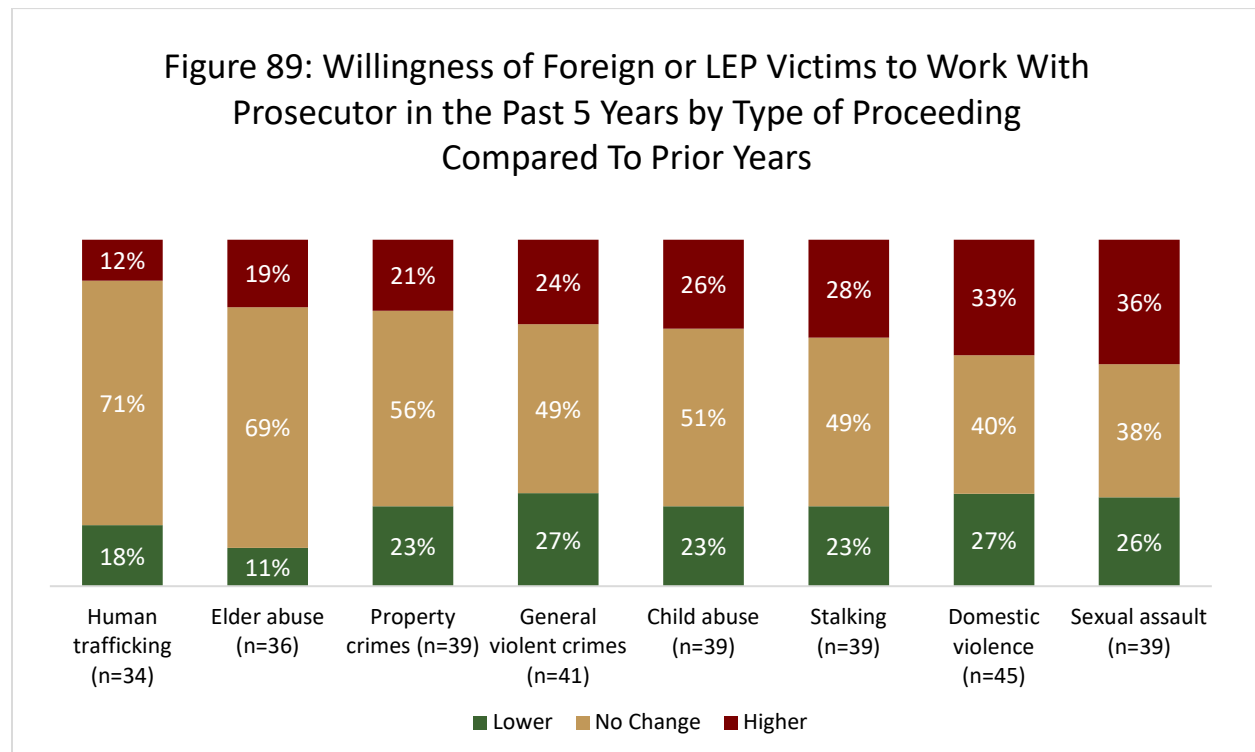
³⁹ See 2017 WA REG TEXT 475745 (NS); See also *Evidence Rule 413 - Unpacking Washington's New Procedural Protections for Immigrants*, NWLAWYER WASHINGTON STATE BAR ASSOCIATION (forthcoming 2018).

⁴⁰ *Training Tools for Prosecutors on the U Visa, VAWA and Criminal Court Discovery*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (November 8, 2017), <http://niwaplibrary.wcl.american.edu/prosecutors-tools/>

- When the defense tries to impugn the victim's credibility by arguing that the victim is lying or has made up the abuse or other crime victimization in order to obtain a U or T visa or VAWA self-petition
- Best practices for responding to discovery requests seeking information about a victim or witnesses immigration case file, the existence of an immigration case, decisions made in the victim's immigration case or the U or T visa certification.

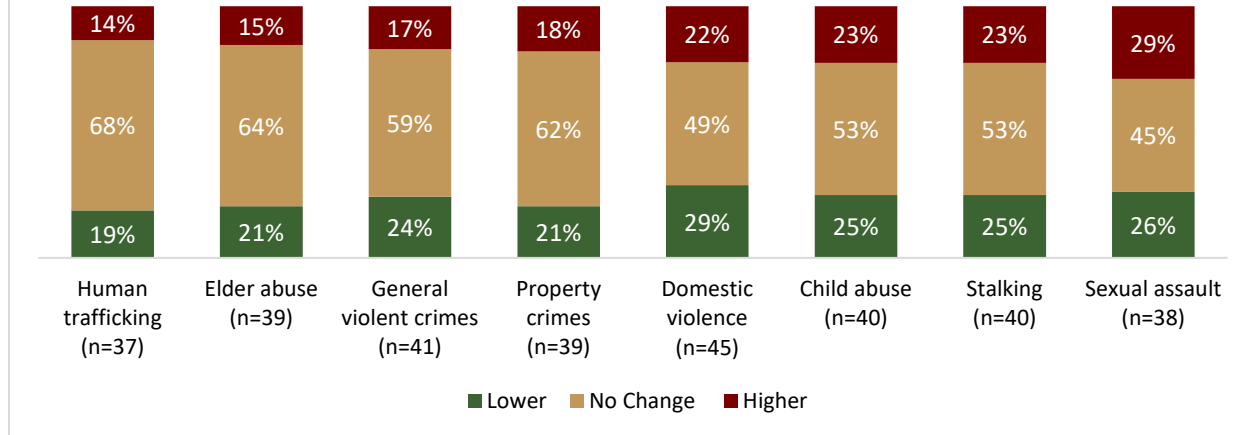
Immigrant and LEP Victims Willingness Work With Prosecutors over the Last Five, Three, and One Year(s)

More than a quarter of prosecutors participating in the survey reported higher levels of willingness by immigrant and LEP victims to work with prosecutors in the past 5 years relative to years before. Immigrant and LEP victims were willing to work with prosecutors on sexual assault cases (36%, n=14), domestic violence cases (33%, n=15), stalking (28%, n=11), and child abuse cases (26%, n=10) (See, figure 89).



The prosecutors' responses to the questions regarding immigrant and LEP victims' willingness to cooperate with them as less or the same for the last three years compared to earlier years. The only type of case for which a substantial number of prosecutors reported a higher level of victim willingness to cooperate with prosecutors in the past 3 years compared to prior years is sexual assault (29%, n=11). Most of the prosecutors however, reported no change in the level of cooperation of immigrant and LEP victims (see figure 90).

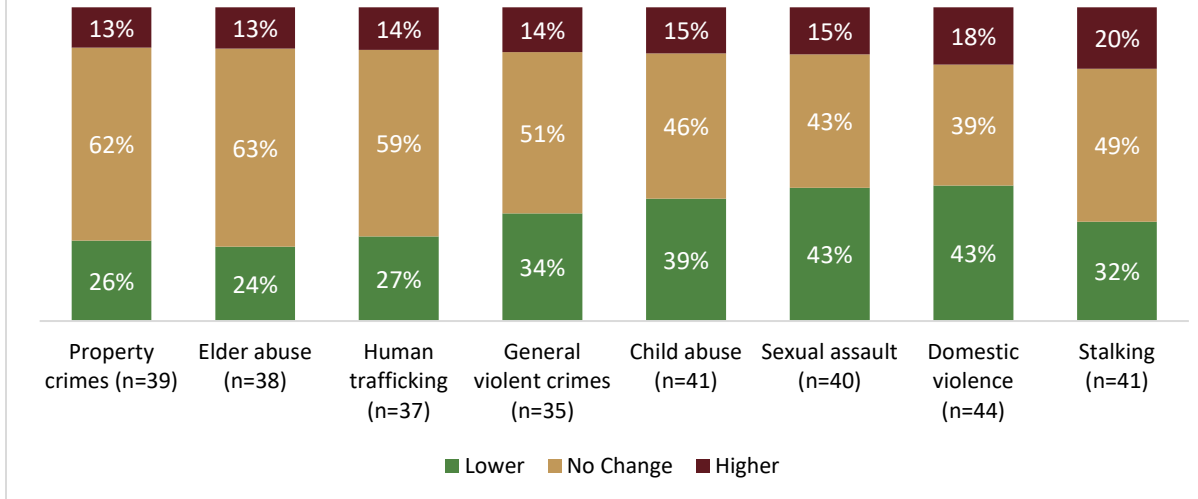
Figure 90: Willingness of Foreign or LEP Victims To Work With Prosecutor In The Past 3 Years (Compared To Prior Years)



The prosecutors' survey responses regarding immigrant and LEP victims' cooperation with them within the immediate the prior year were also significant.⁴¹ Within the past year, the willingness of immigrant and LEP victims to cooperate in criminal prosecutions according to the prosecutors' responses, was lower than they had reported for earlier years. (See, figure 91). The criminal cases for which immigrant and LEP victims were least willing to cooperate were: domestic violence (43%, n=19); sexual assault (43%, n=17); and child abuse (39%, n=16). However, these were not the only types of cases where immigrant and LEP victims were less willing to cooperate with prosecutors. Figure 21 shows the extent to which in the past year compared to prior years immigrant victims' willingness to work with prosecutors is decreasing for general violence crimes, stalking, human trafficking, property crimes, and elder abuse .

⁴¹ The survey was administered between October 9 and November 20, 2017.

Figure 91: Willingness of Foreign or LEP Victims To Work With Prosecutor In The Past 1 Year Compared To Prior Years



Since the majority of survey participant’ prosecutors worked in Signing Agencies, the next section of this report looks particularly the data from regarding immigrant victim cooperation with Signing Agencies. The survey shows that a large number of prosecutors working in Signing Agencies found that immigrant and LEP victims maintained either the same level or higher levels of willingness to cooperate with prosecutors in the past 5 and 3 years relative to years prior (See, figures 92 and 93). However, this level of cooperation in cases of immigrant crime victims dropped in the during the past year compared to prior years particularly for domestic violence (17-19%), sexual assault (16%) and child abuse (17-19%). (See, figure 94).

Figure 92: Signing Agencies Reporting Willingness of Immigrant Victims to Cooperated Higher or the Same as Prior Years by Crime

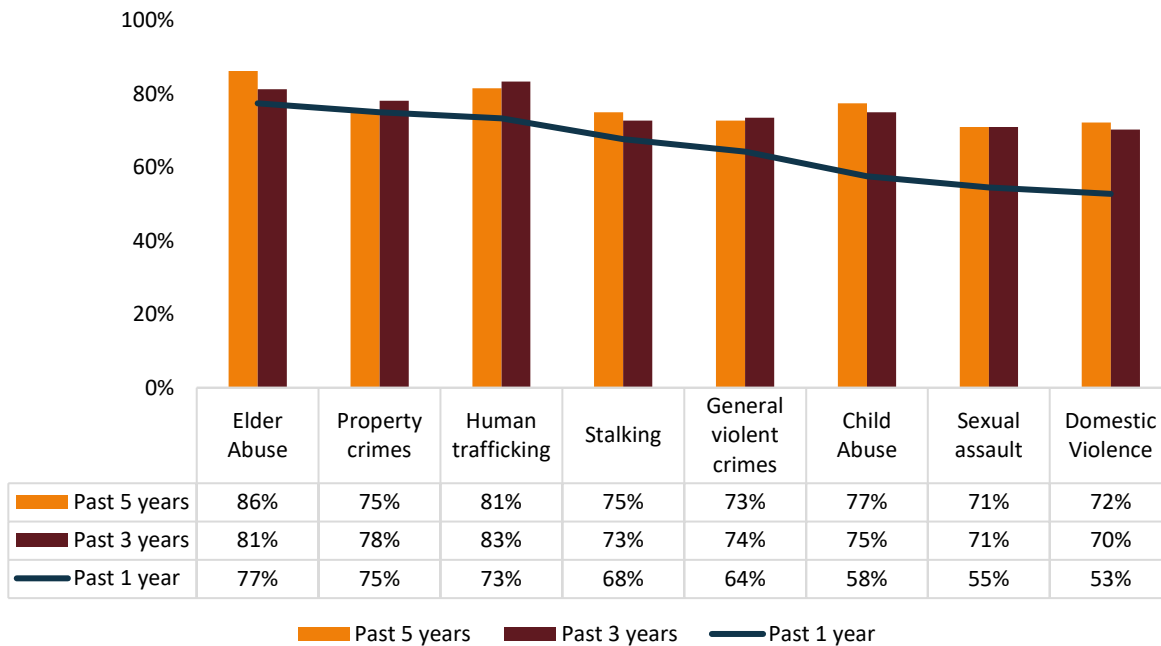
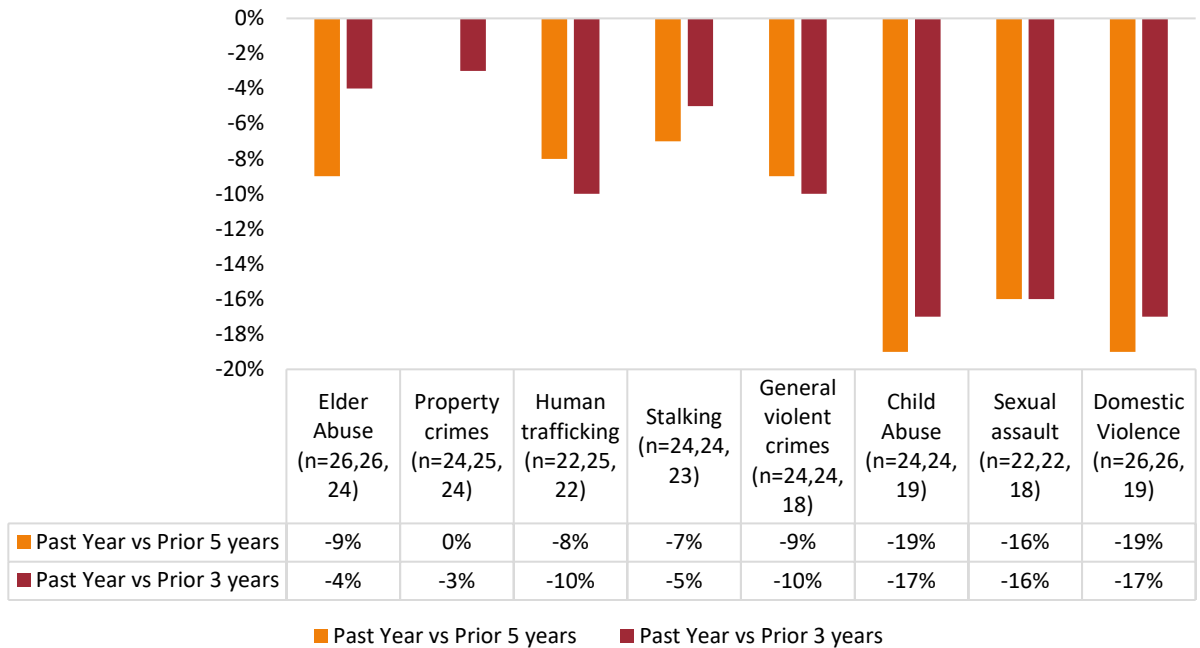


Figure 93: Responses of Prosecutors in Signing Agencies about Immigrant Victim's Willingness to Cooperate Compared to Prior Years (Higher or the Same)

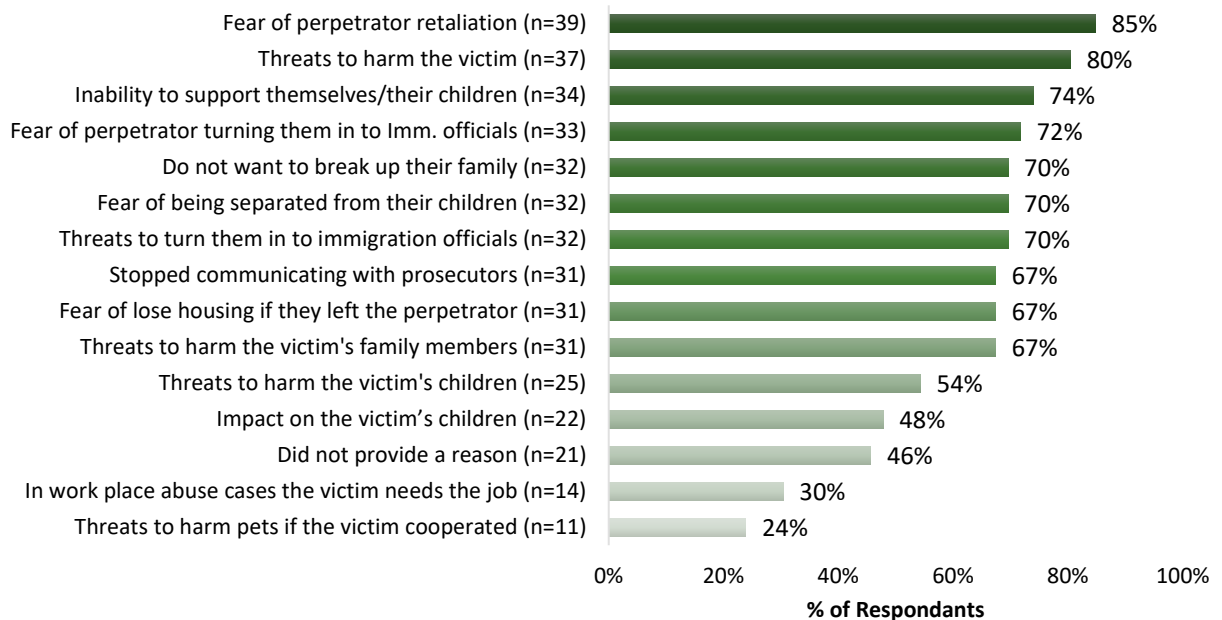
Types of crimes	Past 5 years		Past 3 years		Past 1 year	
	%	#	%	#	%	#
Elder Abuse	86%	26	81%	26	77%	24
Property crimes	75%	24	78%	25	75%	24
Human trafficking	81%	22	83%	25	73%	22
Stalking	75%	24	73%	24	68%	23
General violent crimes	73%	24	74%	25	64%	18
Child Abuse	77%	24	75%	24	58%	19
Sexual assault	71%	22	71%	22	55%	18
Domestic Violence	72%	26	70%	26	53%	19

Figure 94: Decline in Willingness of Immigrant Crime Victims to Cooperate With Prosecutors in Signing Agencies - Past year compared to Prior Years



To better understand the factors that impede immigrant and LEP victims' willingness to cooperate with prosecutors' offices in criminal cases, the survey asked prosecutors for the reasons that immigrant and LEP victims gave them for not cooperating or not continuing to cooperate in a criminal investigation or prosecution. The top two reasons prosecutors reported are consistent with the concerns of all victims in criminal prosecutions – fear of perpetrator's retaliation (85%, n=39) and perpetrator's direct threats to harm the victim if the victim cooperates (80%, n=37). For immigrant and LEP victims the additional fears that the perpetrator will have the victim deported (72%, n=34) and the perpetrator's direct threats to deport the victim (70%, n= 32%) also play an important role in the unwillingness to cooperate (See figure 95).

Figure 95: Reasons for LEP Victim's Non-Cooperation with Prosecutors
(n=425)



Prosecutors also provided information about the factors that are negatively affecting prosecutor-community relationships with foreign-born or LEP communities. The factors most commonly listed by survey participants were:

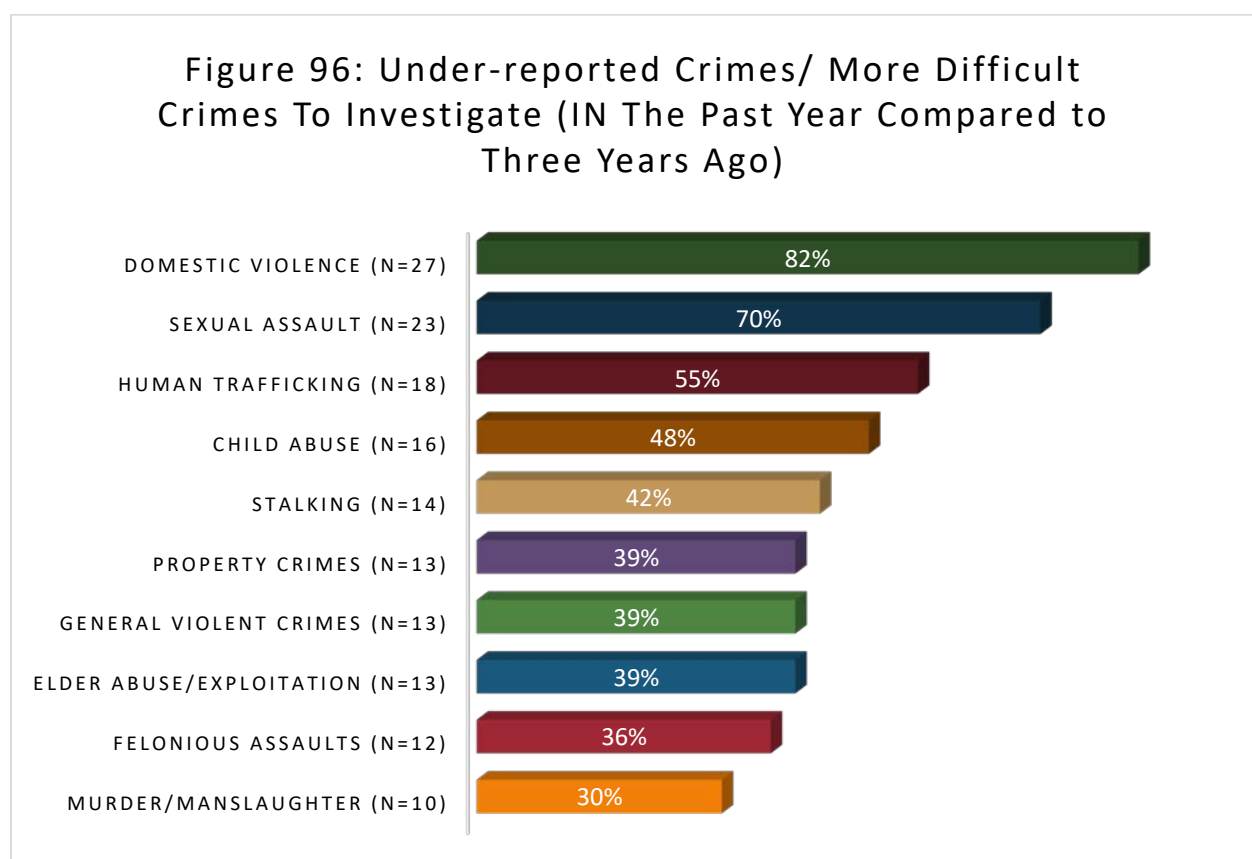
- Victim's increased fear and risk of deportation and fear that deportation will lead to separation from children
- The presence of immigration enforcement officials from the Department of Homeland Security at state courthouses fuels the victim's fears that coming to court will lead to their deportation
- Rise in anti-immigrant sentiments including statements by federal government officials that further reinforce deportation fears
- Immigrant victims misunderstanding of the separate roles and jurisdictions of state, local police and prosecutors versus the immigration enforcement role of ICE
- Lack of knowledge about help available from law enforcement, prosecutors and immigration relief for immigrant crime victims
- Difficulties in communicating with LEP victims due to lack of access to qualified interpreters

The factors contributing to victims' fears of cooperating with prosecutors impact prosecutors' ability to criminally charge and successfully convict perpetrators of crimes committed against immigrant and LEP victims. Prosecutors participating in the survey noted that victims' cooperation is fundamental to the prosecution. The factors listed above and those contained in figure 24 often result in immigrant or LEP victims' decisions not to participate in criminal investigations, not to cooperate with prosecutors, and/or not to testify in criminal

prosecutions. When victims decide not to cooperate, the participating prosecutors noted that this often results in prosecutors:

- Not being able to prove their case at trial
- Deciding not to prosecute cases that are weaker without the victim's testimony
- Finding the criminal case against the perpetrator more difficult to successfully prosecute
- Agreeing to pleas that result in shorter sentences that the prosecutor would have been able to more successful if victim's cooperation
- Winning fewer convictions

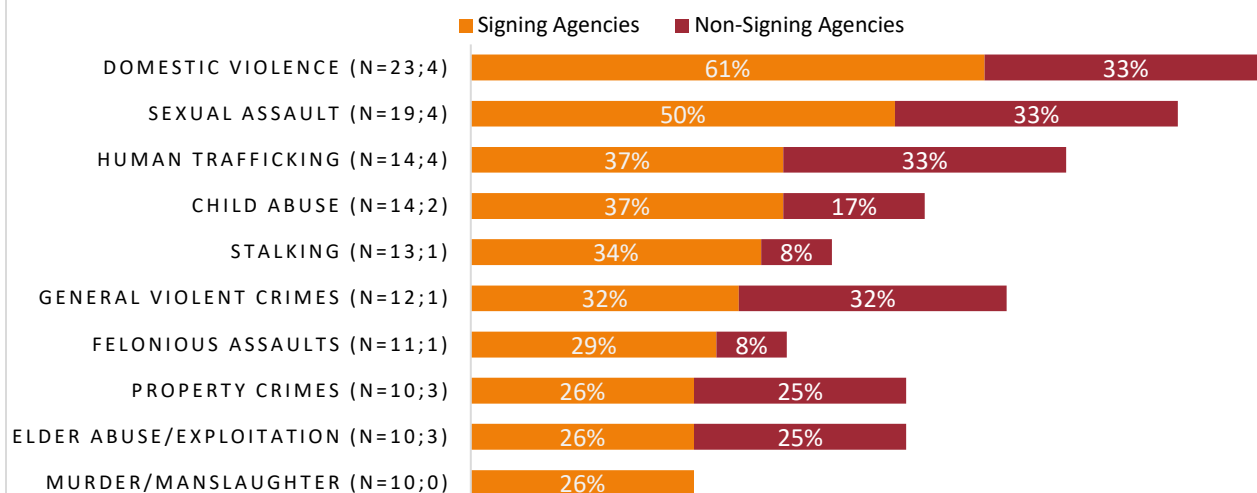
The survey asked prosecutors to rank the crimes involving immigrant and LEP victims that have become increasingly underreported or harder to investigate and prosecute during the past year relative to three years prior. Their responses show that domestic violence (82%, n=27), sexual assault (70%, n=23), human trafficking (55%, n=18), and child abuse (48%, n=16) are the crimes that have become increasingly underreported and harder to investigate and/or prosecute (See, figure 96).



The survey also sought to understand the whether prosecutors from Signing Agencies differed from prosecutors from Non-Signing Agencies in terms of their views about whether the decline in immigrant victim cooperation noted in figure 94 was making cases involving immigrant victims harder to investigate and prosecute. As figure 97 illustrates a higher percentage of prosecutors from Signing Agencies, compared to Non-Signing agencies reported

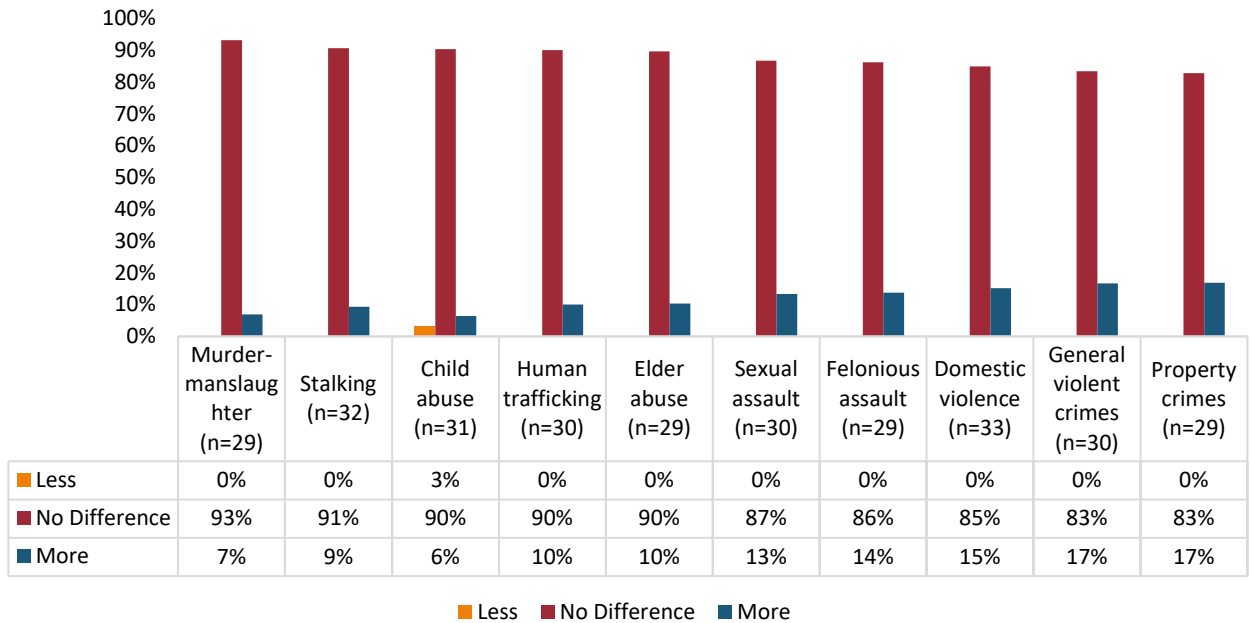
that crimes against immigrant victims were underreported and were harder to prosecute in the past year compared to three years ago. For instance, 61% (n=23) of prosecutors in signing agencies identified domestic violence as underreported/harder to investigate, compared to 33% (n=4) of prosecutors in non-signing agencies. Prosecutors in signing agencies also identified that in the past year murder (26%, n=10) has been underreported/harder to investigate or prosecute compared to 3 years ago compared to 0-% from Non-Signing Agencies. (See, figure 97).

Figure 97: Percentage Of Prosecutors (Signing vs Non-Signing) Who Stated the Following Crimes as Under-reported Or Harder To Investigate Or Prosecute Comparing The Past Year With Three (3) Years Ago



Prosecutors also identified types of cases where recidivism has increased in the past three years. The data shows that the top three types of cases with the largest increase in recidivism during that time period were: property crimes (17%, n=5), violent crimes generally (17%, n=5), and domestic violence (15%, n=5). (See, figure 98).

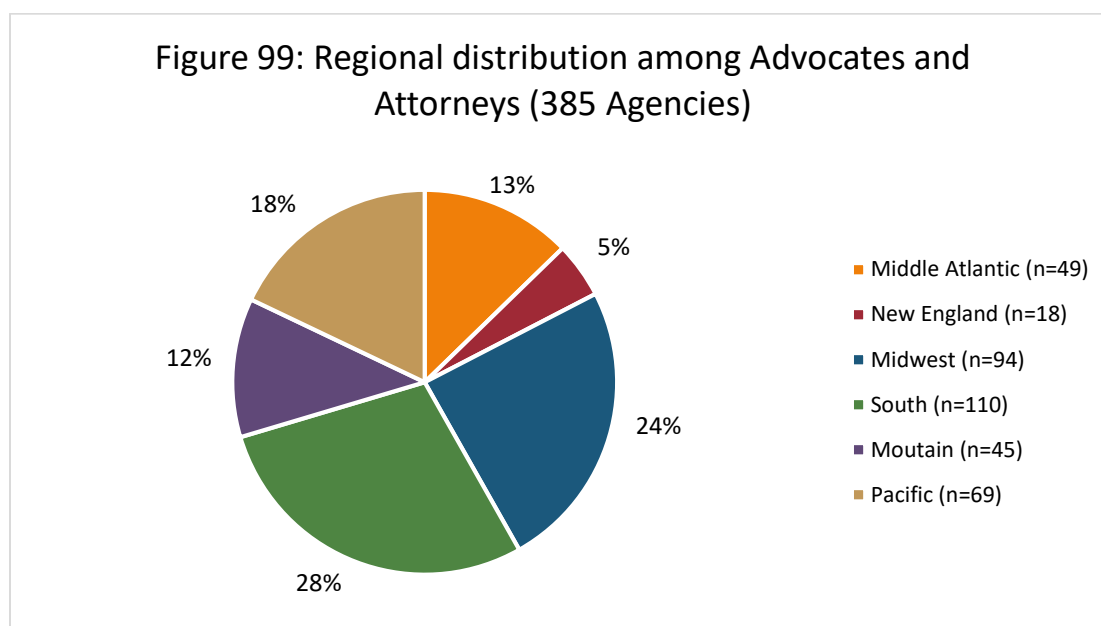
Figure 98: Extent to Which Recidivism Changes in Crimes Against Foreign Born and LEP Victims in the Past Year Compared to Three Years Ago



Part Four: National Survey of Victim Advocates and Attorneys
Findings from 2017 National Survey of Victim Advocates and Attorneys

A total of 389 advocates and attorneys who work with immigrant survivors of domestic violence, sexual assault, child abuse, elder abuse, human trafficking, and other violent crimes participated in a national survey administered in October and November, 2017. Advocate/attorney survey participants worked with a total of 4,228 immigrant victims who were VAWA self-petitioners or U visa, T visa or civil protection order applicants between January, 2016 to October, 2017. More than half (54%)⁴² of the victims the survey participants worked with were limited English proficient. The survey participants worked for agencies that have significant experience assisting immigrant victims, helping a total of 75,979 immigrant victims during this same time period. The immigrant victims they represented had an average of between 2 and 3 children.⁴³ The majority (85%)⁴⁴ of the immigrant victims' children served by the survey participants were U.S. citizens.

Survey participants worked in all 50 states and the District of Columbia. Figure 1 below shows percentage of participants in each region of the United States.⁴⁵ The highest percentage of respondents (29%, n=110) were in the Southern part of the United States⁴⁶ with the greatest proportion in Texas (n=20) and Florida (n=22). (See, figure 99).



⁴² The percentage is equal 228 agencies.

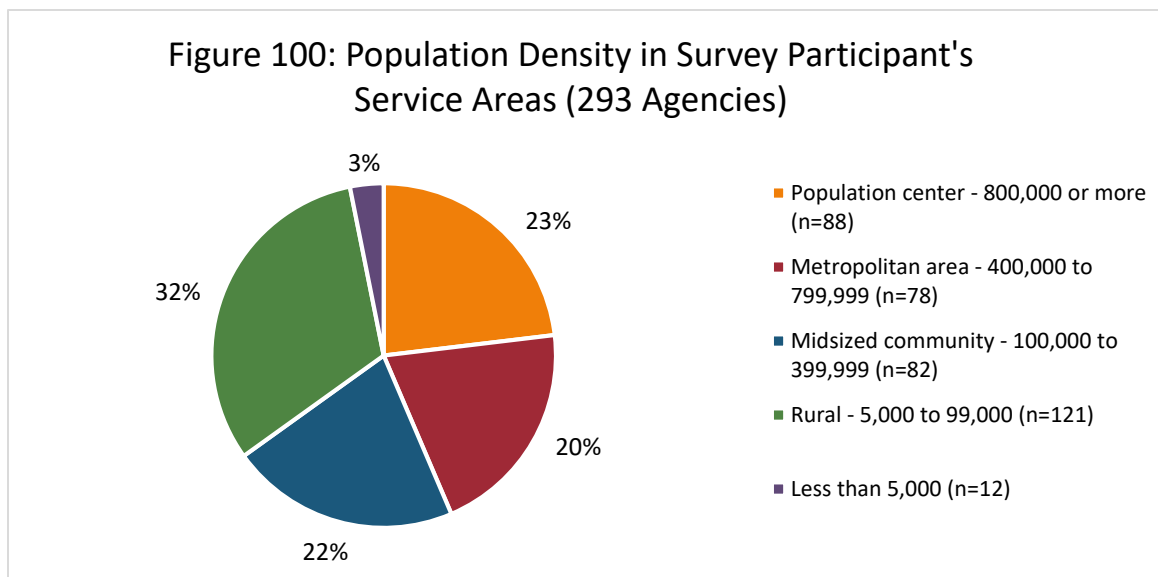
⁴³ The percentage is equal 292 agencies. Average number of children of the immigrant victims that agencies represent was 2.4 children per immigrant victim client.

⁴⁴ The percentage is equal 157 agencies.

⁴⁵ The states were grouped into the following regions: Middle Atlantic (NY, PA, NJ, DC, DE, MD); New England (NH, ME, VT, RI, MA, CT); Midwest (ND, MN, SD, NE, IA, MO, KS, WI, MI, IL, IN, OH); South (OK, TX, AR, LA, KY, TN, MS, AL, FL, GA, SC, NC, VA, WV); West (MT, ID, WY, NV, UT, CO, AZ, NM); Pacific (WA, OR, CA, AK, HI).

⁴⁶ The Southern Part of the United States here consisted of West South Central (OK, TX, AR, LA); East South Central (KY, TN, MS, AL) and the South Atlantic (FL, GA, SC, NC, VA, WV).

The greatest number of survey participants served smaller and rural communities (35%, n=133) with 32% (n=121) working in communities with a population density of 5000 to 99,000 and 3% (n=12) in small isolated rural communities with a population density of less than 5,000 people. Participants working in large cities and metropolitan jurisdictions accounted for 23% (n=88) of the total participants. (See, figure 100).



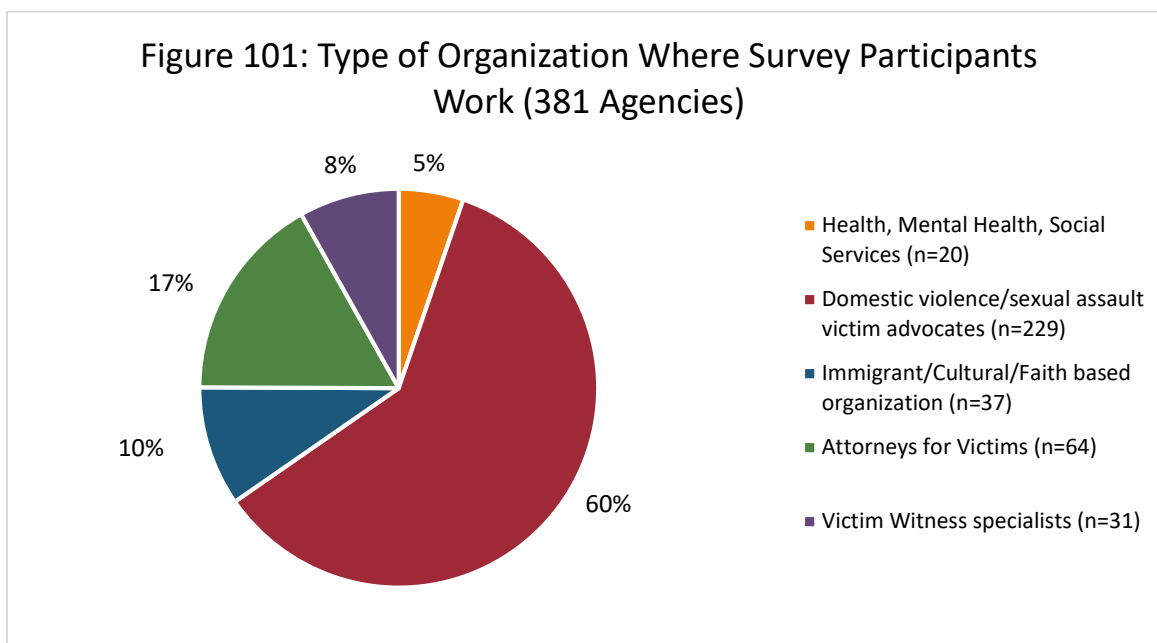
Participants in the advocates/attorneys survey included a range of professionals who provide direct services to immigrant survivors of domestic violence, sexual assault, child abuse, stalking, dating violence, human trafficking and other criminal activities covered by the U visa program.⁴⁷ These professionals included:

- Victim advocates working at shelters, rape crisis centers, victim services agencies, immigrant community based organizations and faith based organizations;
- Victim attorneys working in legal aid and legal services organizations, programs serving domestic violence, sexual assault, stalking, dating violence and child abuse victims, immigrant rights legal services agencies, pro bono attorneys working in law firms, and university based victim and immigrant clinics;
- Social workers and other staff working at community base social services programs serving crime victims and/or immigrants;
- Health and mental health care providers; and
- Victim witness staff working in prosecutors' offices.

Over half (60%, n=229) of participants in the survey were victim advocates and another 17% (n=64) were attorneys representing victims. Additionally, 5% of survey participants were victim-witness specialists working for prosecutors' offices. (See, figure 101). The professionals

⁴⁷ INA Section 101(a)(15)(U) U-visa qualifying criminal activity includes, but is not limited to: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, stalking, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, fraud in foreign labor contracting, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, solicitation to commit any of the above-mentioned crimes, or *any similar activity* in violation of federal, state, or local criminal law.

participating in the National Survey of Victim Advocates and Attorneys will be referred to as “advocates and attorneys” throughout this part of the report.



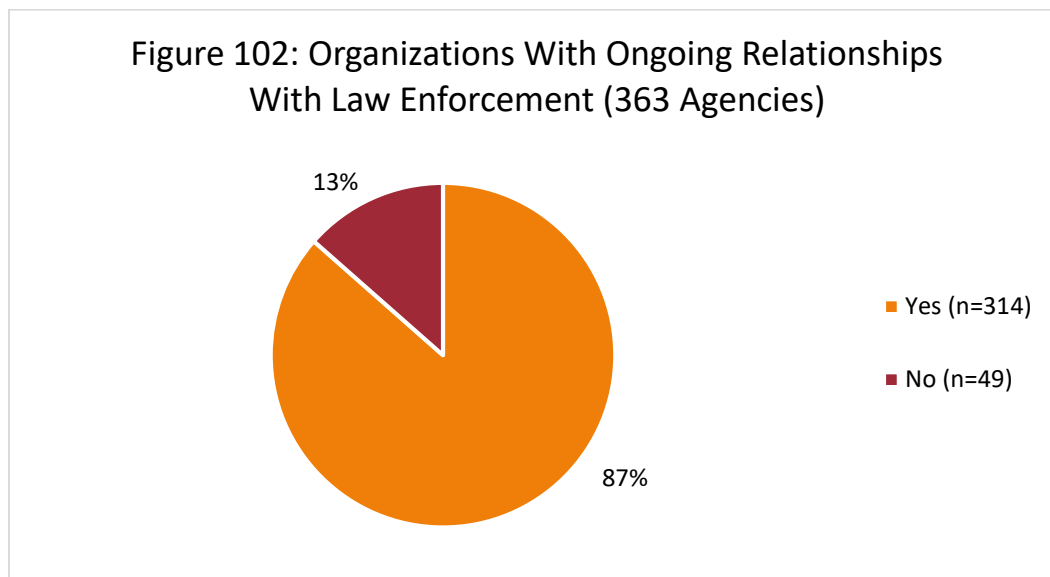
Advocates and attorneys participating in the survey were asked questions requiring two different types of answers. For most of the survey, participants were asked to provide the numbers of immigrant victim clients they worked with and provided a variety of services to during 2016 and 2017. The second type of questions in the survey required the attorneys/advocates to report what they have observed about their immigrant victim clients generally in 2017 relative to 2016.

Many victim and legal services organizations who work with victims of domestic and sexual violence and other crimes have developed effective working relationships with law enforcement agencies.⁴⁸ It is through these relationships that victim advocates and attorneys provide a partnership with justice system staff (e.g., police, prosecutors, courts) who promote the willingness and ability for immigrant survivors of domestic and sexual violence to access legal protections and safety planning that is vital to the safety, security and healing of immigrant victims and their children.⁴⁹ The vast majority (87%, n=314) of this survey’s attorney/advocate participants reported having ongoing working relationships with law enforcement in their local communities. (See, figure 102). These close working relationships are common and best practices for programs working on issues of domestic violence and sexual assault. Seventy-nine

⁴⁸ See Giselle Hass et. al., U-Visa Legal Advocacy: Overview of Effective Policies and Practices, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>; NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, Fact Sheet: Immigrant and Limited English Proficient Victims’ Access to the Criminal Justice System, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013) <http://niwaplibrary.wcl.american.edu/pubs/importance-of-collaboration-victims/>; NATALIA LEE ET. AL., NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/>.

⁴⁹ Nawal H. Ammar et. al., *Battered Immigrant Women in the United States and Protection Orders*, 37 CRIM. JUST. REV. 337, 337-359 (2012), <http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/>.

percent (n=251) of survey participant agencies worked in agencies that served victims of domestic violence and sexual assault (See, figure 103).



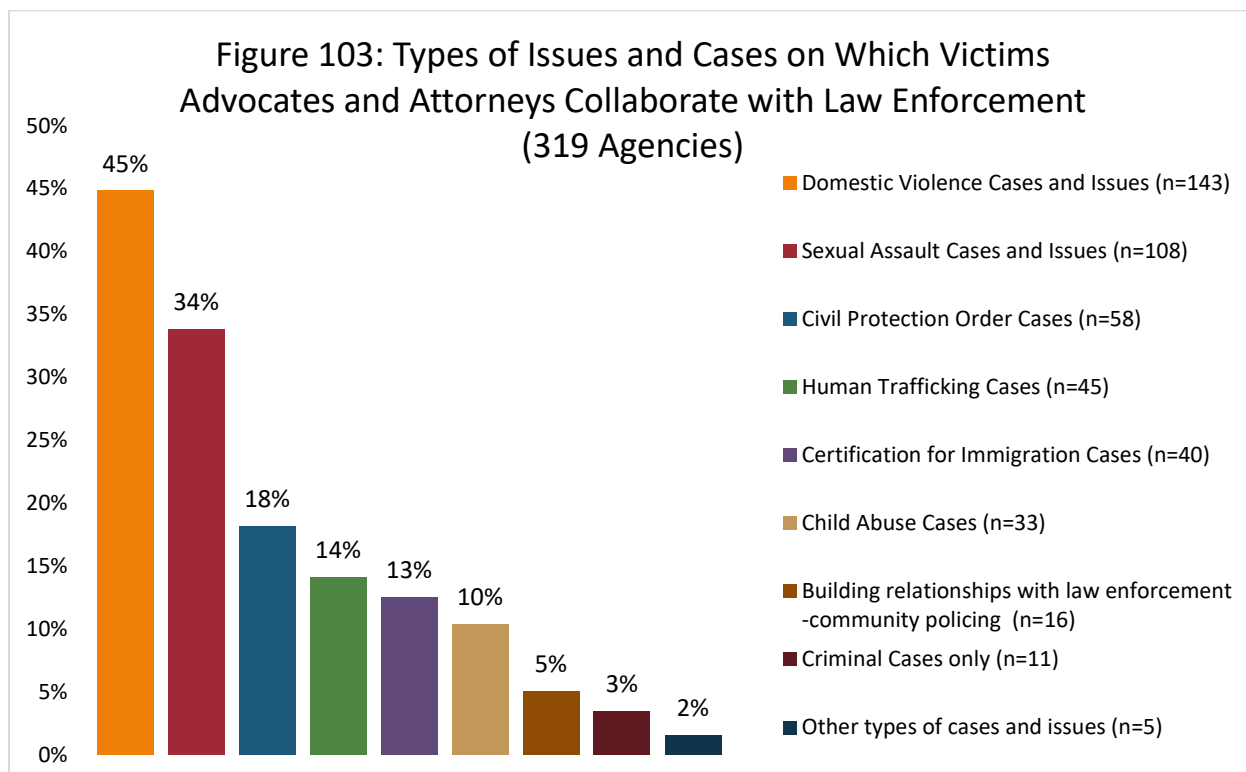
The average length of time the participants reported their agency had been working with law enforcement was 19 years.⁵⁰ Programs collaborate with law enforcement on cases and on community policing efforts related to domestic and sexual violence, human trafficking, and with immigrant and limited English proficient (LEP) communities (See, figure 103). Other issues where they collaborated with law enforcement include assistance with transportation for victims and referring victims for intake at the victim/legal services organization. The majority of the collaborative work reflects best practices where advocates and attorneys participate with law enforcement both on individual cases of crime victims and on Coordinated Community Response (CCR) to domestic violence teams⁵¹ and Sexual Assault Response Teams (SART).⁵² Prior research found that there is a strong correlation between ongoing collaborations between victim advocates/attorneys on domestic and sexual violence issues and whether a local law enforcement agency signs U visa certification on behalf of immigrant victims.⁵³

⁵⁰ The percentage is equal 255 agencies reporting.

⁵¹ *The Blueprint for Safety*, PRAXIS INTERNATIONAL, <http://praxisinternational.org/blueprint-home/blueprint-communities/>. (last visited Apr. 27, 2018)

⁵² Rebecca Campbell et. al., *Sexual Assault Response Team (SART) Implementation and Collaborative Process*, NAT’ CRIM. JUST. REFERENCE SERVICE (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/243829.pdf>; *SART Overview*, END VIOLENCE AGAINST WOMEN INTERNATIONAL, <http://www.evawintl.org/PAGEID7/Best-Practices/Resources/SARRTs>. (last visited Apr. 27, 2018).

⁵³ NATALIA LEE ET. AL., NATIONAL SURVEY OF SERVICE PROVIDERS ON POLICE RESPONSE TO IMMIGRANT CRIME VICTIMS, U VISA CERTIFICATION AND LANGUAGE ACCESS, 10 NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (2013), <http://niwaplibrary.wcl.american.edu/pubs/rsch-police-response-immigrant-victims/>.



Types of Cases Immigrant Victims Pursue

The victim and legal services attorneys and advocates together reported filing a total 4,228 cases on behalf of immigrant victims of domestic violence, sexual assault, child abuse, human trafficking, and other criminal activities between January 2016 and October 2017. The three types of cases victim attorneys and advocates pursued most were VAWA self-petitions/VAWA cancellation of removal cases (44%, n=1868), civil protection orders (38%, n=1619), and U visas (16%, n=695) (See, figure 104). In the VAWA self-petition/cancellation of removal cases, 81% (n=360) of the cases were based on battering, extreme cruelty, sexual assault or child abuse perpetrated by a citizen spouse or parent. In 19% (n=84) of the cases, the perpetrator was a lawful permanent resident.

Survey participants' reported that the cases their agencies filed on behalf of immigrant victims in 2016 relative to 2017, declined by 40% (2,118 cases in 2016 – an average of 234 cases/month - to 1,417 cases in 2017 – an average of 142 cases/month).⁵⁴ This overall decline in cases filed was composed of substantial declines in some immigration case types and increases in the numbers of protection orders immigrant victims were willing to file. Declines and increases by case type were:⁵⁵

- Decline in VAWA self-petitions – 391% lower (2016 =1567; 2017=325)

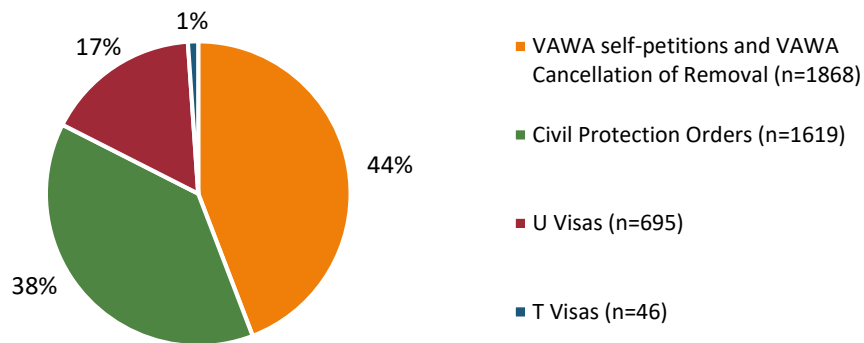
⁵⁴ The survey collected data on cases advocate/attorney participants handled for the full year of 2016 and for January through October 2017. The per month number of cases for all of the agencies participating was used to compare the filing rates in 2016 and 2017.

⁵⁵ All 2017 case filing numbers were calculated by taking the numbers of cases reported for January through October 2017, dividing by 10 to arrive at the average monthly case filings and then multiplying by 12 to obtain the full year 2017 projected number of cases filed.

- Decline in U visas – 31% lower (2016=524; 2017=324)
- Increase in T visas – 64% higher (2016=14; 2017=38)
- Increase in civil protection orders filed – 23% higher (2016=775; 2017=1013)

The survey data illustrate the extent to which the climate of increased immigration enforcement and anti-immigrant public discourse have fueled fears of deportation are leading battered immigrant spouses and children abused by U.S. citizens and lawful permanent resident spouses, parents and step-parents locked in abusive homes. Agencies report filing almost 4 times (3.9) lower rate of filing VAWA self-petitions in 2017 compared to 2016. The effects on battered immigrants is also reflected in the 31% decline in U visa filings in 2017 compared to 2016, since domestic violence and child abuse cases make up approximately 46% of U visa cases filed nationally.⁵⁶

Figure 104: Case Types Pursued in 2016 and 2017 by Immigrant Victims Whom Advocates and Attorneys Served (Cases = 4228)



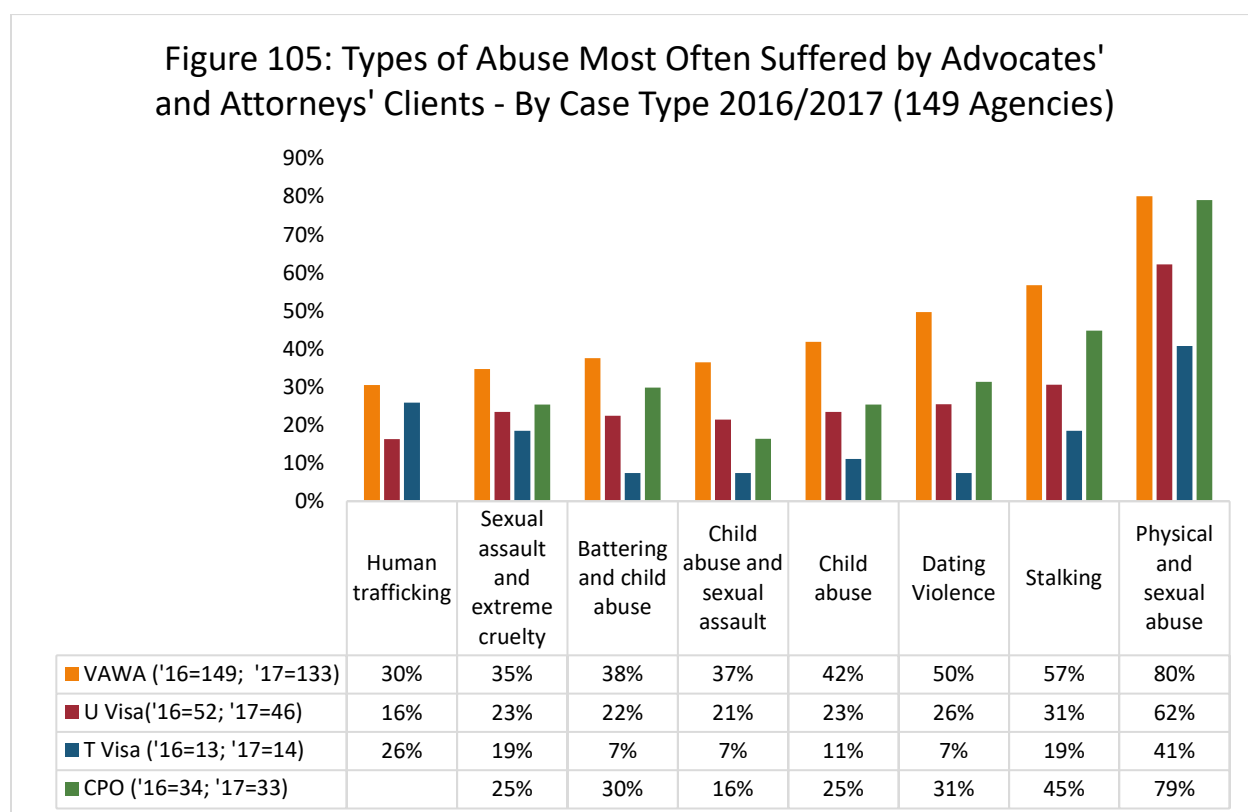
Types of Abuse and Crime Victimization Suffered

Figure 105 shows the responses of the advocates/attorneys (n=149) about the numbers of the overlapping forms of abuse their VAWA self-petitioning, U visa and protection order clients and their children suffered. The survey asked them to check all that apply to the clients they served in 2016 and 2017. There were a total of 447 responses. Attorneys and advocates reported that the majority of their clients (across all types – U visa, VAWA, and CPO) were victims of abuse that included both battering and sexual assault (ranging from 62% for U visa clients to 80% for VAWA clients). In many relationships, this was accompanied by extreme cruelty (ranging from 30% for protection order clients to 50% for VAWA self-petitioners). It is important to note that in many states protection orders are only available to victims of physical and sexual abuse or other behaviors (e.g. stalking, attempted assaults) that constitute crimes

⁵⁶ LESLYE E. ORLOFF & PAIGE E. FELDMAN, NATIONAL SURVEY ON THE TYPES OF CRIMINAL ACTIVITIES EXPERIENCED BY U VISA RECIPIENTS (2011), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-criminal-activities-survey/>.

under state law.⁵⁷ The immigration law definition of domestic violence includes forms of extreme cruelty that may not be considered as criminal or an assault.⁵⁸

This survey also captured the extent to which the abuse underlying the cases advocates and attorneys were working with immigrant victims on included. They included co-occurring domestic violence and child abuse (ranging from 23% in U visa cases to 38% in VAWA self-petitioning cases) and were based exclusively on physical and/or sexual abuse of a child (ranging from 16% or 25%)in civil protection order cases to a high of (40% to 42%) in VAWA self-petitioning cases. While there was co-occurrence of elder abuse reported (ranging from 5% for U visa clients to 13% for VAWA clients), it nevertheless lower than that of child abuse. (See, figure 105).



Additionally, a small proportion of advocates and attorneys reported working with immigrant victims who were involved in the following criminal activities:

⁵⁷ See *Restraining Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/laws/general/restraining-orders> (last visited Apr. 27, 2018); *Appendix N: Domestic Violence Includes Child Abuse and Child Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A GUIDE TO BEST PRACTICE FOR JUDGES AND COURTS (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-n-domestic-violence-abuse-and-neglect/>; Catherine F. Klein; Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 1190 (1993)

⁵⁸ Leslye E. Orloff et. al., *Battering or Extreme Cruelty: Drawing Examples from Civil Protection Order and Family Law Cases*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2015), <http://niwaplibrary.wcl.american.edu/pubs/extreme-cruelty-examples-protection-order/>

- Blackmail, extortion, perjury, obstruction of justice – U visa (14%, n=14); Civil Protection orders (25%, n=17);
- Kidnapping, unlawful restraint, hostage taking, torture – U visa (17%, n=17), Civil Protection Orders (18%, n=12);
- Felonious assault, murder, manslaughter – U visa (12%, n=12); Civil Protection orders (3%, n=2).

Advocates/attorneys were also asked to respond to questions about the types of abuse the children of their VAWA self-petitioning, U visa and protection order clients suffered independent of or in addition to the abuse suffered by their immigrant parent. All forms of immigration relief that protect immigrant crime victims allow immigrant parents to apply for protection when their child is abused whether or not the parent is also abused.⁵⁹

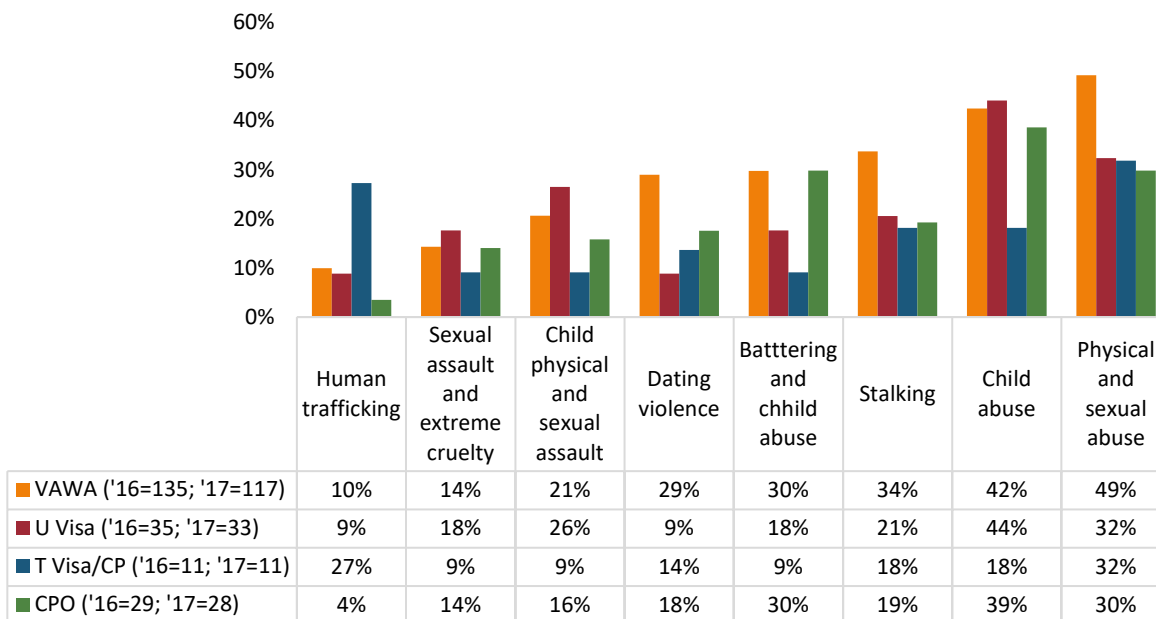
Similarly, non-abused parents can bring civil protection order actions on behalf of their abused children. This practice is however, less common than abused immigrant parents filing for immigration relief based on abuse of their children so that they can safely take steps to protect their children from ongoing abuse and help their children heal.⁶⁰ The survey asked the participating advocates and attorneys to check all that apply to the clients they served in 2016 and 2017. The majority of the attorneys and advocates clients' children (across all client types, U visa, T visa, VAWA, and CPO) were physically or sexually abused. (See figure 106). It is important to note that while many attorneys and advocates (n=239) reported working with clients whose children had been either physically or sexually assaulted, a relatively large number (n=179) reported working with clients whose children had been both physically and sexually assaulted⁶¹.

⁵⁹ See e.g. U visas INA Section 101 (a) (15)(U)(ii); INA Section 204(a)(1)(A)(iii); and INA Section 204(a)(1)(B)(ii)(1).

⁶⁰ JOANNE LIN & COLLEEN O'BRIEN, IMMIGRATION RELIEF FOR CHILD SEXUAL ASSAULT SURVIVORS, *IN* NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2015), <http://niwaplibrary.wcl.american.edu/pubs/ch8-imm-relief-child-sexual-assault-survivors/>

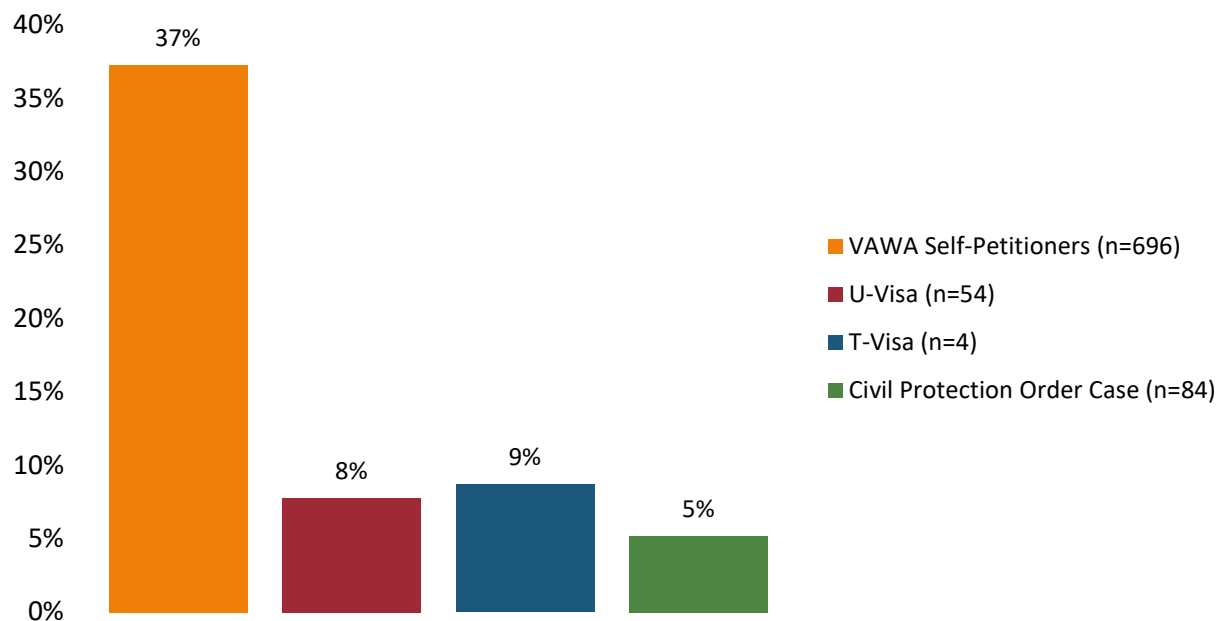
⁶¹ In the case of children of VAWA self-petitioners this abuse would have been perpetrated by the child's parent or stepparent.

Figure 106: Types of Abuse Most Often Suffered by Children of Advocates' and Attorneys' Clients - By Case Type 2016/2017 (135 Agencies)



The survey also sought to learn about what forms of abuse occur and with what frequency when immigrant crime victims face barriers in seeking help and return to or are unable to leave abusive homes or employment. Figure 107 reports the percent of immigrant victims who stay or return to their abuser by type of case (immigration or protection order) that the immigrant victim is pursuing.

Figure 107: Percent Of Immigrant Victims Who Stay/Return to Their Abusers in 2016 and 2017 (838 cases)



Of the participants who reported their clients stayed with or returned to their abusers, almost three-quarters (72%, n=902) suffered daily, weekly or monthly abuse (See, figure 108) and the majority said their clients (regardless of client type) suffered from battering and sexual assault. (See, figure 109 for a detailed report of the types of abuse suffered).

Figure 108: Frequency of Abuse for Victims Who Stayed/Returned to Their Abusers (2016-2017) (1215 cases)

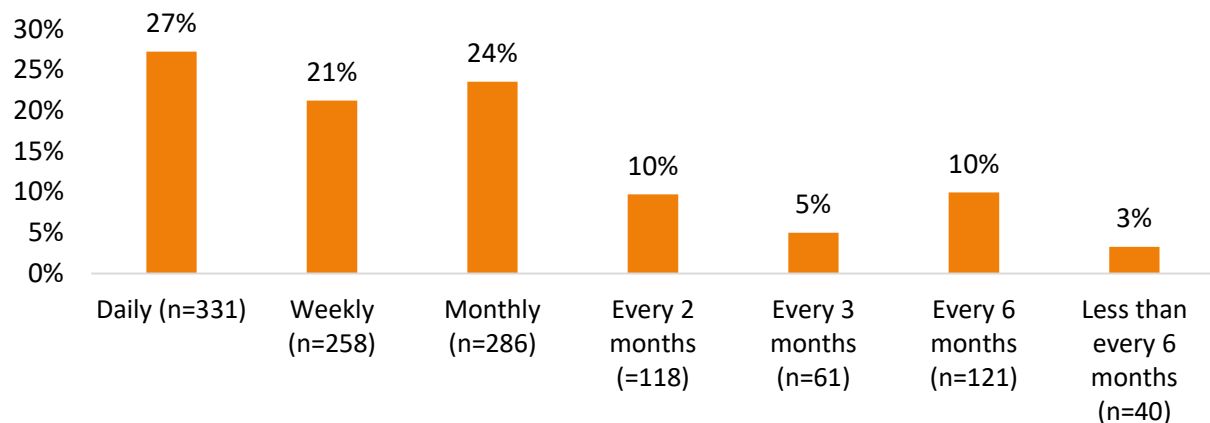
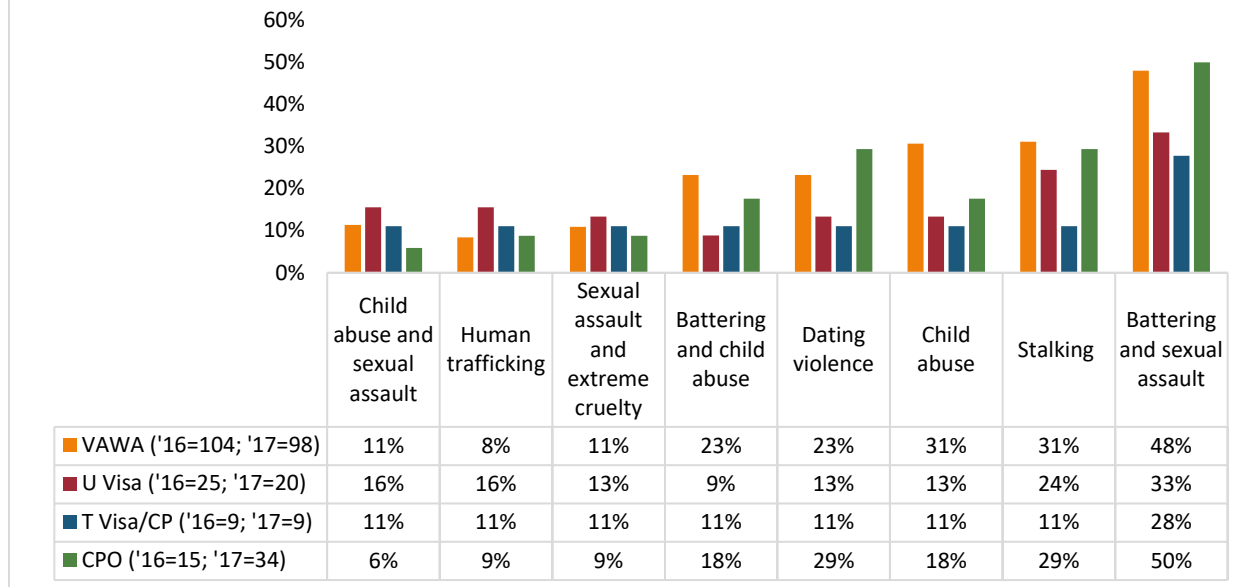


Figure 109: Advocates and Attorneys Reporting Ongoing Abuse Victims and their Children Suffer if they Stay or Return to Their Abusers (2016/2017) (104 Agencies)



Types of Benefits, Services, and Justice System Assistance Immigrant Victims are Willing to Seek

The attorneys and advocates were asked what services their VAWA, U visa, T visa, and civil protection order clients were willing to seek. (See, figures 110 and 111). Figure 111 shows the responses the attorneys/advocates gave regarding their clients “likelihood” to seek the following services: healthcare⁶², victims’ services⁶³, public benefits⁶⁴, and justice system⁶⁵. Victims who were receiving assistance from advocates and attorneys were willing to receive a wide range of victim services, health care and housing and other public benefits. (See, figure 110). Trafficking victims were slightly less likely than other victims to seek these services. Victims were also generally willing with the support of victim advocates and attorney to access justice system help. (See, figure 111).⁶⁶ However, as discussed in more detail below, the analysis of data of individual client choices in 2016 and 2017 revealed that their clients continued participation; particularly in the justice, system is affected by fear of negative

⁶² This refers to healthcare for themselves as well as healthcare for children.

⁶³ This is made up of help with an employment, rape crisis center or sexual assault program victim advocacy, counseling services, shelter and the domestic violence program services and victim advocacy.

⁶⁴ This includes state and federal public benefits for the victim themselves and/or for the victim’s children including but not limited to subsidized childcare services, and housing.

⁶⁵ Justice system assistance from the both the criminal and civil justice systems included help from prosecutors, police, courts, and specifically civil protection orders, custody, child support and divorce in family courts.

⁶⁶ The survey questionnaire inadvertently did not list sexual assault programs as a services as an option from survivors receiving civil protection orders.

immigration consequences of justice system involvement and perpetrator's threats to deportation made to those who participate.

**Figure 110: Services Immigrant Victims are Willing to Seek
2016/2017 - By Case Type (142 Agencies)**

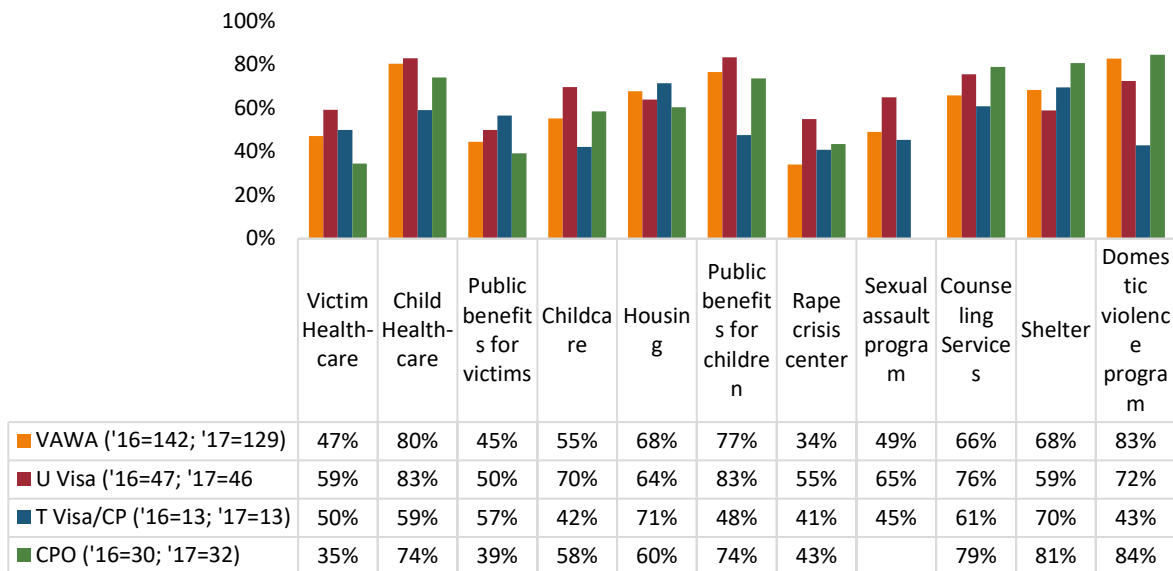
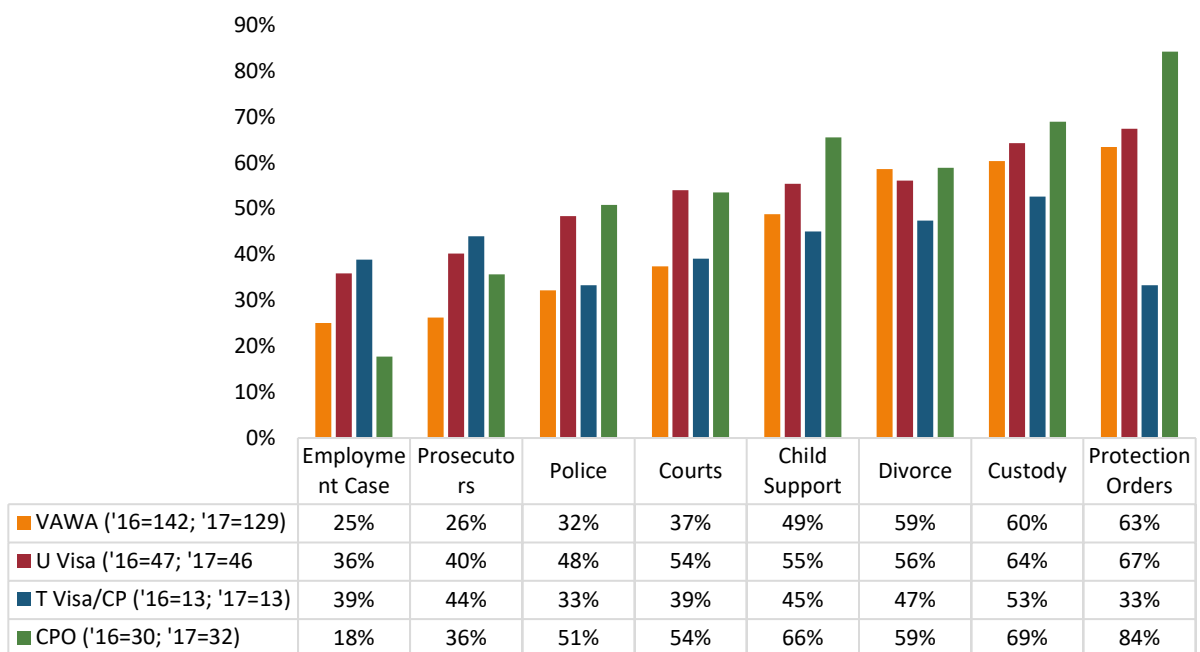
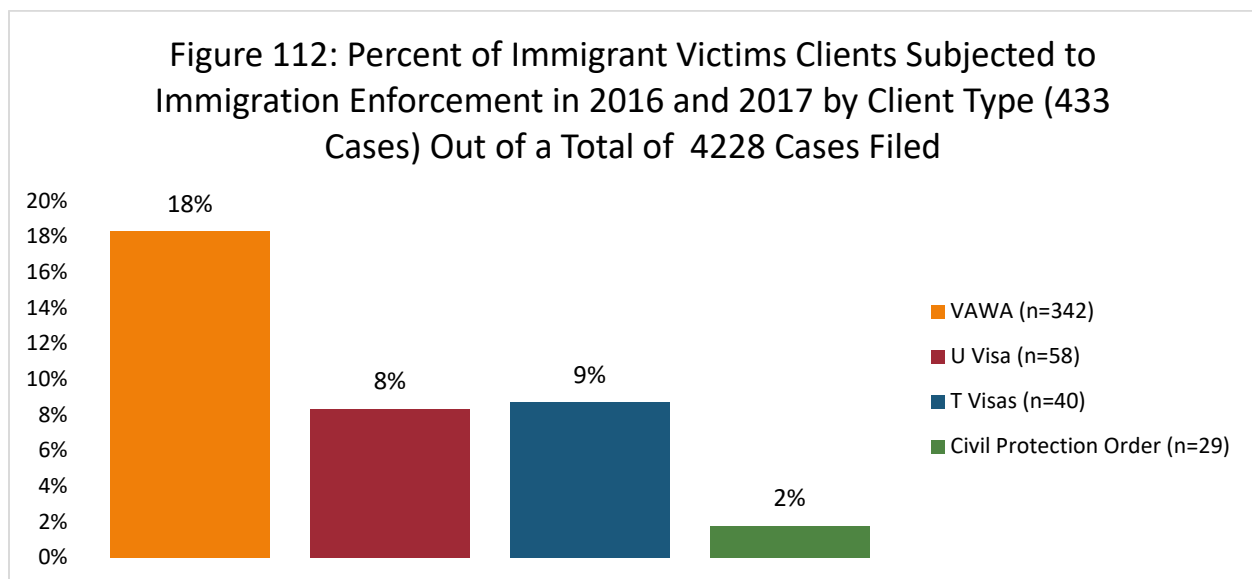


Figure 111: Immigrant Victims' Willingness to Turn to Justice System for Help 2016/2017 - By Case Type (142 Agencies)



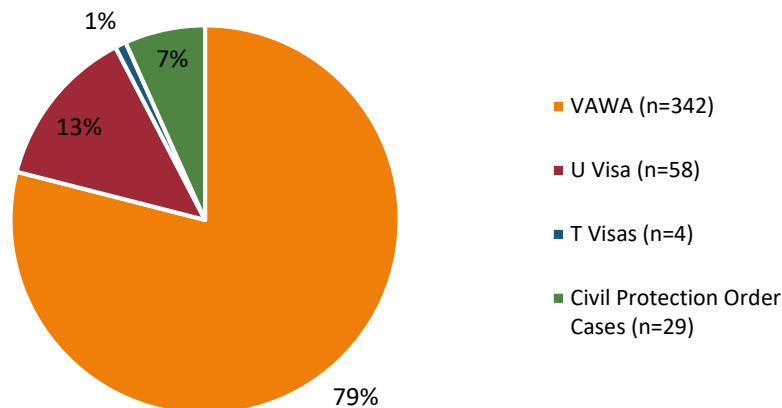
Immigrant Crime Victim's Experiences with Immigration Enforcement

A key focus of this survey involved examining the extent to which immigration enforcement is affecting immigrant crime victims. Advocates and attorneys were asked to report on the numbers of their immigrant victim clients who in 2016 and 2017 had been subject to an immigration enforcement action by U.S. Department of Homeland Security enforcement officials who worked at either Immigration and Customs Enforcement (ICE) or Customs and Border Patrol (CBP). This includes being stopped, questioned, detained, deported, or had a notice to appear in immigration court issued against them. In total, 433 cases advocates and attorneys' immigrant victim clients had been subject to immigration enforcement actions in 2016 and 2017. This constitute 10% of the total number of immigrant victims cases (n= 4228) that attorney and advocates reported in the survey. VAWA self-petitioners at least twice as likely as immigrant victims with other type of cases filed (U visas, T visas and civil protection orders) to subject to immigration enforcement. (18% VAWA self-petitioners compared to U visa 8%, T visa 9% and protection orders 2%).(See, figure 112).



Out of the total number of immigrant victim clients exposed to immigration enforcement identified by the advocates/attorneys in this survey, over three-quarters (79%, n=342) of them were VAWA self-petitioners who were abused by their U.S. citizen or lawful permanent resident spouses or parents. (See, figure 113).

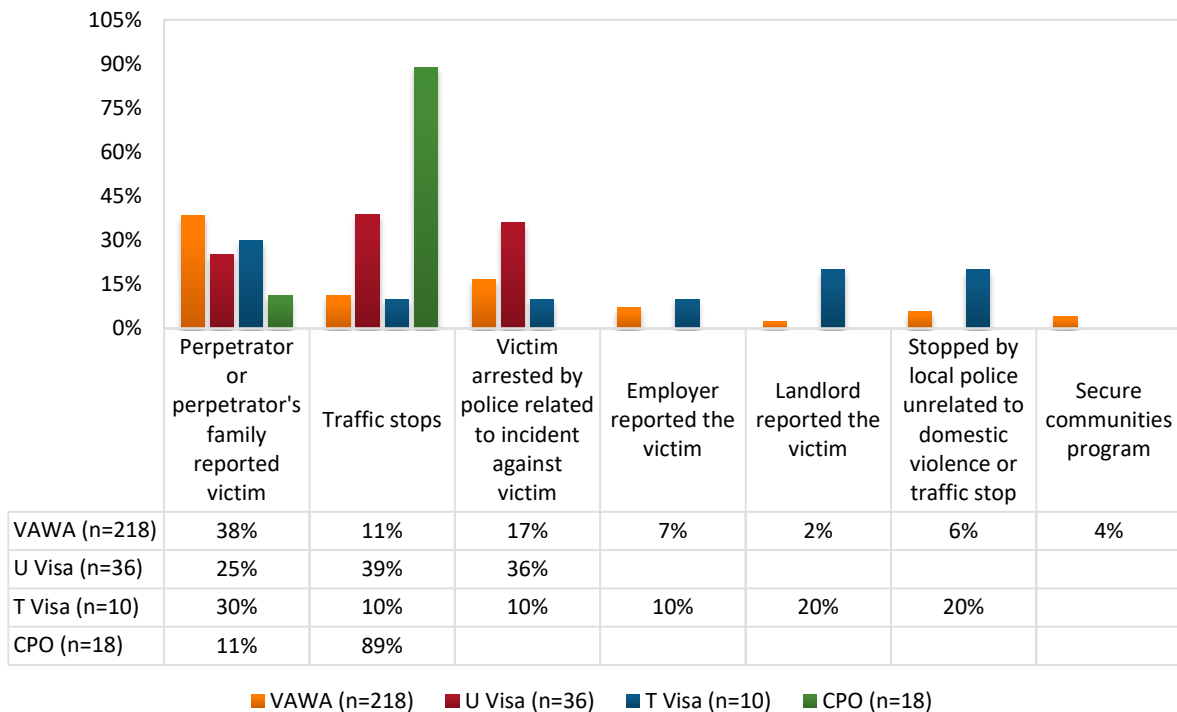
Figure 113: Enforcement Actions Against Immigrant Victims Reported By Advocates and Attorneys 2016-2017 By Case Type (433 cases)



Advocates and attorneys who said that their clients were subjected to immigration enforcement were also asked to identify what led to the enforcement action for each of their clients. The perpetrator or perpetrator's family members calling immigration enforcement officials to turn the victim in for immigration enforcement was the answer given by the largest number of advocates/attorneys. Providing tips and information about the victim to ICE or CBP agents accounted for a quarter to over a third of immigration enforcement actions initiated against immigrant victims who were VAWA self-petitioners (38%, n=97), trafficking victims (T visas 30%, n=3) or victims with pending U visas (25%, n=9).⁶⁷ Battered immigrant victims who were civil protection order clients were most often (89%) targeted for immigration enforcement during traffic stops. Over a third of U visa victims (36%, n=13) and 17% (n=42) were turned in for immigration enforcement when they had called local police or sheriffs for help and the police arrived at a crime scene. (For a detailed breakdown, See, figure 114).

⁶⁷ These findings in terms of perpetrator's role in triggering enforcement actions against victims are consistent with prior research conducted in 2013. That research similarly found that when VAWA self-petitioners and U visa victims were subject to immigration enforcement, tips from perpetrators triggered immigration enforcement against victims in 38.3% of the VAWA cases and 26.7% of the U visa cases. Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 26 (Feb. 2014), http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/.

Figure 114: Motives that Triggered the Immigration Enforcement Action 2016 and 2017 (282 cases)



Advocates and attorneys were also asked about the locations where the immigration enforcement actions against their clients took place. Of the 206 immigration enforcement actions against victims identified by advocates and attorneys in the survey, 51 of them occurred against immigrant victims in connection with their appearance at courthouses. Another 87 of the enforcement actions⁶⁸ reported took place at locations that Congress in the Violence Against Women Act 2005 prohibited immigration enforcement. As part of the VAWA confidentiality protections there is a list of protected locations where enforcement against immigrant crime victims was to be generally prohibited.⁶⁹ The list of VAWA confidentiality protected locations includes:⁷⁰

- Domestic violence shelters
- Rape crisis centers
- Family justice centers
- Supervised visitation centers
- Victim services agencies, and
- Courthouses “(or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault,

⁶⁸ The 87 enforcement actions were conducted in the following locations: domestic violence shelter (n=33); victims service agencies (n=21); rape crisis center (n=17); family justice center (n=13) and; supervised visitation (n=3)

⁶⁹ Leslye E. Orloff, *VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jan. 31, 2018), <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>.

⁷⁰ INA Section 239(e).

trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 1101(a)(15))”⁷¹

The Advocates/ attorney identified another 23 enforcement actions⁷² against their immigrant victim clients at other protected locations and where immigration enforcements are prohibited. ICE has longstanding policies designed to prevent immigration enforcement actions at sensitive locations⁷³ these include:

- Schools,
- Hospitals, and
- Places of worship and other religious ceremonies

Figure 115 provides more details regarding attorneys and advocates responses regarding places where their immigrant victims faced immigration enforcements.

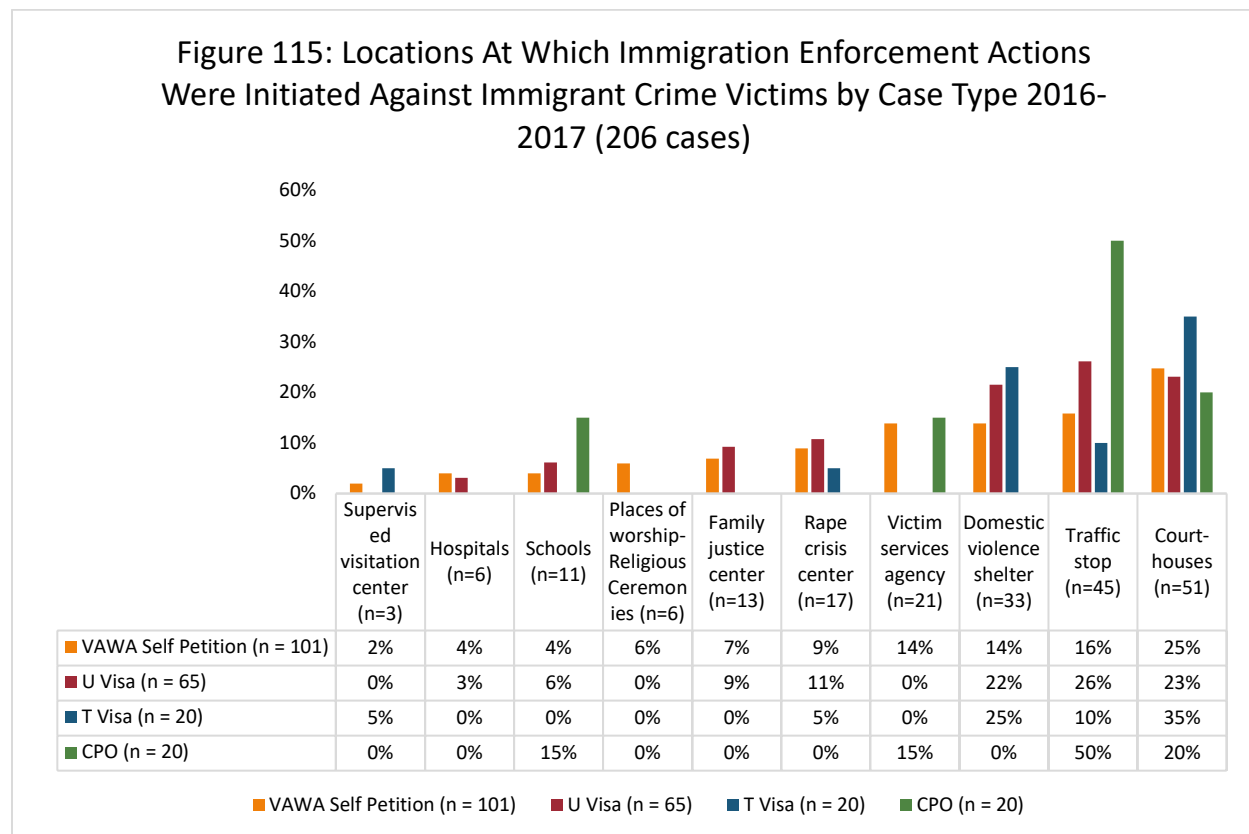


Figure 116 provides more detail documenting the fact that the immigration enforcement actions initiated against immigrant victims at courthouses were occurring in connection with

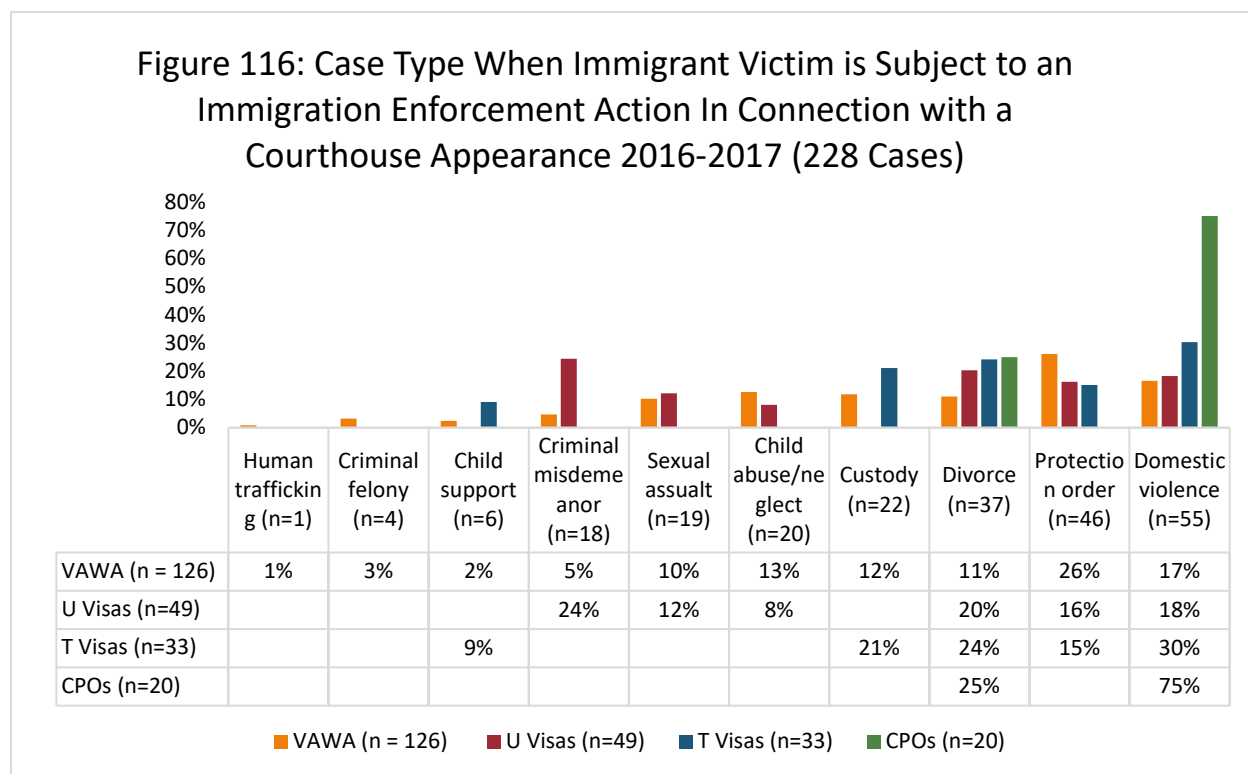
⁷¹ INA Section 239(e)(2)(B)

⁷² The 27 enforcement actions were conducted in the following locations: hospitals (n=6); schools (n=11); places of worship and other religious ceremony (n=6).

⁷³ Memorandum from Julie Myers, Assistant Secretary, U.S Immigration and Customs Enforcement, to All Field Office Directors, *Field Guidance on Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations* (Jul 3, 2008), <http://niwaplibrary.wcl.american.edu/pubs/guidance-enforcement-sensitive-community/>; Memorandum from John Morton, Director, U.S Immigration and Customs Enforcement, to Field Office Directors, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>

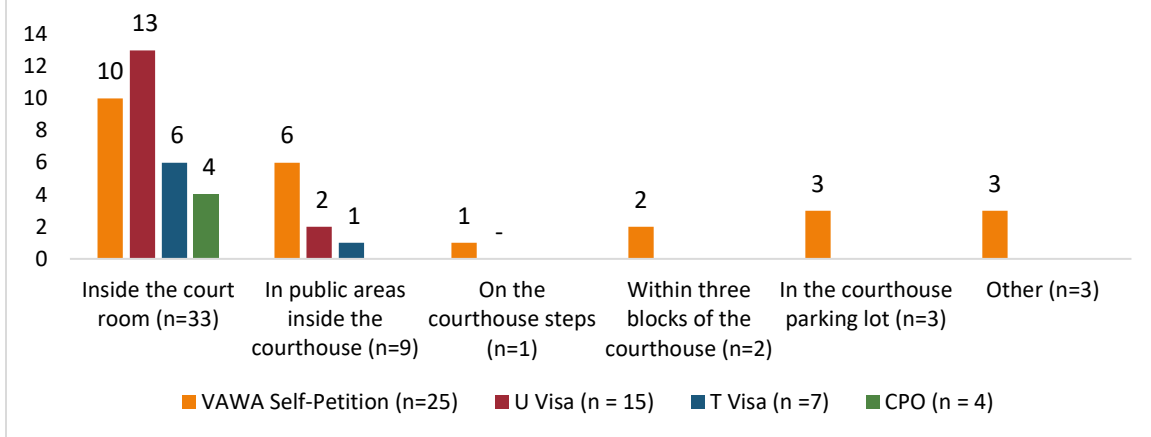
cases that should have received VAWA confidentiality protection. Courthouse enforcement was occurring when immigrant victims were going to or were in courts in connection with protection order cases, child custody cases, domestic violence cases and other cases related to seeking civil or criminal court remedies for the abuse or crime victimization.

Each of the enforcement actions related to cases described in figure 115 occurring at courthouses that immigrant victims were reported in the survey by advocates and attorneys (n=228) is prohibited VAWA confidentiality's statutory protections and as a result should have been legally avoided. Instead, the advocates and attorneys' clients were subjected to immigration enforcement in connection with their courthouse appearance. The majority of civil protection order (CPO) clients had immigration enforcement initiated against them during domestic violence court appearance (75%, n=15). Many of the advocates and attorney's T visa clients who were victims of domestic violence related human trafficking were also targeted for immigration enforcement during domestic violence court cases (30%, n=10), during divorce court cases (25%, n=8) and custody court cases (21%, n=7). U visa clients, on the other hand, were often targeted for immigration enforcement during criminal misdemeanor court cases (24%, n=12) and divorce cases (20%, n=10) cases. Many VAWA self-petitioners, targeted for immigration enforcement during protection order cases (26%, n=33) against their citizen or lawful permanent resident spouses. See, figure 116 for further details.



The survey also obtained information from advocates and attorneys about where in connection with courthouse appearances their immigrant crime victim clients were being arrested and/or subjected to immigration enforcement actions. Most clients who were arrested at courthouses were inside the courtroom, and this is particularly typical for U visa and VAWA clients. (See, figure 117).

Figure 117: Location of Courthouse Enforcement Actions
Conducted Against Immigrant Victims
2016-2017 (n=51)



Victim advocates and attorneys were asked to report only about immigration enforcement actions taken against immigrant victim clients at courthouses.⁷⁴ The states in which advocates and attorneys reported courthouse enforcement actions against their immigrant victim clients were: Florida, Georgia, Nevada, New Mexico, Oregon, Pennsylvania, Vermont and Wisconsin. These findings are similar to those discussed above in Section I of this report the National Judicial Survey,⁷⁵ the states in which this survey data found immigration enforcement to be occurring against immigrant crime victims was not limited to states with lower levels of cooperation with federal immigration enforcement officials. The reports of immigration enforcement occurring against immigrant crime victims were occurring mostly in civil and family court cases (see, figure 116) and also occurred in states that have high levels of cooperation with federal immigration enforcement activities (e.g. Florida, Georgia, Nevada, Pennsylvania, and Wisconsin).⁷⁶

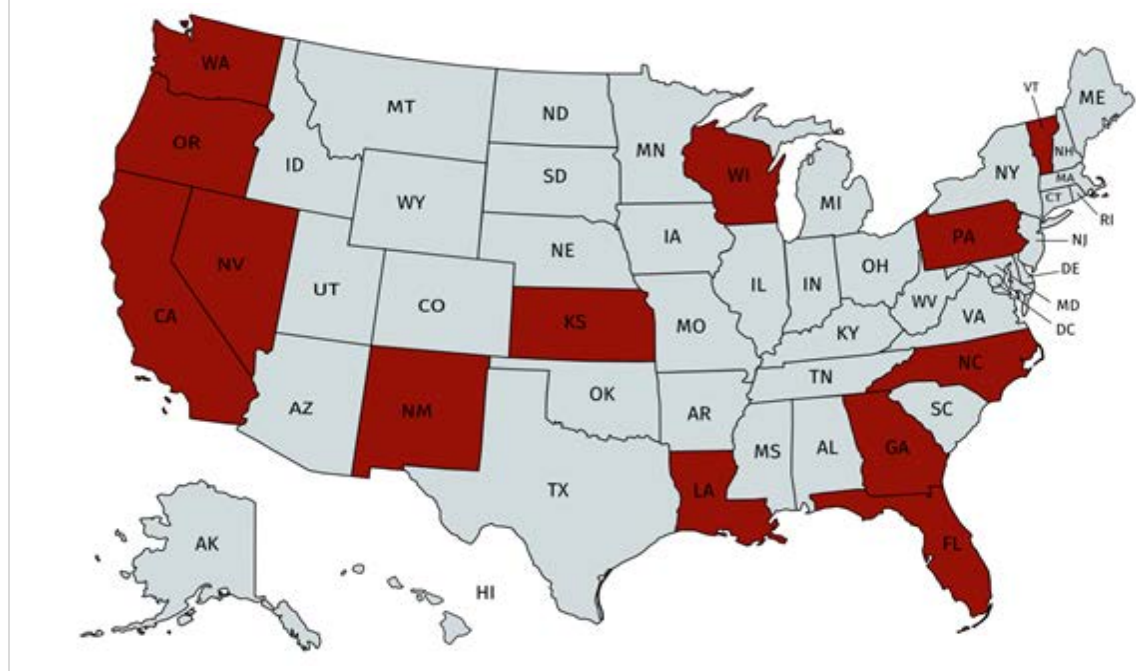
The map contained in Figure 118 provides an infographic overview of the Judicial Survey's findings regarding immigration enforcement in non-criminal cases together with the Advocates and Attorneys' survey findings on immigration enforcement at courthouses against immigrant crime victims in both civil and criminal cases. The states in red are the states in which judges and/or victim advocates/attorneys reported immigration enforcement actions.

⁷⁴ The questions about immigration enforcement asked in the judges' survey asked about immigration enforcement at courthouses generally and did not specifically ask about immigrant crime victims. Despite this fact, the survey data revealed 18 cases in which immigration enforcement occurred in family court cases including protection orders and child welfare cases that were likely to have directly involved victims.

⁷⁵ Figures 19 and 20 in this Survey Report.

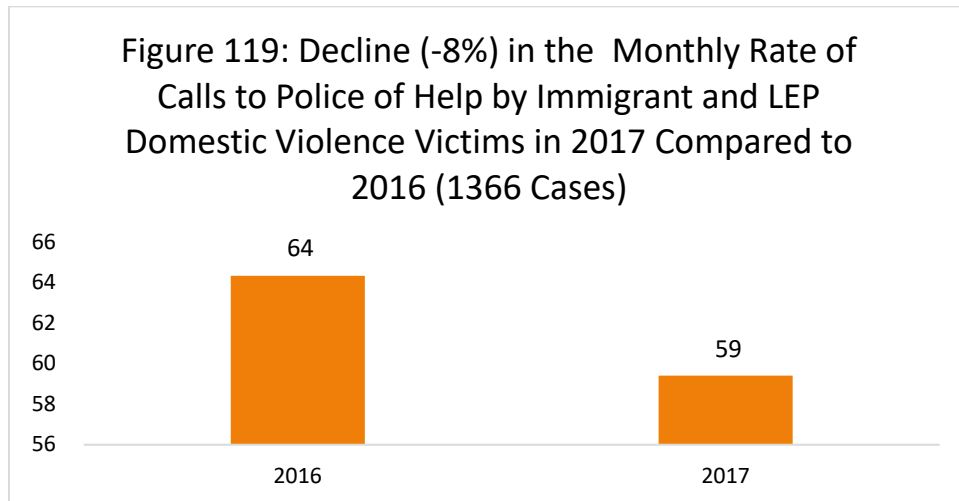
⁷⁶ *National Map of Local Entanglement with ICE*, IMMIGRANT LEGAL RESOURCE CENTER (Jan. 25, 2018), <https://www.ilrc.org/local-enforcement-map>; Bryan Griffith and Jessica M. Vaughan, *Maps: Sanctuary Cities, Counties, and States*, CENTER FOR IMMIGRATION STUDIES (Jul. 27, 2017), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

Figure 118: States with 2016-2017 Reports by Judges on Courthouse Immigration Enforcement in Family Employment and Civil Cases and Advocates, or Attorneys Reports on Courthouse Enforcement Against Crime Victims (71 cases; 51 Attorneys/Advocates Survey + 20 Judges Survey)



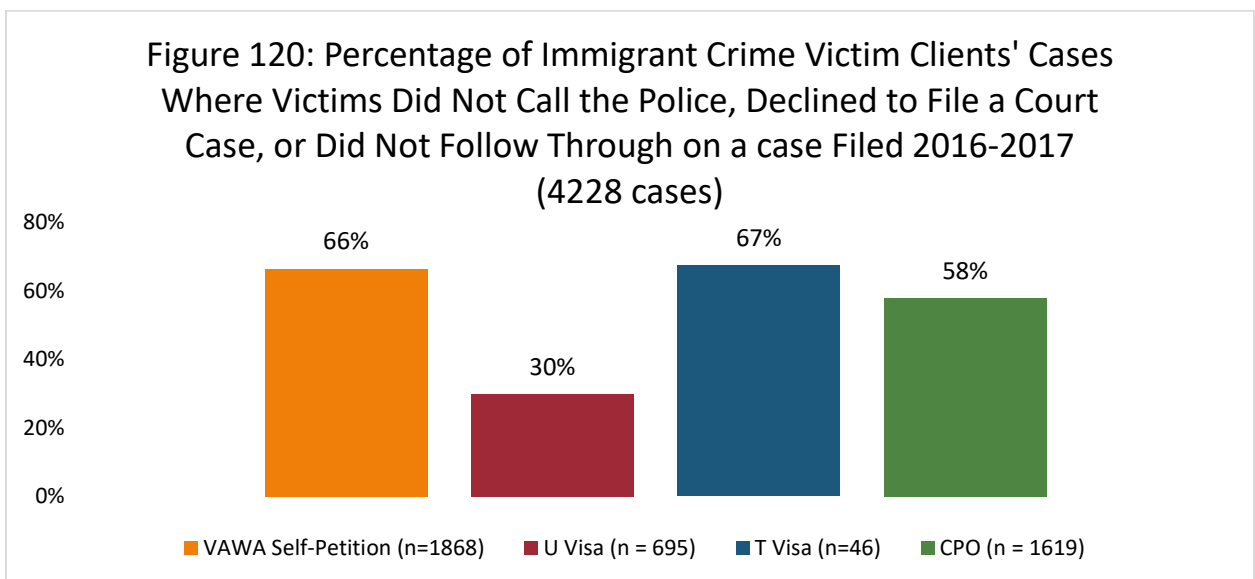
Impact of Immigration Enforcement on Immigrant Crime Victims and Their Children

The survey also sought to better understand the impact immigration enforcement in communities and at courthouses has on immigrant crime victims and their willingness to turn to the justice system for help. The advocates and attorneys were, therefore, asked to indicate the experience of their clients who are domestic violence victims and their willingness to call the police for help in 2016 compared to 2017. They reported 1,366 cases where victims called the police for help. The number of immigrant domestic violence victims willing to call the police for help dropped 8% in 2017 vs 2016. (See, figure 119).



The advocates and attorneys noted that there were 4,228 cases of immigrant crime victim clients who in 2016 and 2017 did not call the police for help, decided not to file a court case, or filed but did not follow through on a court case filed. (See, figure 120). These cases are summarized below by type:

- Civil protection order clients 58%, n=938;
- VAWA clients 66%, n=1242;
- Trafficking victim clients 67%, n=31); and
- U visa clients (30%, n=207).



Additionally, the information provided in the survey regarding fears, concerns and factors that influence immigrant victims' individual decisions to seek help from the civil and/or criminal justice system is summarized in figure 18. Primary among the reasons for not seeking help from police or courts and not following through with these agencies are fear of deportation (37%, n=899), fear that the perpetrator will retaliate by calling immigration enforcement officials, and

reporting the victim (25%, n=605). (See, figure 121). Fear of losing children was the third factor (24%, n=591). Figure 18 provides information about the range of factors that play a role in influencing immigrant victims' reticence to turn to the justice system for help and figure 122 provides details about how these factors may be different among immigrant victims by case type.

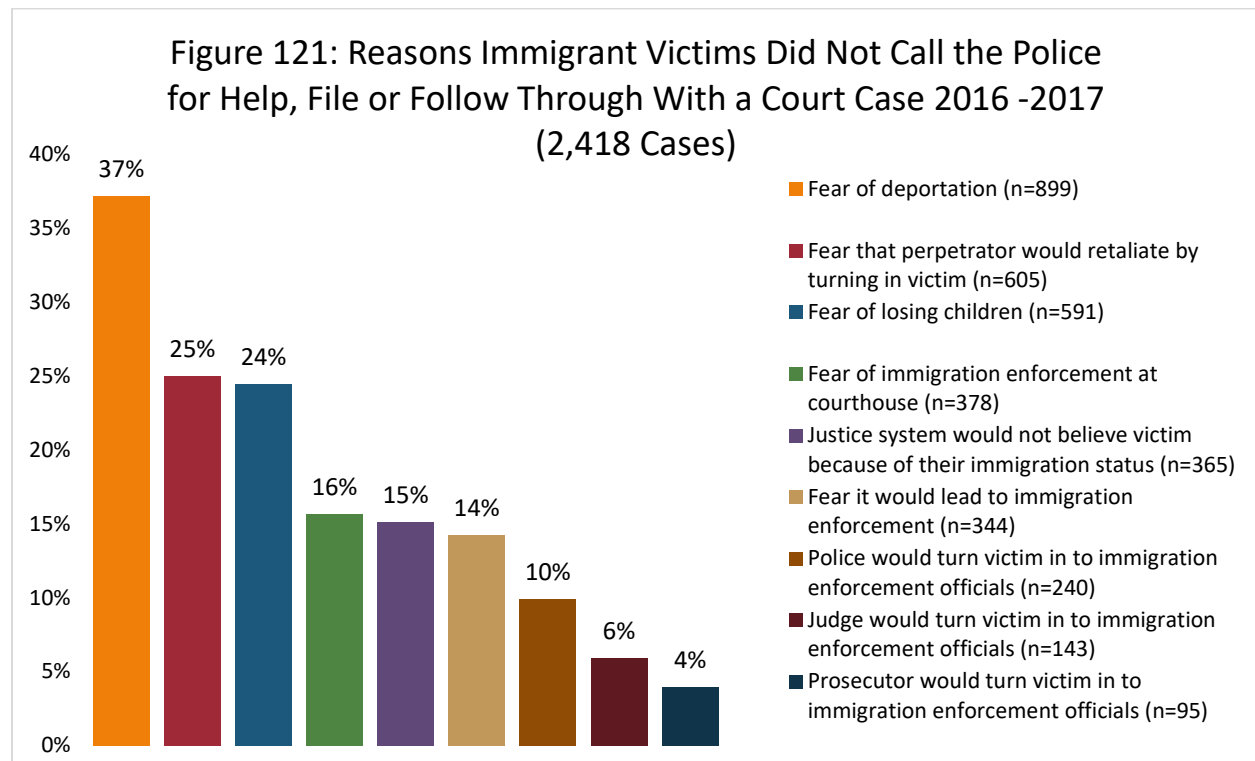
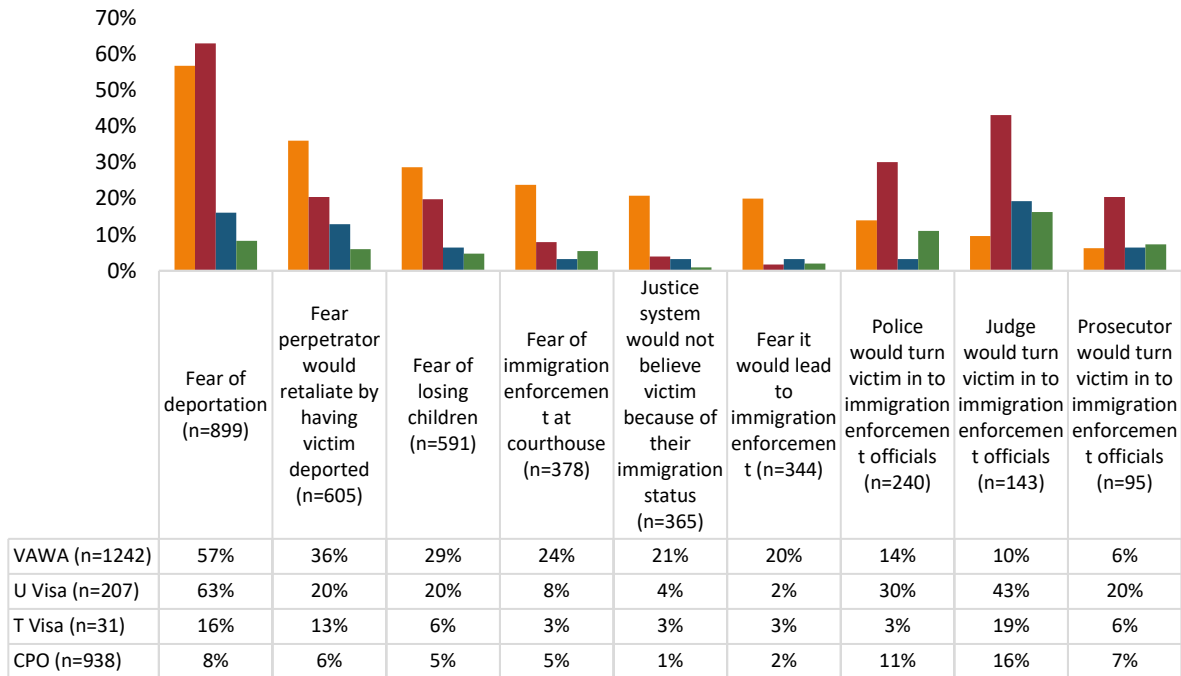


Figure 122: Reasons Immigrant Victims Did Not Call the Police for Help, File or Follow Through With a Court Case 2016 -2017 - By Case Type (2,418 Cases)



Part Five: Policy Recommendations and Conclusions

Initial Implications and Recommendations:

Over the past 27 years, the numbers of immigrants from linguistically and culturally diverse backgrounds has steadily increased. Immigrants have moved beyond traditional gateway states,⁷⁷ settling in urban and rural communities across the country, particularly in the Southeast, the Pacific Northwest, Mountain States, and the Sun Belt.⁷⁸ The immigrant population rose by 11.6% between 2000 and 2016. As of 2016:

- 13.5% (43,739,345) of the U.S. population is foreign-born;⁷⁹
- 24.5% of the U.S. population is either foreign born or has one or more foreign born parents;⁸⁰
- 25.8% of children in the U.S. under the age of 18 have one or more immigrant parents;⁸¹
- 88.2% of children in immigrant families are U.S. citizens.⁸²

As a result, greater numbers of courts, law enforcement agencies, prosecutors' offices, victim advocates and attorneys across the country will be called upon to offer assistance to immigrant victims of crime including particularly domestic violence, sexual assault, child abuse, stalking, dating violence and human trafficking. This includes agencies working in new immigrant gateway communities that had not previously been home to growing immigrant populations.⁸³

This survey showed some notable declines in immigrant crime victims' willingness to seek help in 2017 compared to 2016:

- 12% of judicial survey participants report declines in requests for protection orders by immigrant victims
- Declines in complaints filed by the immigrant community (18%) and in willingness (15%) of immigrant community members and victims to cooperate on criminal cases were reported by law enforcement survey participants
- Law enforcement officers reported in greater detail the areas in which they observed declines in immigrant victim willingness to:
 - Make a police report – 22%
 - Participate in crime scene investigations – 21%

⁷⁷ For example, California, Florida, Illinois, New Jersey, New York and Texas.

⁷⁸ *Changing Patterns in U.S. Immigration and Population*, (December 18, 2014), The Pew Charitable Trusts (last visited Feb. 16, 2018), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/changing-patterns-in-us-immigration-and-population>.

⁷⁹ *United States Demographics*, Migration Policy Institute, (last visited Feb. 16, 2018) <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

⁸⁰ Sources: 2016 census data reported by Migration Policy Institute, United States Demographics 2016 (Foreign born population 13.5%) + 2016 Census Migration Policy Institute, Children in U.S. Immigrant Families (citizen children under age of 18 with one or more immigrant parents 4.9% of US population) + 2014 census data The Pew Charitable Trusts, *Changing Patterns in U.S. Immigration and Population* (December 18, 2014) (adult citizen children of immigrant parents – Second Generation citizens 6.2%).

⁸¹ *Children in U.S. Immigrant Families*, Migration Policy Institute, (last visited Feb. 16, 2018), <https://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#children>.

⁸² *Children in U.S. Immigrant Families*, Migration Policy Institute, (last visited Feb. 16, 2018), <https://www.migrationpolicy.org/programs/data-hub/us-immigration-trends#children>.

⁸³ *Changing Patterns in U.S. Immigration and Population*, (December 18, 2014), The Pew Charitable Trusts (last visited Feb. 16, 2018), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/changing-patterns-in-us-immigration-and-population>.

- Assist in post-crime scene criminal investigations – 20%
- Work with prosecutors – 18-25%
- Work with victim witness staff at police agencies – 13%
- Victim advocates and attorneys participating in the survey reported a:
 - 391% decline in the numbers of VAWA self-petitions filed on behalf of battered immigrant spouses and children of U.S. citizens and lawful permanent residents by the agencies on behalf of immigrant victim clients
 - 31% decline in the numbers of U visa cases filed by the agencies on behalf of immigrant victim clients
 - 8% decline in the number of immigrant domestic violence victims willing to call the police for help

In addition to these findings showing declines in immigrant victims' willingness to seek help through the justice system and willingness to file for immigration relief, there were areas in which the findings show increases in victim's willingness to use the justice system. These were observed more by Signing Courts and Signing Agencies than those that do not sign. The survey found that when courts, law enforcement agencies and prosecutors adopt practices, policies and/or protocols that result in U and T visa certifications, submitting requests for continued presence, and/or issue state court findings for immigrant children applying for Special Immigrant Juvenile Status, the message sent to the immigrant community by these Signing Agencies is strong. This agency or courthouse is a safe place where immigrant crime victim and abused, abandoned or neglected immigrant children can turn for help. Even in times of increased immigration enforcement and public anti-immigrant discourse, Signing Agencies including courts, law enforcement and prosecutors report seeing increases in the willingness of immigration crime victims to turn to these agencies and courts for help. Examples include:

- 23% of judges reported observing an increase in civil protection order filings by immigrant victims and similarly victim advocates and attorneys reported filing 23% more cases on behalf of immigrant victims in 2017 compared to 2016;
- 20% of judges reported an increase in custody cases involving immigrant crime victims

It is important to note that the qualitative and quantitative data collected in the survey found that both Signing Agencies and Signing Courts reported observing areas of decreases and increases of willingness of immigrant victims to avail themselves of services from their agency or court. The quantitative data collected from courts and law enforcement explains that as police or courts witnessed declines occurring they increased their efforts to reach out to the immigrant community and make it known that their agencies and courts were safe places for immigrants. These efforts resulted in a greater willingness of immigrant victims to use court services and seek help from police in communities where these efforts were underway and particularly when U visa certification, continued presence requests and judges signing SIJS orders were a part of these efforts. Signing Agencies and Signing Courts often work with non-governmental community based agencies providing legal, advocacy and social services to immigrant victims. The National Center for State Courts issued a White Paper that recommends that courts collaborate with community-based organizations to identify barriers and develop strategies to

improve access to the courts for LEP victims.⁸⁴ Prior National Institute of Justice funded research has found that victim advocates and attorneys play a key role in improving immigrant victims' willingness to file for civil protection orders.⁸⁵

Another theme across disciplines that the survey data revealed is that although immigrant victims in many communities with victims filing more cases are becoming more difficult and complex:

- Judges observed this complexity as including:
 - The immigration status of victims being raised in criminal (39%), civil protection order (32%), custody (31%), divorce (23%) and other family court cases;
 - Court proceedings being interrupted due to victim's fears of coming to court (54% in 2017 and 45% in 2016)
 - Instances of immigration enforcement at courthouses (2016= criminal 11, family/civil 8; 2017 = criminal 18, family/civil 10)
 - Judges reporting that they are concerned or very concerned about the effect immigration enforcement is having on the willingness of immigrant and LEP litigants and victims to participate in court cases. Examples include:
 - Human trafficking – 94%
 - Sexual assault – 92%
 - Domestic Violence – 91%
 - Child abuse and neglect – 91%
 - Custody – 88%
 - Criminal – 87%
- Law enforcement officers reported
 - That fears about deportation and victim's being turned in by perpetrators to DHS are among the top reasons that criminal cases of crimes committed against immigrant and LEP victims are underreported and becoming harder to prosecute:
 - Domestic violence – 69%
 - Human trafficking – 64%
 - Sexual assault – 59%
 - Child abuse – 50%
 - Extortion-Blackmail – 38%
 - Elder abuse and exploitation 34%
 - Felonious assaults – 33%
 - That barriers to cooperation by victims are leading to greater numbers of perpetrators at large in their communities (52%)

⁸⁴ BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS 204 (2016), <http://niwaplibrary.wcl.american.edu/pubs/serving-lep-women-survey/>; See also BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, SERVING LIMITED ENGLISH PROFICIENT (LEP) BATTERED WOMEN: A NATIONAL SURVEY OF THE COURTS' CAPACITY TO PROVIDE PROTECTION ORDERS (2006), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>.

⁸⁵ MARY ANN DUTTON ET. AL., U.S. DEP'T OF JUST., USE AND OUTCOMES OF PROTECTION ORDERS BY BATTERED IMMIGRANT WOMEN REVISED FINAL TECHNICAL REPORT (2006), <http://niwaplibrary.wcl.american.edu/pubs/fam-gov-nijtechnicalreportprotectionorders11-10-06/>

- That when immigrant victims do not cooperate this affects officer safety (64%), community safety (69%), victim safety (67% all victims; 69% immigrant and LEP victims) and the ability to hold violent perpetrators accountable (71%)
- Prosecutors participating in the survey reported
 - That immigration status issues about crime victims were being raised in criminal cases more in the past 5 years than ever before (62%)
 - Declines in immigrant victims' willingness to work with prosecutors in the past year compared to prior years:
 - Domestic violence – 43%
 - Sexual assault – 43%
 - Child abuse – 39%
 - Stalking – 32%
 - Human trafficking – 27%
 - Immigration related reasons for non-cooperation in prosecutions included:
 - Fear that the perpetrator will turn the victim in to immigration officials – 72%
 - Fear of being separated from their children – 70%
 - Victims receiving threats from perpetrators to report the victim to immigration officials – 70%
 - That the following crimes are harder to prosecute in cases involving immigrant victims
 - Domestic violence – 82%
 - Sexual assault – 70%
 - Human trafficking – 55%
 - Child abuse – 48%

Recommendations for Victim Advocates and Attorneys

Advocates and attorneys play a critical role in informing immigrant victims of domestic and sexual violence about their legal rights and options and facilitating access to justice system remedies for immigrant victims including help from the civil and criminal justice systems.⁸⁶ Victim advocates and attorneys provide essential support and help to victims. Immigrant victims and their children (who are often US citizens) will heal faster if they are able to successfully access the full range of public benefits and services that immigrant victims are legally eligible to receive under federal immigration laws, state family laws, state and federal public benefits laws and in criminal court cases.

The surveys this report summarizes show that long sustained relationships between advocacy/ legal services agencies and law enforcement experts on violence against women contributes to immigrant victims' safety and access to justice. The participants in the surveys we conducted have had a 19-year working relationship. Strong working relationships that are built over time and involve work on a range of domestic violence, sexual assault, language access and immigrant community issues lead to positive outcomes for immigrant crime victims and their

⁸⁶ Nawal H. Ammar et. al., *Battered Immigrant Women in the United States and Protection Orders*, 37 CRIM. JUST. REV. 337, 337-359 (2012), <http://niwaplibrary.wcl.american.edu/pubs/battered-women-protection-order-research/>.

access to the civil and criminal justice systems.⁸⁷ Particularly in times of increased immigration enforcement, victim advocates and attorneys need to develop and strengthen their relationships with law enforcement officials/prosecutors, and need to build relationships with courts that promote access to justice for immigrant victims.

Immigrant victims' advocates and attorneys can benefit their clients by being proactive in reaching out to law enforcement and prosecutors and bringing them to the table where multi-disciplinary teams are working together to resolve issues and improve community responses to domestic and sexual violence. Close working relationships, built over time that establish mutual respect and trust create strong bridges will facilitate immigrant access to criminal and civil justice system relief for immigrant crime victims.

These relationships further create opportunities for law enforcement and prosecutors to join victim advocates and attorneys in efforts that help ensure that immigration enforcement officials will not initiate prohibited immigration enforcement actions against immigrant crime victims. Additionally, strong and sustained relationships between advocates/attorneys and law enforcement officials will also ensure that law enforcement officials will not initiate immigration enforcement when the victim's perpetrator calls ICE or CBP to turn the victim in for immigration enforcement in retaliation for the victim's cooperation in a criminal case or for the victim seeking a protection order or custody of children in family courts.

Victim advocates and attorneys need to file VAWA, T visa or U visa immigration cases as early as possible so that immigrant crime victims receive VAWA confidentiality protections against deportation. Early filing combined with collaborative working relationships with law enforcement and prosecutors can result in interventions by these justice system partners with immigration enforcement officials to prevent or reverse efforts to initiate immigration enforcement actions against victims.

This research documents the extent of the risk that immigration enforcement actions are triggered against victims by their perpetrators' calls to DHS and the extent to which this research found that perpetrators are persuading law enforcement officials to arrest the victim when the victim calls police for help. The response that victim advocates and attorneys employ to help immigrant survivors subjected to immigration enforcement needs to be expanded to include routine filing of VAWA confidentiality violation complaints whenever the facts lead the victim, attorney or advocate to believe that actions of the perpetrator led to or contributed to immigration enforcement activities being initiated against the immigrant crime victim.

Filing formal VAWA confidentiality violation complaints can play an important role in preventing future immigration enforcement actions against the victim while VAWA, T and U visa cases are pending. These complaints also are useful in informing DHS about officials who are violating VAWA confidentiality protections including by failing to examine the DHS Central Index System that would have notified the immigration enforcement officer that the immigrant against whom they are considering enforcement is a victim. Complaints lead to formal investigations by the Office of Civil Rights and Civil Liberties at DHS that draw attention to the immigration enforcement official's confidentiality violations and educate the officer and their

⁸⁷ Cite U-Visa Legal Advocacy Overview of Effective Policies and Practices 2013.
<http://niwaplibrary.wcl.american.edu/pubs/uvisa-collaboration-policy-brief/>

supervisors about statutes, regulations, policies and directives that all DHS personnel are required to follow.⁸⁸

The findings from the judge's survey highlighted the extent to which judges participating in the survey (31%) knew about U visas, but had not been asked to sign U visa certifications. Too often, advocates and attorneys limit their U visa certification requests to local law enforcement, when there are a number of government officials who can sign U visa certifications including judges, child and adult protective services, the EEOC and state and federal labor agency staff.⁸⁹ Attorneys and advocates working with immigrant victims need training on U visa certification by judges and the range of cases in which victims can seek certification from judges. Examples of the types of cases in which judges can sign U visa certifications based on detection of a U visa listed criminal activity occurring in a case before the court include, but are not limited to, civil protection order, custody and divorce cases.⁹⁰ In many of these cases the victim may never have called the police for help or when she did call for help the police did not secure the assistance of a qualified interpreter so the victim was unable to communicate with law enforcement at the crime scene. Judges can certify when the victim has come to court and filed a case that includes providing facts to the court about the criminal activity the victim suffered.

Recommendations for Courts

Family courts across the country are seeing growing numbers of immigrants seeking civil protection orders, U visa certification from judges,⁹¹ custody, child support, divorce, guardianship, and state court findings in cases of immigrant children who have been abused, abandoned or neglected by one of their parents applying for Special Immigrant Juvenile Status (SIJS).⁹² State courts encounter immigrant children and families in a wide range of state court proceedings including civil protection orders, custody, divorce, child support, paternity, dependency, delinquency, termination of parental rights and adoptions.

Issues that arise in state court cases involving immigrant families, children and crime victims can present challenges for the courts. Immigrant and LEP litigants and children speak many different languages and courts are responsible for providing interpreters to facilitate LEP litigants and crime victims' access to courtroom proceedings, clerks' offices, courthouses

⁸⁸ For further information about VAWA confidentiality and the complaint process *see*, DEP'T OF HOMELAND SECURITY, VIOLENCE AGAINST WOMEN ACT (VAWA) CONFIDENTIALITY PROVISIONS AT THE DEPARTMENT OF HOMELAND SECURITY (2008), <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-gov-dhscomplaintinstrts-2008/>; LESLYE E. ORLOFF, VAWA CONFIDENTIALITY: HISTORY, PURPOSE, DHS IMPLEMENTATION AND VIOLATIONS OF VAWA CONFIDENTIALITY PROTECTIONS, IN NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, EMPOWERING SURVIVORS (2014), <http://niwaplibrary.wcl.american.edu/pubs/ch3-vawa-confidentiality-history-purpose/>; LESLYE E. ORLOFF, VAWA CONFIDENTIALITY, IN NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, BREAKING BARRIERS (2014) <http://niwaplibrary.wcl.american.edu/pubs/ch3-2-vawa-confidentiality/>. For technical assistance on VAWA confidentiality violations or potential violations contact NIWAP at (202) 274-4457 or info@niwap.org

⁸⁹ Benish Anver; Leslye E. Orloff, *U Visa Certifications: Range of Potential Certifiers at the Local, State, and Federal Government Levels*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, (Jun. 21, 2014), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-range-of-potential-certifiers/>

⁹⁰ DEP'T OF HOMELAND SECURITY, U AND T VISA LAW ENFORCEMENT RESOURCE GUIDE, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Nov. 30, 2015), https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf; <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

⁹¹ Department of Homeland Security, *U and T Visa Law Enforcement Resource Guide*, 6 (Jan. 2016) https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf; <http://niwaplibrary.wcl.american.edu/pubs/dhs-updated-u-certification-resource-guide-2015/>

⁹² U.S. Citizenship & Immigration Servs., *USCIS Policy Manual*, Vol. 6, Part J (last updated Aug. 23, 2017), <http://niwaplibrary.wcl.american.edu/pubs/uscis-policy-manual-vol-6-7-part-j-sijs-full/>

through public notices about interpretation services available and courthouse signage, as well as to all court ordered services.⁹³ In addition, immigrants come from many different cultural and religious backgrounds and their assumptions and expectations about the justice system are influenced by experiences in their home countries. Most live in mixed immigration status families where family members have a range of differing citizenship and immigration statuses.⁹⁴

A review of state family court decisions reveals patterns of courts issuing rulings based on legally incorrect information about U.S. immigration laws and/or about immigration law's applicability to a child, party or a witness in the case before the court.⁹⁵ Access to legally accurate information about immigration laws, Department of Homeland Security (DHS) regulations and policies, and federal immigration law protections for immigrant crime victims and immigrant children promotes the fair administration of justice in cases involving immigrant victims, children and families.

Training materials, tools, and webinars have been developed that assist state court judges in swiftly accessing legally correct information to help state courts on a range of topics that arise in cases involving immigrant crime victims, children and families appearing in cases before state courts.⁹⁶ The following are examples of information such materials provide:

- *Immigration*: Federal immigration law protections for immigrant victims of domestic violence, child and elder abuse, sexual assault, human trafficking and other mostly violent criminal activities under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA) that have been an essential part of U.S. immigration laws for 18 years⁹⁷ creating a State court judge's role as U and T visa certifiers. The U visa offers immigration relief for immigrant victims of 26 types of criminal activities including domestic violence, sexual assault, human trafficking, felonious assault and kidnapping.⁹⁸
- *Life and Safety Programs* offer government funded programs that are legally required to be open to all persons without regard to immigration status;⁹⁹
- *Federal and state public benefits* are available to many immigrant crime victims and their children, access to benefits grows as victims and children apply for and are granted

⁹³ Letter from Loretta King, Deputy Assistant Attorney General, Dep't of Just., to Director of State Court and/or State Court Administrator, *Handout 18: Limited English Proficiency & the Courts* (Dec. 1, 2003), <http://niwaplibrary.wcl.american.edu/pubs/lep-courts-doj-2003/>.

⁹⁴ Randy Capps, Michael Fix, and Jie Zong, *A Profile of U.S. Children with Unauthorized Immigrant Parents, Fact Sheets*, 1 (January 2016) available at <https://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents>.

⁹⁵ See Soraya Fata et al., *Custody of Children in Mixed-Status Families: Preventing the Misunderstanding and Misuse of Immigration Status in State-Court Custody Proceedings*, 47 Fam. L.Q. 191, 244 (2013); Veronica T. Thronson et al., *Winning Custody Cases for Immigrant Survivors: The Clash of Laws, Cultures, Custody and Parental Rights*, 9 Fam. & Intimate Partner Violence Q. 2-3, 1-169 (2017). <http://www.courts.ca.gov/documents/BTB24-PreCon1E-11.pdf>

⁹⁶ *Immigration Relief for Crime Victims and Children* (Dec. 11, 2017), NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Last visited Feb. 17, 2018), <http://niwaplibrary.wcl.american.edu/uandvisatrainingmat/>.

⁹⁷ See Leslye E. Orloff, Charles Palladino, *Bench Card: Overview of Types of Immigration Status*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (October 14, 2013), <http://niwaplibrary.wcl.american.edu/pubs/bchcrd-immstaturtypes/>; Dep't of Homeland Security, *Protections for Immigrant Victims* (Jan 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims/>

⁹⁸ Leslye E. Orloff, et al., *U Visa Certification Toolkit For Federal, State And Local Judges, Commissioners, Magistrates And Other Judicial Officers*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (Last updated Nov. 7, 2017), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>

⁹⁹ Victim Rights Law Ctr., *Safety Planning with Adult Sexual Assault Survivors: A Guide for Advocates and Attorneys* (2013), <http://niwaplibrary.wcl.american.edu/pubs/safety-planning-with-adult-sa-survivors/>.

immigration relief. Courts need tools that provide the information needed to ensure court orders are consistent with state and federal benefits laws.¹⁰⁰

- *What benefits an immigrant qualifies for varies by the:*
 - Immigration status an individual has received or applied for;
 - Date of entry into the U.S.;
 - Benefits program the immigrant needs; and
 - State the immigrant lives in.
- *Intersection of Immigration and State Family Law* including the following topics:
 - *Special Immigrant Juvenile Status (SIJS)*: Role of state court judges issuing findings that immigrant children need to file for SIJS;¹⁰¹
 - *Custody, Protection Orders, Economic Relief*: Special issues that arise in cases involving immigrant children, victims, and litigants;¹⁰²
- *Federal VAWA Confidentiality Laws* implications for discovery in civil and criminal court cases and limitations on courthouse enforcement against immigrant crime victims.¹⁰³
- *Policies Limiting Courthouse Immigration Enforcement*: DHS Immigration and Customs Enforcement's policies on courthouse immigration enforcement and how these policies intersect with federal VAWA confidentiality laws.¹⁰⁴

To promote access to justice for immigrant and LEP victims and children in immigrant families, judges, court leadership, and national judicial organizations nationwide should implement the following recommendations at courthouses serving urban and rural communities across the country:

- 1) Implement practices and policies that promote understanding of the laws regarding U and T visa certification and issuance of SIJS findings by state court judges;
- 2) Adopt, implement and keep up-to-date language access plans and practices that ensure language access to all court services including courtrooms, clerks offices, self-help centers and, court ordered services (e.g. home studies, treatment programs, paternity testing);
- 3) Make available at courthouses DHS produced "Know Your Rights" information on immigration protections for immigrant crime victims and immigrant children;

¹⁰⁰ See, e.g. *Public Benefits FAQs*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (last visited Feb. 17, 2018), <http://niwaplibrary.wcl.american.edu/frequently-asked-questions/public-benefits-faqs/>; *Interactive Public Benefits Map*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (last visited Feb. 17, 2018), <http://www.niwap.org/benefitsmap/>.

¹⁰¹ U.S. Citizenship & Immigration Servs., *supra* note 9.

¹⁰² See Leslye E. Orloff et. al., *Bench Card for State Court Judges on Common Issues That Arise From Parties' Immigration Status: Economic Remedies* (Oct. 15, 2013), <http://library.niwap.org/pubs/fam-tool-econrelief-childspousalsuprt/>; Andrea Carcamo Cavazos & Leslye E. Orloff, *Immigrants and Protection Orders Bench Card* (Aug. 27, 2013), <http://niwaplibrary.wcl.american.edu/pubs/bench-card-imm-protection-orders/>; Candace Evilsizor et al., *Common Immigration Issues that Arise in Custody Cases Involving Immigrant Crime Victims and Their Children* (Mar. 4, 2014), <http://niwaplibrary.wcl.american.edu/pubs/common-imm-issues-custody-cases/>.

¹⁰³ *VAWA Confidentiality Protections for Immigrant Crime Victims (March 3, 2017-Update January 31, 2018)*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (last visited Feb. 16, 2018), <http://niwaplibrary.wcl.american.edu/vawa-confidentiality-materials-tools/>.

¹⁰⁴ *Immigration and Customs Enforcement January 2018 Courthouse Enforcement Policy and VAWA Confidentiality Protections for Immigrant Crime Victims (January 31, 2018)*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (last visited Feb. 16, 2018), <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>.

- 4) Develop professional relationships with local agencies serving immigrant and LEP communities and work collaboratively with these agencies to promote access to justice for crime victims and other litigants in immigrant communities;¹⁰⁵
- 5) State court judges should take leadership roles in a multidisciplinary team approach to resolve immigration issues that may arise for domestic violence and sexual assault survivors in order to improve communication, protect confidentiality and enhance safety;
- 6) Adopt policies regarding courthouse immigration enforcement that guide judges on what steps to take should immigration enforcement officials come to civil, family and criminal courtrooms;
- 7) Educate and provide technical assistance to judges offered by judicial resource officers and/or national experts providing judges and judicial staff access to legally correct information about the issues that arise in state courts at the intersection of state laws and legal protections with federal immigration laws;¹⁰⁶
- 8) Provide training for state court judges on:¹⁰⁷
 - a. Immigration relief designed to protect immigrant victims of domestic violence, sexual assault, human trafficking, U visa criminal activities and child abuse, abandonment or neglect perpetrated against immigrant children;
 - b. U and T visa certification by judges;
 - c. Special Immigrant Juvenile Status findings;
 - d. Obtaining and applying legally correct information about immigration law and immigrant crime victim and children's benefits eligibility in custody, protection order, divorce, child support, child welfare and other state court cases in which immigration status is raised by a party as an issue in the case;
 - e. VAWA confidentiality protections against courthouse enforcement and against discovery of copies of information about immigration contained in federal immigration case files in family and criminal court cases; and
 - f. Federal immigration laws and policies that limit courthouse enforcement of immigration laws
- 9) The Chief Judge or Presiding Judge in each state or court should make trainings on U visas, T visas and SIJS mandatory for state court judges; and
- 10) Build these policies, trainings and practices into court budgets, grants, and court management and strategic plans so that the access to justice gained by courts that implement these recommendations become sustainable.

Recommendations for Law Enforcement

These survey results found approximately 20% the law enforcement survey participants were seeing a reduction in immigrant and LEP crime victims' willingness to provide information to officers at the crime scenes, to make police reports and/or to participate in post-crime scene investigative interviews. A larger number of law enforcement officials reported that crimes involving immigrant crime victims, particularly, family violence and crimes of violence against

¹⁰⁵ See Recommendation section: BRENDA K. UEKERT ET AL., THE NATIONAL CENTER FOR STATE COURTS, WHITE PAPER, IMPROVING THE COURTS' CAPACITY TO SERVE LIMITED ENGLISH PROFICIENT PERSONS SEEKING PROTECTION ORDERS 200-205 (2016), <http://niwaplibrary.wcl.american.edu/pubs/lang-gov-white-paper-improvingcourtscapacity-2006/>;

¹⁰⁶ See, e.g. San Francisco Superior Court Civil Division, U-Visa Certification Protocol (Oct. 27, 2017) <http://niwaplibrary.wcl.american.edu/pubs/san-francisco-court-civil-division-u-visa-certification-protocol/>

¹⁰⁷ Training and technical assistance is available to judges and court staff from NIWAP (202) 274-4457 or info@niwap.org.

women and children were becoming harder to detect, investigate and prosecute in 2017 compared with 2016 due to underreporting. Officers participating in the survey reported, as did victim advocates and attorneys, that victims' fears of deportation, perpetrators' deportation threats, and fears that police will turn in undocumented victims for immigration enforcement play a key role in victim's reticence to cooperate with law enforcement. Similarly, qualitative survey responses from judges and prosecutors showed that judges and prosecutors are hearing the same fears and concerns from immigrant victims explaining victim's reasons for not continuing to participate in criminal and family court cases.

Law enforcement agencies are undertaking community policing efforts designed to lessen fears, confusion and concerns of immigrant crime victims about calling the police for help and cooperating in criminal investigations. These community policing efforts will slowly convince immigrant crime victims that calling some police departments will not lead to their deportation or subject them to immigration enforcement. In many communities, law enforcement are working hard to establish, maintain and reestablish trust with immigrant communities. Partnering and collaborating with victim and legal services agencies with expertise serving immigrant crime victims are a very important part of successful community policing efforts.

The law enforcement survey results show some differences between Signing and Non-Signing agencies in terms of reporting rates for immigrant victims of crime. These differences could be interpreted as being due to more engaged role the Signing agencies play with their immigrant communities, which as a result puts them in a better position to observe the declines in participation with law enforcement. The fact that Non-Signing agencies had fewer dedicated community engagement and civilian liaison staff working with immigrant communities may have meant that Non-Signing these agencies were less involved with their immigrant communities and as a result less likely to gauge the changes between 2017 and 2016.

These survey findings regarding the differences between Signing and Non-Signing agencies demonstrate that since the U and T visas programs were fully implemented by DHS over a decade ago, law enforcement agencies across the country have found these visa certifications to be effective tools for fighting crime. These visa programs are important tools for building trust with immigrant crime victims and immigrant communities by removing fear of deportation as an obstacle to cooperation. This survey research found that law enforcement agencies are active in Signing certification (e.g. U visas 35% and T visas 17.8%). However, a significant number of law enforcement agencies represented in the survey did not know whether their agency was Signing certifications in either U visa (50%) or T visa (64%) cases.

Knowledge about the U and T Visa programs helps officers better protect and serve immigrant community members and immigrant crime victims while simultaneously protecting officer safety. By implementing U and T Visa certification practices and adopting certification policies, law enforcement agencies demonstrate to the community that they are receptive to and interested in protecting and helping immigrant and LEP victims.

Implementation of U and T visa certification programs is a necessary component of an effective community policing strategy that builds trust and develops strong working relationships with immigrant and LEP crime victims, the victim advocates and attorneys who serve immigrant and LEP victims, and with immigrant and LEP communities. Building trust, breaking the barriers

of language access and fear of deportation allows law enforcement agencies to undertake criminal investigations that would not otherwise be possible, often revealing other crimes and identifying dangerous criminal offenders in the community.

The value of the U and T visa programs as effective community oriented policing strategies has been well established.

- *FBI Law Enforcement Bulletin* (2009): Described the benefits of the U visa for both immigrant victims and law enforcement officers¹⁰⁸
- *Department of Justice, COPs Office* (2011): Promoted the U-Visa as an important tool for community policing and promotes U visa training for law enforcement and the U Visa Law Enforcement Certification Toolkit;¹⁰⁹
- *The Police Executive Research Forum* (2017): Conducted research and issued a report entitled *U Visas and the Role of Local Police in Preventing and Investigating Crimes Against Immigrants*, which highlighted promising practices employed by law enforcement agencies across the country and the successes, lessons learned and benefits for law enforcement and the community of the San Francisco Police Department's decade-long U visa certification program.¹¹⁰

U and T visa certification programs that include training and policies that reflect agency support of the community are important crime-fighting tools that eventually build trust with immigrant and LEP communities, reduce crime and promote officer safety. The following are four recommended steps that law enforcement agencies can follow to successfully implement U and T visa certification programs:

- **Initiate U and T visa certification practices:** Law enforcement agencies can begin issuing U visa and T visa certifications signed by the Chief/Sheriff/Colonel or by agency staff that the Chief/Sheriff/Colonel designates. According to DHS, designation can be accomplished by the Chief/Sheriff Signing a letter listing the law enforcement agency officials that the Chief designates to be certifiers for the agency. These certifying officials are required by DHS regulations to have supervisory responsibility.¹¹¹
- **Adopt a U and T visa certification policy and language access plan:** Policies play an important role in raising awareness among law enforcement agency officials about the U and T visa programs. Establishing policies that all law enforcement personnel are responsible for being knowledgeable about can promote greater awareness among law enforcement agencies, which helps to address the proportion of officers this survey revealed “do not know” whether and what steps their agencies may have taken in

¹⁰⁸ U.S. Federal Bureau of Investigation, 78 FBI Law Enforcement Bulletin no.4 (2009), <https://www.hsd1.org/?view&did=34531>

¹⁰⁹ LESLYE E. ORLOFF ET. AL., U VISA TOOLKIT FOR LAW ENFORCEMENT AGENCIES AND PROSECUTORS, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (2018), <http://niwaplibrary.wcl.american.edu/pubs/uvisatoolkit-police-prosecutors/>; Stacey Ivie and Natalie Nanasi, “The U Visa: An Effective Resource for Law Enforcement,” *FBI Law Enforcement Bulletin* 78 (2009): 10; Tony Flores and Rodolfo Estrada, “The U-Visa: An Important Tool for Community Policing,” *Community Policing Dispatch* 4, no. 1 (January 2011).

¹¹⁰ POLICE EXECUTIVE RESEARCH FORUM, <http://www.policeforum.org/> (last visited Apr. 27, 2018)

¹¹¹ U.S. Citizenship and Immigration Services - DHS, 72 Fed. Reg. 53013, 53023 (Sep. 17, 2007) (the person signing the certificate is the head of the certifying agency or person(s) in a supervisory role who has been specifically designated with the authority to issue U nonimmigrant); 8 CFR 214.14(c)(2)(i)

employing U and T visa certification and continued presence requests as effective crime fighting tools. It is important that any policies issued and any practices implemented follow DHS regulations and guidance on U and T visa certification. Policies also serve as an important tool for developing relationships with the programs serving immigrant crime victims and building trust with immigrant communities.¹¹² The National Model U and T Visa Certification Policies developed in collaboration with 13 law enforcement agencies with significant certification experience provides an excellent model that can be implemented in jurisdictions across the country.¹¹³

- **Expand community-policing efforts designed to reach immigrant crime victims:** This includes assigning greater numbers of officers with expertise and experience in working with crime victims, immigrant crime victims, LEP victims and refugee communities to community policing and also involving more civilian victim advocates to these activities. Develop and maintain ongoing personal working relationships between law enforcement officers who specialize in working with immigrant crime victims and local community based agencies that provide victim advocacy for and legal representation of immigrant victims in immigration and in family court matters. It is important that these relationships be transferred through training and mentorship that can sustain the relationship through staff changes at both the local law enforcement agency and the victim and legal services agencies.
- **Train law enforcement agency staff on U and T visa certification and continued presence:** Training for all ranks of law enforcement officials is critical for ensuring effective help for immigrant crime victims. Front line officers need knowledge about and an understanding of how these tools, combined with effectively implemented language access plans, facilitate proper identification and investigation of crimes being committed in communities. Mid-level supervisors and specialized investigators, including certifying officials and department leadership, need knowledge of the procedures and requirements to ensure victims receive certifications in a timely manner.¹¹⁴
- **Law Enforcement Officials Can Receive Technical Assistance National Law Enforcement Certification Experts:** Numerous training opportunities exist, including free and low-cost training on best practices and model policies for U visa certification provided by a national team of law enforcement and victim attorney experts on immigration relief for immigrant crime victims and U and T visa certification. Peer to peer technical assistance for law enforcement is offered through law enforcement/prosecutor roundtables and through assistance with issues that may arise in individual cases involving immigrant and LEP crime victims.¹¹⁵
 - Law Enforcement Agencies can receive interpretation skills training for the agencies' bilingual law enforcement officers and staff to become qualified

¹¹² DHS, *U and T Visa Law Enforcement Resource Guide*. See National Model U and T Visa Certification Policies developed in collaboration with law enforcement agencies with significant certification experience: NIWAP, *Model Policy for Interactions with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certifications and T Visa Declarations*, 2016, <http://niwaplibrary.wcl.american.edu/pubs/proposed-model-u-visa-policy/>; NIWAP, *Discussion Paper for Model Policy for Working with Immigrant Victims of Crime and Human Trafficking & Signing of U Visa Certification and T Visa Declarations*, 2016, <http://niwaplibrary.wcl.american.edu/pubs/discussion-paper-model-policy-u-visa-certification-may-2016/>.

¹¹³ Model U-Visa Certification Protocol for Law Enforcement Agencies, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT (May 2011), <http://niwaplibrary.wcl.american.edu/pubs/model-u-cert-protocol-policy/>

¹¹⁴ Cal. Penal Code § 679.10. (SB 674)

¹¹⁵ *Law Enforcement & Prosecution Monthly U Visa Roundtable*, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT <http://www.niwap.org/tools/law-enforcement-u-visa-certification-roundtables/> (last visited Apr. 27, 2018)

interpreters. This training and the technical assistance that comes with it can be provided by the Interpretation Technical Assistance & Resource Center (ITARC) based at the Asian Pacific Institute on Gender Based Violence.¹¹⁶ Training law enforcement agency staff to be qualified interpreters enhances law enforcement agencies' ability to provide meaningful access to the agencies' services. When qualified interpreters are used at encounters with LEP victims and witnesses by officers responding to 911 calls, at crime scene investigations, when taking police reports and post crime scene investigations, the records in the criminal investigation will not contain flaws in interpretation of statements made by victims and witnesses that can often undermine criminal prosecutions.

Recommendations for Prosecutors

The results of the survey research among prosecutors demonstrated that more prosecutors' offices need to adopt U visa and T visa certification practices. This survey also found that both prosecutors and law enforcement officials were under-utilizing continued presence as an important tool that protects victims of human trafficking and helps law enforcement officials. Continued presence provides swift access to temporary protection of legal immigration status for victims of human trafficking who are potential witnesses in human trafficking investigations. This findings of this survey clearly demonstrates that the frequency of instances of defense counsel raising the immigration status of the victim serving as a witness in criminal prosecutions is very common in criminal cases. (See, figure 87).

The national prosecutors' survey results additionally underscored that many prosecutors' offices were delaying certification of U and T visas until after any criminal case the prosecutor was pursuing against the perpetrator was completed. These practices put victims at risk, are not required or supported by the U visa's legislative history, and are not consistent with the letter, the purpose or the spirit of U visa and T visa regulations and DHS publications on the programs.

In criminal prosecutions involving immigrant crime victims as witnesses, prosecutors should implement a case strategy that includes deciding how the prosecution will address issues related to the victim's immigration status in the criminal case. Strategies to consider should include:

- In a domestic violence or child abuse case will the prosecutor want to raise the immigration status of the victim as part of the prosecution's case to demonstrate how the perpetrator used threats of deportation or immigration related power and control over the victim as part of the pattern of abuse;
- The prosecutor can file a pre-trial motion to keep immigration status related issues out of the immigration case as prejudicial and irrelevant;¹¹⁷
- Preparing to respond with a timeline demonstrating the point in the case at which the victim learned about immigration relief available to victims and introducing prior consistent statements to counter allegations raised by defense counsel that the victim is making up abuse to gain immigration status;

¹¹⁶Language Access, Interpretation, and Translation, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/culturally-specific-advocacy/language-access/>

¹¹⁷ See 2017 WA REG TEXT 475745 (NS); See also Evidence Rule 413 - Unpacking Washington's New Procedural Protections for Immigrants, NWLAWYER WASHINGTON STATE BAR ASSOCIATION (forthcoming 2018)

- Introducing expert witness testimony on the U visa, VAWA self-petitioning or the T visa programs to educate the jury about the history, purpose, and requirements of these programs; and
- Preparing objections to oppose potential requests for discovery of VAWA confidentiality protected immigration case files and information about the existence of any such immigration case the victim may have filed.

The following tools will support prosecutors in making their prosecutions more successful, leading to more convictions. This in turn will, over time, render defense attorneys in prosecutors' jurisdictions less likely to raise the immigration status of victims and the U visa as an issue in future cases. Prosecutor's training tools have been developed emphasizing the following issues:

- Pretrial strategies, the prosecutor may raise immigrant status related abuse, power and control as part of the prosecution's case. Whether or not a prosecutor employs this strategy, prosecutors will need to prepare immigrant victims for cross-examination, develop effective rebuttal questions and consider the use of expert witnesses.¹¹⁸
- Case preparation. There are advantages to signing U and T visa certifications early in the case for prosecutors, especially when the defense counsel raises the immigration status of the victim or the U or T visas as a discrediting strategy in the criminal case.¹¹⁹ Case preparation strategies include developing and presenting evidence timelines that help the prosecution successfully admit "prior consistent statements" of the victim as evidence that counters efforts to discredit immigrant victims or use the victims' U visa certifications against them in criminal cases.
- Preventing discovery of VAWA confidentiality protected case files. Federal Violence Against Women Act confidentiality protections limit discovery of information about a victim's immigration case, including information contained in the victim's federal immigration case file, in criminal court cases.¹²⁰ Only the certification itself, signed by a law enforcement officer, a prosecutor, or a state court judge could potentially be discovered.

The success of criminal prosecutions involving immigrant crime victims will also be enhanced if prosecutors' offices implement the following recommendations:

¹¹⁸Jane Anderson, Leslye E. Orloff, and Benish Anver, What's Immigration Status Got to Do with It? Prosecution Strategies for Cases Involving Undocumented Victims (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/pretrial-strategies-7-24-17-final-with-logos/>

¹¹⁹ Jane Anderson, Leslye E. Orloff, and Benish Anver, Certifying Early: When Should You Sign a U or T Visa Certification for a Victim? (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/certifying-early-7-24-17-final-w-logo/>

¹²⁰ Jane Anderson, Leslye E. Orloff, and Benish Anver, VAWA Confidentiality and Criminal Cases: How Prosecutors Should Respond to Discovery Attempts for Protected Information (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/discovery-and-awa-confidentiality-tool-final-7-24-17/>; Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (March 11, 2017), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>; and Quick Reference Guide for Prosecutors: U Visa and VAWA Confidentiality Related Case Law (July 24, 2017), <http://niwaplibrary.wcl.american.edu/pubs/case-law-quick-reference-tool-7-24-17-final-w-logo/>

- Identify formal points of contact within the prosecutor's office and the local victim's advocacy and legal services organizations with expertise serving immigrant victims
- Develop strong relationships and work collaboratively with immigrant victim's advocates and attorneys on:
 - Individual victim's cases to ensure that victims receive information about immigration relief available to victims through the VAWA, T and U visa programs as early as possible in the prosecution
 - Developing partnerships to work on the development and implementation of improvements to local processes and procedures that improve immigrant victim's ability to participate in criminal cases
- Identify prosecutors who will be the designated U visa certifiers for the prosecutor's office, implement U visa certification practices and policies that encourage U visa certification early in the case and do not wait until the criminal case has concluded
- Work collaboratively with immigrant victim advocates and attorneys to receive training on immigrant crime victim's legal rights and immigration options for prosecutors, and to provide training by victim advocates and attorneys on how they can best assist with prosecutions.

Recommendations for the Department of Homeland Security

This survey's findings confirmed that perpetrators of violence against immigrant crime victims during 2016 and 2017 were actively engaged in using threats of deportation and making calls to immigration enforcement officials in efforts to trigger initiation of immigration enforcement actions against immigrant victims. In total 433 immigrant victims of domestic violence, sexual assault, child abuse, and human trafficking who had filed or were in the process of filing VAWA self-petitions, U visa applications, T visa applications and for civil protection orders from state courts became the subjects of immigration enforcement. This amounts to 10% of all of the victims reported by attorneys and advocates in the survey in 2016 and 2017. VAWA self-petitioners were most likely to be subjected to immigration enforcement (18%) followed by U visa (8%) and T visa (9%) victims. (See, figure 112). This research found that what triggered the immigration enforcement action was most often reports from the perpetrator or the perpetrator's family members to immigration enforcement officials.

The percent of immigrant enforcement actions against immigrant victims that were initiated by perpetrators or their family members by case type in this survey was:

- VAWA self-petitioners – 38%
- U visa victims – 25%
- T visa victims – 30%
- Civil protection order applicants – 11%

These findings are consistent with findings from research conducted in 2013, which found that immigration enforcement against crime victims was caused by calls from the perpetrator or the perpetrator's family at the following rates:¹²¹

¹²¹ Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 25-26 (Feb. 2014), http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/.

- VAWA self-petitioners – 38.3%
- U visas – 26.7%

When immigrant victims who are limited English proficient (LEP) call the police for help and police arriving at the crime scene are not able to communicate with the victims because they do not obtain the assistance of a qualified interpreter, this can result in the police arresting the victim instead of or in addition to the perpetrator.¹²² Often the person who speaks English at the crime scene will be the perpetrator or his family member.¹²³ Prior 2013 research has found that this leads to the victim's arrest in 15.4% of VAWA self-petitioning cases and 7.5% of U visa cases. This research found that in 2016 and 2017 police responding to domestic violence calls arrested the immigrant victim in addition to or instead of the perpetrators at the following rates:

- VAWA self-petitioners – 17%
- U visa victims – 36%
- T visa victims – 10%

It is important to note that traffic stops trigger immigration enforcement against immigrant victims and is the factor that triggered immigration enforcement against crime victims at the following rates:

- VAWA self-petitioners – 11%
- U visa victims – 39%
- T visas – 10%
- Civil protection order victims – 89%

VAWA confidentiality statutory protections were enacted by Congress in 1996 and improved and enhanced by the Violence Against Women Acts of 2000, 2005 and 2013.¹²⁴ The legislative history of VAWA confidentiality from VAWA 2005 states:

“This section enhances VAWA’s confidentiality protections for immigrant victims and directs immigration enforcement officials not to rely on information provided by an abuser, his family members or agents to arrest or remove an immigrant victim from the United States. Threats of deportation are the most potent tool abusers of immigrant victims use to maintain control over and silence their victims and to avoid criminal prosecution... These provisions are designed to ensure that abusers and criminals cannot use the immigration system against their victims. Examples include abusers using DHS to obtain information about their victims, including the existence of a VAWA immigration petition, interfering with or undermining their victims’ immigration cases, and encouraging immigration enforcement officials to pursue removal actions against their victims.”¹²⁵

¹²² See e.g. Leslye E. Orloff; Mary Ann Dutton; Giselle Aguilar Hass; Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 100 (2003)

¹²³ Leslye E. Orloff; Mary Ann Dutton; Giselle Aguilar Hass; Nawal Ammar, *Battered Immigrant Women's Willingness to Call for Help and Police Response*, 13 UCLA Women's L.J. 43, 100, 64-69 (2003) (In responding to 8.34% of domestic violence calls and 10.7% of sexual assault calls involving immigrant victims police spoke only with the perpetrator who spoke English.)

¹²⁴ Alina Husain and Leslye E. Orloff, VAWA Confidentiality: Statutes, Legislative History, and Implementing Policy (March 11, 2017), <http://niwaplibrary.wcl.american.edu/pubs/vawa-confidentiality-statutes-leg-history/>;

¹²⁵ DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009, H.R. NO. 109-233, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, 122 (2005) <http://niwaplibrary.wcl.american.edu/pubs/conf-vawa-lghist-dojexcerpts-3402-09-22-2005/>.

The Department of Homeland Security recognizes that:

“Violations of Section 1367 could give rise to serious, even life-threatening, dangers to victims and their family members. Violations compromise the trust victims have in the efficacy of services that exist to help them and, importantly, may unwittingly aid perpetrators retaliate against, harm or manipulate victims and their family members, and elude or undermine criminal prosecutions.”¹²⁶

The findings from this national research on immigration enforcement highlight the ways perpetrators of domestic violence, sexual assault, child abuse, human trafficking and other violent crimes against immigrant victims are continuing to use their ability to trigger immigration enforcement against victims. Perpetrators who are successful in getting DHS to subject victims to immigration enforcement will be more successful in avoiding criminal prosecution, stopping victims from seeking civil protection orders, and gaining an advantage in custody and divorce proceedings to the detriment of victims and children.

The issuance of ICE Directive Number 11072.1 “Civil Immigration Enforcement Actions Inside Courthouses” on January 10, 2018 was an important step for immigrant crime victims. In this memo ICE confirms (in footnote 2) that immigrant crime victims and witnesses continue to receive VAWA confidentiality protections against courthouse enforcement that are in addition to the limitations on civil courthouse enforcement set out in the January 10, 2018 memo. The requirement that ICE officials cannot undertake civil immigration enforcement actions in non-criminal family and civil court cases and courtrooms without Field Office Director or Special Agent in Charge approval will be very helpful in deterring the kinds of immigration enforcement actions being taken at courthouses against victims that this research documents.¹²⁷

There are additional steps that the Department of Homeland Security should take to address the findings regarding immigration enforcement against crime victims that this report has found. This survey found that immigration enforcement against victims is triggered most often by tips from perpetrators, by a victim’s arrest related to the domestic violence and by traffic stops. The following recommendations are designed to ensure full implementation of the ICE Courthouse Enforcement Directive 11072.1 and prevent immigration enforcement against immigrant crime victims protected by federal VAWA confidentiality statutes. These recommendations are designed to reach staff and supervisors at DHS who encounter immigrant crime victims or whose actions in their DHS work directly impacts victims. DHS should:

- Mandate annual training for:
 - All Immigration and Customs Enforcement and Customs and Border Patrol officials involved in and supervising immigration enforcement activities;
 - All new ICE and CBP enforcement officers;
 - All ICE Trial Attorneys;

¹²⁶ DEP’T OF HOMELAND SECURITY, INSTRUCTION NUMBER: 002-02-001, IMPLEMENTATION OF SECTION 1367 INFORMATION PROVISIONS, *in* NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, 15 (Nov. 7, 2013) <http://niwaplibrary.wcl.american.edu/pubs/implementation-of-section-1367-all-dhs-instruction-002-02-001/>.

¹²⁷ *Immigration and Customs Enforcement January 2018 Courthouse Enforcement Policy and VAWA Confidentiality Protections for Immigrant Crime Victims*, NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT (Jan. 31, 2018) <http://niwaplibrary.wcl.american.edu/courthouse-protections-and-crime-victims/>

- Any state or local law enforcement officers given authority to conduct immigration enforcement activities on under Section 287(g); and
- All DHS staff responsible for SAVE verification
- All DHS staff who receive detainer requests, work at detention centers and have any role in responding to requests about whether or not immigration enforcement officials are interested in a particular person on:
 - VAWA confidentiality requirements including how to access the Central Index System containing the “384” flag assigned to VAWA confidentiality protected cases and the “DHS Broadcast Message on New 384 Class of Admission”
 - ICE Directive Number 11072.1 procedures and requirements
 - ICE and CBP sensitive locations memo
 - ICE Victim Witness memo¹²⁸
- Require that all DHS staff indicate as part of their performance review whether or not they have taken the annual required training courses on VAWA confidentiality laws and courthouse and sensitive locations.
- Require that CBP issue:
 - A written muster or other policy memo implementing VAWA confidentiality requirements; and
 - A policy directive or muster that implements the same courthouse enforcement limitations for CBP officials as contained in ICE Directive Number 11072.1 on courthouse enforcement
- Implement practices that will prevent use of immigration enforcement actions, immigration court, and detention resources on cases of immigrant crime victims including particularly those with pending VAWA, U visa, and/or T visa and other VAWA confidentiality protected cases.
- Coordinate across DHS including USCIS and ICE to update the process of expedited processing of U visa applications by USCIS in cases of immigrant crime victims who are in immigration detention, are in removal proceedings or have final orders of removal. Expand this process to apply to VAWA self-petitioners,¹²⁹ VAWA cancellation of removal applicants, VAWA suspension of deportation applicants, T visa applicants and any other applications covered by VAWA confidentiality protections. This research has found that perpetrators of crimes continue to use threats, attempts and calls to DHS immigration enforcement officials reporting immigrant victims. Often these calls are resulting in immigration enforcement actions being initiated against victims. An expedited process that works to swiftly adjudicate cases of VAWA, T and U visa victims will be an effective mechanism that cuts off perpetrator’s ability to undermine criminal investigations and prosecutions and to harm victims.

Recommendations for Additional Statutory Protections Needed to Protect Immigrant Crime Victims

This report discusses recommendations that courts, law enforcement, prosecutors, victim advocates, victim attorneys and the DHS can implement that will help remove barriers to accessing

¹²⁸ Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs Policy Number: 10076.1 (2011).

¹²⁹ VAWA self-petitioners includes definition at INA 101(a)(51) includes battered spouse waiver applicants.

justice and improve access to federal statutory immigration protections designed to help immigrant victims and protect them from deportation. There are additional federal and state statutory protections that would greatly improve protections for immigrant victims of domestic and sexual violence, child abuse and human trafficking. Examples include:

- Federal Legislation to:
 - *Create a statutory list of locations deemed by statute to be sensitive locations* at which immigration enforcement activities cannot be conducted unless the action has supervisor approval and meets limited statutorily defined exceptions. The list of sensitive locations should include but not be limited to:
 - Domestic violence shelters
 - Rape crisis centers
 - Family justice centers
 - Supervised visitation centers
 - Victim services agencies
 - Courthouses
 - Schools
 - Hospitals
 - Places of worship and other religious ceremonies
 - Weddings
 - Funerals
 - *Eliminate the U visa annual cap:* This will shorten the time that U visa victims cooperating with law enforcement and prosecutors in criminal investigations or prosecutions are at risk from abusers attempts to have victims detained or deported.
 - *Allocate sufficient resources in appropriations bills and earmark support for sufficient staffing, supervision, and adequate training for the VAWA Unit.* Survey findings about the numbers of immigrant victims who stay with abusers until their cases are adjudicated and daily, weekly and monthly abuse suffered by immigrant victims and their children necessitates staffing levels that will eliminate long waits for U visa adjudication. Ensure that all VAWA self-petitions, battered spouse waivers, U visa and T visa adjudications occur in a swift and predictable manner that allow immigrant crime victims to implement safety plans that protect victims while they await deferred action and work authorization which are both key to victim safety, protection and full participation in the criminal and civil justice systems.
 - *Grant victims timely access to employment authorization within 6 months of filing* for a U visa, a VAWA self-petition, a T visa or any other VAWA confidentiality protected case. Lengthy delays in the adjudication process leaves victims of domestic violence, child abuse, human trafficking and workplace violence at the mercy of perpetrators. Without an ability to work, victims cannot support themselves and their children if they flee.¹³⁰
 - *Protect survivors from removal while their VAWA self-petitions, VAWA cancellation, U visa, and T visa applications are pending.* The findings of this

¹³⁰ Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 26 (Feb. 2014), http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/.

research updates and builds upon findings in prior research¹³¹ describing the extent to which immigrant crime victims eligible for and applying for immigration relief created to protect them are at risk of becoming the subject of immigration enforcement actions. Victims need to receive formal protection from deportation, detention and issuance of a notice of action against them once they have established a prima facie case. This will provide them protection soon after filing their VAWA, T or U visa case and will assure protection from all immigration enforcement actions whatever the trigger of the immigration enforcement action may be, including perpetrators tips, arrests of LEP victims at crime scenes, traffic stops or from any other source.

- State legislation to:
 - Require U visa certification within a specified time after the request is made by government agencies authorized by federal statutes to be certifiers. This includes, but is not limited to, law enforcement, prosecutors and judges.¹³²
 - Provide access to state funded public benefits for immigrant victims of domestic violence, child abuse, human trafficking and, to immigrant victims with pending status, approved status or who are in the process of filing VAWA confidentiality protected immigration case. This includes, but is not limited to, granting these immigrant victims access to state funded TANF, subsidized health care, drivers' licenses and child care.¹³³
 - Amend state discovery rules to preclude discovery in state family, civil or criminal court cases of information about any VAWA confidentiality protected immigration case that the victim has filed. This includes information about the existence of the case, actions taken in the case and discovery of the contents of the federal immigration case file.

¹³¹ Krisztina E. Szabo et. al., Early Access to Work Authorization For VAWA Self-Petitioners and U Visa Applicants, NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT 26 (Feb. 2014), http://niwaplibrary.wcl.american.edu/pubs/final_report-on-early-access-to-ead_02-12/.

¹³² Cal. Penal Code §679.10; Conn. Gen. Stat. §46b-38b (2016)

¹³³ To identify states that have already implemented these provisions go to <http://www.niwap.org/benefitsmap/>

EXHIBIT F



Safeguarding the Integrity of Our Courts: The Impact of ICE Courthouse Operations in New York State





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Executive Summary

The ICE Out of Courts Coalition (the Coalition) is comprised of over 100 organizations and entities across New York State. As community-based organizations, unions, civil legal services providers, public defenders, family defenders, anti-violence advocates, law schools, and civil rights and liberties groups serving New Yorkers of all ages, races, and immigration statuses, we have been alarmed and appalled by Immigration and Customs Enforcement's (ICE) increasing dependence on our State's court system as its preferred venue for surveilling and detaining immigrant New Yorkers.

For over two years, the Coalition has gathered qualitative and quantitative data from affected stakeholders across issue areas and roles within the justice system. Following meetings with the Chief Judge and the Chief Administrative Judge, the Coalition has spent significant energy compiling the data collected in this report. The data collected in this report demonstrates the full breadth of the negative impact ICE courthouse operations have had on the administration of justice, as well as equal access to justice, in New York State. This report demonstrates just how widespread this problem is — affecting not just New York City but the whole state, affecting not just criminal but problem-solving and civil courts as well. Information presented here attests to how systemic this issue has become in the fair and efficient administration of justice, and how ICE courthouse operations have had an outsized effect on the most vulnerable New York State residents, including victims and survivors of domestic and gender-based violence, single mothers, those eligible for problem-solving courts and youth.

The report begins with an overview of the astronomical increase (1700%) in ICE courthouse operations since 2016 and shows the negative impact of this increase on countless stakeholders. Statewide, law enforcement agencies, from district attorney offices to the Attorney General's Office, have publicly condemned ICE for disrupting the trust between New York's immigrant residents and law enforcement. District attorney offices that participated in the Coalition's data-gathering describe how victims, survivors, and witnesses were often too fearful to pursue justice in courts or to participate in their services geared toward immigrant residents. Advocates similarly point out a pronounced chilling effect among victims, survivors, and witnesses in reporting abuses to law enforcement or pursuing legal claims. Most disturbingly, advocates also reported how ICE's highly publicized tactics have emboldened abusers, who use threats of deportation to keep their clients from seeking legal redress. Public defender organizations recount how disruptive ICE's recent tactics have been to not just their attorneys' daily work but also to their resource allocation and morale.

The report highlights how ICE courthouse operations thwart the intended outcomes of problem-solving courts and those designed for trafficking victims, youth, and other vulnerable populations. ICE's targeting of relief-eligible individuals induces fear around court-related activities, including alternatives to incarceration and other rehabilitation-focused programs run by the Center for Court Innovation. This atmosphere of fear has spread beyond criminal courts to civil courts. ICE's courthouse operations hinder these problem-solving and civil courts from carrying out their missions of providing opportunity and redress to vulnerable New Yorkers.

As recounted here, the widespread corrosive impact of ICE courthouse operations on New York State Courts has been documented and condemned by legal professional associations at the city, state, and national level. Numerous sitting and retired judges as well as elected officials have spoken up against ICE's tactics. Given the insidious and pervasive impact ICE courthouse operations have had on the function and mission of the New York justice system, the Coalition urges the Office of Court Administration to adopt two rules to address the problems identified in this report:

1. Employees of the Unified Court System shall not:

- i. **Assist with federal immigration enforcement activities in the course of their employment, in any courthouse of the New York State Unified Court System except to the extent they are described in Section (2).**
- ii. **Inquire into the immigration status of any individual within any courthouse of the Unified Court System unless such information about a person's immigration status is necessary for the determination of program, service, or benefit eligibility or the provision of services.**
- iii. **Provide any information to immigration enforcement officers regarding persons appearing before the court, except information regarding citizenship or immigration status, as required by 8 U.S.C. § 1373, and then only if known.**

2. Civil arrests without judicial warrants:

Civil arrests may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant or judicial order authorizing that the person who is the subject of such warrant be subjected to a civil arrest. "Judicial warrant" is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government. "Judicial order" is defined as an order issued by a magistrate sitting in the judicial branch of local, state, or federal government.

These rules will help protect New Yorkers' access to the courts and ensure increased public safety and legal protections for all.

Overview of ICE Courthouse Operations from 2016-Present

The Immigrant Defense Project (IDP) has documented a sharp increase of 1736% in ICE courthouse enforcement in and around New York's courts since 2016.¹ In particular, IDP documented an almost 1500% increase in ICE courthouse operations from 2016 to 2017, with a further 17% increase over the 2017 number of operations.²

IDP tracks two types of operations: arrests and sightings.³ An arrest refers to an operation where IDP was able to confirm that ICE took an individual into custody.⁴ Arrests include operations that occur both inside of a courthouse and in the immediate vicinity of a courthouse.⁵ A sighting refers to an operation where IDP confirmed that witnesses saw ICE agents or ICE vehicles, but were not able to verify an arrest.

IDP collects reports of ICE courthouse arrests and sightings through collaborations with community-based and legal services organizations across New York State, as well as through calls and reports received on IDP's hotline. In addition, New York State uniquely houses Regional Immigrant Assistance Centers (RIACs) across the state and the New York Immigrant Family Unity Project (NYIFUP) in immigration courts. Both initiatives have provided a mechanism for IDP to collect firsthand accounts of courthouse enforcement.

¹ See Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 6 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf (comparing 202 ICE courthouse operations from 2018 to 11 reported in 2016).

² See *id.*

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.* The figures cited in the report are up-to-date as of January 20, 2019. Since individuals arrested by ICE may spend months in detention before they have a chance to see an immigration judge, IDP may not hear of an individual's arrest until they finally resurface in immigration court.

IDP confirms details by speaking with the witnesses and the individuals arrested by ICE themselves, along with their family members and attorneys.⁶

In addition to the reports collected by IDP staff, IDP has obtained 66 “unusual occurrence reports” through a FOIL request with the Office of Court Administration.⁷ These reports cover the period from February 2, 2017 to August 13, 2018.⁸ Of the 66 reports, 32 matched an operation that was independently reported to IDP, 11 were possible matches, and 23 did not match a report documented by IDP.⁹ For this time period, IDP received reports of 241 ICE courthouse operations that were not documented in an OCA unusual occurrence report.¹⁰

Immigrant Defense Project Reports: ICE Courthouse Operations



⁶ *Id.*

⁷ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

⁸ See *id.* (App. RR).

⁹ See Immigrant Def. Project, ICE Courthouse Operations from 2/1/2017 to 8/13/2018: A Comparison of Operations Reported to IDP and Operations Documented by OCA’s Unusual Occurrence Reports (App. UU).

¹⁰ See *id.* (App. UU).

ICE courthouse operations increased by more than 1700% between 2016–2018

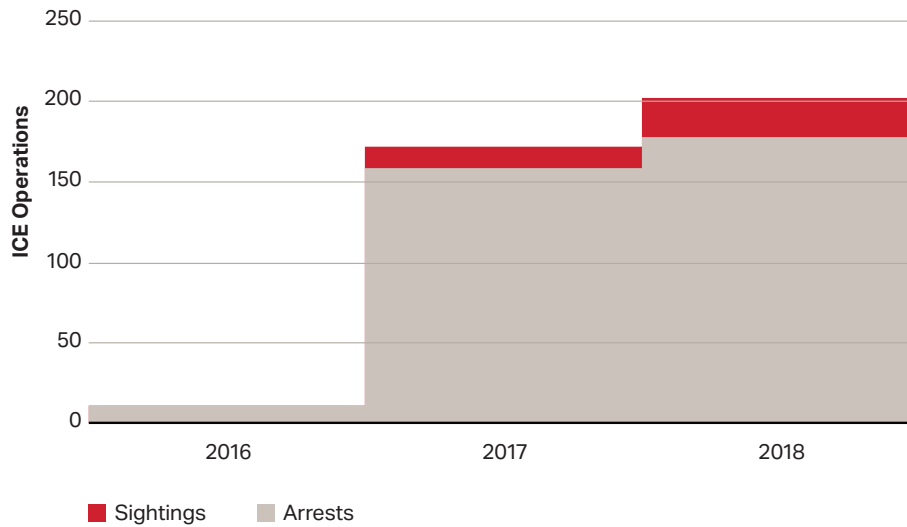


Fig 1

A majority of reports come from New York City.¹¹ In 2017, Brooklyn reported the largest number of arrests in the city, with 32 incidents, with Queens a close second at 27.¹² In 2018, Brooklyn and Queens were again the top two boroughs for ICE courthouse enforcement, with 35 arrests reported in Brooklyn and 33 in Queens.¹³ Staten Island reported the largest increase in arrests from 2017 to 2018, doubling from 6 to 12.

ICE also actively pursues individuals in many courts outside of the city. Since the beginning of 2017, IDP has received courthouse arrest reports from 19 counties outside of the city, with the largest number coming from Westchester.¹⁴ While most arrests in 2017 focused on larger county or city courthouses, ICE appeared to increase operations in town and village courts in 2018.¹⁵ Operations were reported in more than a dozen town and village courts scattered

¹¹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

¹² *Id.*

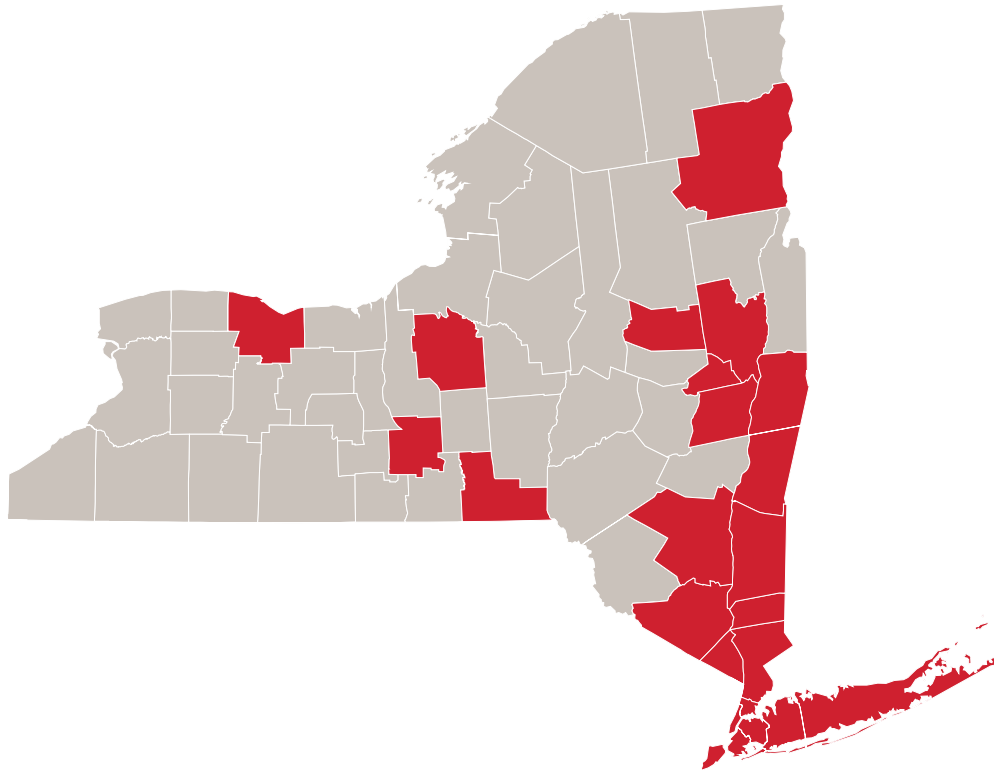
¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

across Westchester, Rockland, Columbia, Orange, Ulster, and Albany counties.¹⁶ In 2018, there was a significant surge in reports out of Westchester, with the county reporting 13 arrests, up from four the previous year.¹⁷

Counties Reporting ICE Courthouse Operations



Albany, Bronx, Broome, Columbia, Dutchess, Essex, Fulton, Kings (Brooklyn), Monroe, Nassau, New York (Manhattan), Orange, Onondaga, Putnam, Queens, Rensselaer, Richmond (Staten Island), Rockland, Saratoga, Schenectady, Suffolk, Tompkins, Ulster, Westchester.

As Albany Law School Professor **Sarah Rogerson** explains, “In New York City there is a volume of cases, but there are more eyes and ears. It could be happening upstate but we don’t know because we can’t be in every city and town court.”¹⁸

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Mallory Moench, *Immigrants In or Near Capital Region Courts Increasingly Fear ICE Arrests*, Times Union (Jan. 31, 2019), <https://www.timesunion.com/news/article/Capital-Region-courts-dangerous-for-immigrants-as-13578301.php>.

How ICE Courthouse Operations Complicate the Work of District Attorney Offices and Compromise Public Safety



District attorney offices from across New York State expressed how ICE courthouse operations complicate their ability to ensure fair and effective prosecutions of crimes. Below are four main areas in which the district attorney offices expressed concern.

Fearful Victims and Witnesses

District attorneys across the state have publicly stated their concern about how ICE presence in New York courts has discouraged noncitizen crime victims from reporting crime. They report that this fear has resulted in the reluctance of domestic violence victims, survivors, and witnesses to come to court to testify, as well as a reduction in the number of

participants in clean slate and other community outreach programs targeted at noncitizens. An alarming and natural consequence of this chilling effect, they stress, is the inability of district attorneys to prosecute perpetrators and other dangerous individuals, resulting in a serious public safety issue.

Concern around this issue is so prevalent that prominent New York District Attorneys have spoken out. Bronx County District Attorney **Darcel D. Clark** lamented that when a witness or a victim is arrested by ICE, the district attorney is often incapable of prosecuting a case. Dismissing such cases, she stressed, will result in “dangerous individuals being released back into the community.” Moreover, she stated, “This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety.” **Cyrus Vance Jr.**, the Manhattan District Attorney, affirmed that all New Yorkers, whether documented or not under federal law, have the right to safely attend court proceedings, and that the fear of deportation inhibits crime victims from coming forward and disincentivizes defendants from responsibly attending court dates. He specifically noted that “Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety.”¹⁹

Brooklyn District Attorney **Eric Gonzalez** called upon ICE to designate courthouses as sensitive locations, like schools or places of worship. Discussing courthouse arrests made by ICE, he emphasized that, “These actions jeopardize public safety by instilling fear in immigrant communities, which makes victims and witnesses afraid to come forward to report crimes, and unable to get justice.”²⁰

Albany District Attorney **David Soares** stated, “The activities of Immigration Customs Enforcement is compromising our ability to hold accountable perpetrators who prey upon victims from vulnerable immigrant communities.”²¹ Westchester District Attorney **Anthony A. Scarpino, Jr.** reiterated the objections of his counterparts, contending that his office’s efforts are undermined by ICE’s presence in Westchester criminal courts. He stated, “When ICE uses our local courthouses to make civil immigration arrests, both immigrants who are victims of or witnesses to domestic violence, scams, wage theft or violent crimes are now fearful that coming to court may lead to arrest by ICE.”²² **Silvia Finkelstein**, the Executive Director of the Immigration Unit at the Nassau County District Attorney’s Office, has reported that the current administration’s enforcement prerogative contributed

¹⁹ Immigrant Def. Project, *Protect Our Courts Act: Prosecutor Statements*, <https://www.immigrantdefenseproject.org/wp-content/uploads/Prosecutor-Statements-Updated-02202019.pdf>.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

substantially to the fear and disincentive of the immigrant population to come forward to report crime or to participate in the criminal justice system generally.²³ **Madeline Singas**, the Nassau County District Attorney, expressed concern for ICE's impact on crime reporting by noncitizens:

New York's justice system works best when everyone has access. Immigrants who are victims of domestic violence, wage theft, fraud, or violent crime should be able to seek justice regardless of their status, and they should be able to come to court for that purpose without fear that their appearance will lead to civil arrest by ICE.²⁴

Citizens and noncitizens alike are both vulnerable to criminal offenses. Noncitizens living in the U.S., regardless of status, are regularly the victims of the same crimes suffered by citizens. In fact, noncitizens are more likely to be the victims of crime in the United States than their U.S.-born counterparts.²⁵ Additionally, immigrants are victims of unique crimes that prey on their vulnerable statuses. For example, individuals in immigrant communities are particularly vulnerable to crimes,²⁶ and this concern, particularly for the Latinx community, has only increased since the 2016 presidential election.²⁷ Indeed, in 2017, FBI hate crime data revealed a 24% increase in attacks against the Latinx community, the target

²³ Peter Belfiore, *D.A.: Fear Rising Among Immigrant Witnesses to Crimes*, Long Island Herald (Feb. 1, 2018), <http://liherald.com/stories/da-fear-rising-among-immigrant-witnesses-to-crimes,99647> (“Given the current climate, there is a lot of fear in the immigrant communities to come forward or participate in any way in the criminal justice system,” Finkelstein said.”).

²⁴ Immigrant Def. Project, *The Protect Our Courts Act: Prosecutor Statements*, <https://www.immigrantdefenseproject.org/wp-content/uploads/Prosecutor-Statements-Updated-02202019.pdf>.

²⁵ Frances Bernat, *Immigration and Crime*, Oxford Research Encyclopedia of Criminology (Apr. 2017), <http://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-93> (“In regard to victimization, immigrants are more likely to be victims of crime. Foreign-born victims of crime may not report their victimization because of fears that they will experience negative consequences if they contact the police.”).

²⁶ Int’l Ass’n of Chiefs of Police, *Police Chiefs Guide to Immigration Issues* at 28 (July 2007), <https://kymnradio.net/wp-content/uploads/2016/12/2-Police-Chiefs-Guide-to-Immigration.pdf>.

²⁷ Jessica Weiss, *Six Months of Hate: How Anti-Immigrant Sentiment Is Affecting Latinos in the United States*, Univision News (June 14, 2017), <https://www.univision.com/univision-news/united-states/six-months-of-hate-how-anti-immigrant-sentiment-is-affecting-latinos-in-the-united-states> (“In recent months, hate crimes have targeted Latinos around the country, in small towns and big cities, coast-to-coast. Though the weeks immediately before and after the presidential election saw the most reports, incidents have continued at a steady tick.”).

of significant anti-immigrant bigotry, compared to 2016.²⁸ In addition, immigrants are regularly targeted for fraudulent housing schemes and wage exploitation.²⁹ Immigrants are also recurring victims of notario fraud, where those who are not licensed attorneys promise green cards or visas in exchange for large sums of money and then fail to deliver, often leaving families worse off.³⁰ Such perpetrators operate with impunity in the current climate due to a decline in reporting rates.

District attorney offices participated in this report's data gathering by responding to a questionnaire drafted by Coalition members.³¹ The questionnaire asked for data on crime reporting, victim and witness participation in prosecutions, frequency of writ filing, and effect of ICE enforcement on office management, including the burden of producing immigration detainees for criminal court proceedings.³² Data gathered from questionnaire responses is set forth below.

Manhattan District Attorney's Office

The Manhattan District Attorney, **Cyrus Vance, Jr.** stressed that judicial warrants should be required in order for ICE to make a courthouse arrest and has stated that such civil arrests engender fear in victims against reporting and cooperating in criminal prosecutions.³³ **Nitin Savur**, the Executive Assistant District Attorney for Strategic Initiatives and Deputy Chief of the Trial Division for the Manhattan District Attorney's Office, elaborated:

²⁸ Anti-Defamation League, *New ADL Study Details How Extreme Anti-Immigrant Hate Has Been Thrust Into the Mainstream* (Nov. 29, 2018), <https://www.adl.org/news/press-releases/new-adl-study-details-how-extreme-anti-immigrant-hate-has-been-thrust-into-the>.

²⁹ Alexandra Ricks, *Latinx Immigrant Crime Victims Fear Seeking Help*, Urban Inst. (Sept. 25, 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help> ("Immigrants are often victims of labor violations, such as labor trafficking and wage theft, because some employers see them (especially undocumented immigrants) as particularly vulnerable to exploitation. Latinx immigrants are six times more likely that their US-born white counterparts to suffer minimum-wage violations.").

³⁰ Anna M. Hill & Susan E. Reed, *Immigration Scams: Good Feelings and Double-Dealing*, Am. Bar Assoc. (Oct. 25, 2017), https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/immigration-law/immigration-scams-good-feelings-and-doubledealing/ ("In best-case scenarios, scam victims lose only a few hundred dollars. In the worst situations, victims pay thousands of dollars, never recover original documents, and incur irreversible immigration consequences, including deportation.").

³¹ See, e.g., Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project ¶¶ 1-2, dated Feb. 14, 2019 (App. NN); Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney ¶ 7, dated Feb. 21, 2019 (App. JJ).

³² See, e.g., Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project ¶¶ 1-2, dated Feb. 14, 2019 (App. NN); Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney ¶ 7, dated Feb. 21, 2019 (App. JJ).

³³ See, e.g., Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

We see [the effects of fear] often when victims of crimes report to the NYPD, but give fake names, addresses and phone numbers out of fear that ICE will somehow track them down. Unfortunately, when we then need them to come to our office for grand jury, or trial preparation, we cannot locate them because their contact information was not real.³⁴

The Trial Division of the Manhattan District Attorney's Office reported a heightened fear among noncitizens of testifying in criminal court since 2017.³⁵ As part of trial preparation, noncitizen witnesses are notified that their immigration status must be divulged to the defense before trial, which, in turn, causes undocumented noncitizen witnesses to fear that ICE will gain access to this information.³⁶ Assistant District Attorney Savur indicated that there is confusion among the immigrant population with respect to the relationship between the District Attorney's Office and ICE: "We have to assure them — that we do not work for ICE, we do not have ICE agents in our office or in our buildings."³⁷ In certain areas of Manhattan, such as Washington Heights, some immigrants were less likely to attend community events sponsored by law enforcement.³⁸

Even more troubling have been reports that noncitizens experience such tremendous fear around any aspect of the justice system that the fear goes well beyond attending court to testify or reporting a crime. In fact, the Manhattan District Attorney's Office has reported that noncitizen victims have expressed fear of availing themselves of certain victim services including counseling, developing safety plans, and relocation.³⁹

Bronx District Attorney's Office

The Domestic Violence Bureau of the Bronx District Attorney's office (Bronx DV Bureau) reports that numerous complaining witnesses expressed fear of testifying or otherwise participating in criminal proceedings due to ICE presence in the courthouse.⁴⁰ In one

³⁴ See, e.g., *id.* (App. OO).

³⁵ See, e.g., *id.* (App. OO).

³⁶ See, e.g., *id.* (App. OO).

³⁷ See, e.g., *id.* (App. OO).

³⁸ See, e.g., *id.* (App. OO).

³⁹ See, e.g., *id.* (App. OO).

⁴⁰ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

instance, the Bronx DV Bureau reported that a previously cooperative complaining witness became extremely reluctant to testify following several news reports regarding ICE arrests occurring in courthouses.⁴¹ In another case, the complaining witness was reluctant to report a violation of an order of protection because the alleged violator threatened to report her immigration situation to ICE if she called the police.⁴² When she appeared to report the violation, she was visibly terrified.⁴³ The Bronx DV Bureau has also seen witnesses express fear of ICE arrest in the courthouse.⁴⁴ In one case cited, a complaining witness's mother was very reluctant to testify because she feared ICE would be in the court.⁴⁵

The Bronx District Attorney Appeals Bureau reports that defendants refuse to testify in post-conviction relief hearings due to fear of ICE in courts.⁴⁶ In one case, a sex abuse victim's mother was terrified to testify because the defendant had been arrested and detained by ICE.⁴⁷ In that same case, two outcry witnesses, the defendant's wife and daughter, were initially cooperative and planned to testify, but after the defendant's ICE arrest and detention, became uncooperative and refused to testify.⁴⁸

Brooklyn District Attorney's Office

As Brooklyn District Attorney, **Eric Gonzalez**, says, “[w]e now work in an atmosphere of fear and intimidation that discourages victims and witnesses, both documented and undocumented, from coming forward to report crimes.”⁴⁹ District Attorney Gonzalez affirms that in several cases before his office, victims and witnesses have expressed fears of coming to criminal court due to ICE in courts.⁵⁰ In one instance, a victim robbed at gunpoint refused to testify because he feared an ICE arrest in court.⁵¹ In another case, a man robbed at knifepoint refused to testify because he was not a US citizen, and without his testimony,

⁴¹ *Id.* (App. S).

⁴² *Id.* (App. S).

⁴³ *Id.* (App. S).

⁴⁴ *Id.* (App. S).

⁴⁵ *Id.* (App. S).

⁴⁶ *Id.* (App. S).

⁴⁷ *Id.* (App. S)..

⁴⁸ *Id.* (App. S).

⁴⁹ Eric Gonzalez & Judy Harris Kluger, *How ICE Harms the Justice System: The Feds' Aggressive Tactics in our Courthouses are Emboldening Violent Criminals*, N.Y. Daily News (Aug. 2, 2018), <https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-justice-system-20180801-story.html>.

⁵⁰ *Id.*

⁵¹ *Id.*

the assistant district attorney (ADA) was forced to reduce the charges to a misdemeanor.⁵² In another case, the Brooklyn District Attorney's Office was forced to dismiss assault charges because the eyewitness would not testify due to similar fears.⁵³ The Brooklyn Special Victims Bureau struggled to prosecute a sexual abuse case where the witness, an undocumented mother of the victim, feared cooperation due to ICE in courts.⁵⁴

Decline in Calls to Immigrant Affairs Unit Hotlines

In recent years several District Attorney's Offices across the state, including Manhattan, Bronx, Brooklyn, Queens, Nassau, Westchester, and Orange counties, have established Immigrant Affairs Units and Offices (IAUs).⁵⁵ These IAUs serve various purposes, such as, for example in Nassau County, the acceptance and investigation of crimes reported by noncitizens, U visa certifications (visas available for noncitizen crime victims who have cooperated in the prosecution of the perpetrator), criminal complaint walk-in services, fraud prevention education, referral services, and community outreach to noncitizen crime victims.⁵⁶

Among the resources offered to the immigrant communities in participating counties, IAUs operate hotlines for noncitizens to report crimes, ask questions, and obtain referrals for access to legal or other resources.⁵⁷ The IAUs that have been open the longest have seen the most dramatic declines in call rates since January 2017.⁵⁸

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ N.Y. State Dist. Attorneys League of Immigrant Affairs Flyer (App. WW).

⁵⁶ Nassau Cty. Dist. Attorney's Office, Office of Immigrant Affairs Flyer (App. VV).

⁵⁷ N.Y. State Dist. Attorneys League of Immigrant Affairs Flyer (App. WW).

⁵⁸ *See, e.g.*, E-mail from Jose Interiano, Deputy Chief, Immigrant Affairs Unit, Kings Cty. Dist. Attorney's Office, to Seth Hoy, Dir. Of Commc'ns, Legal Servs. N.Y.C., dated Apr. 9, 2019 (App. LL).

Calls to Brooklyn DA's IAU Decreased by 67% Post-Election

After increasing in 2016, call volume decreased precipitously

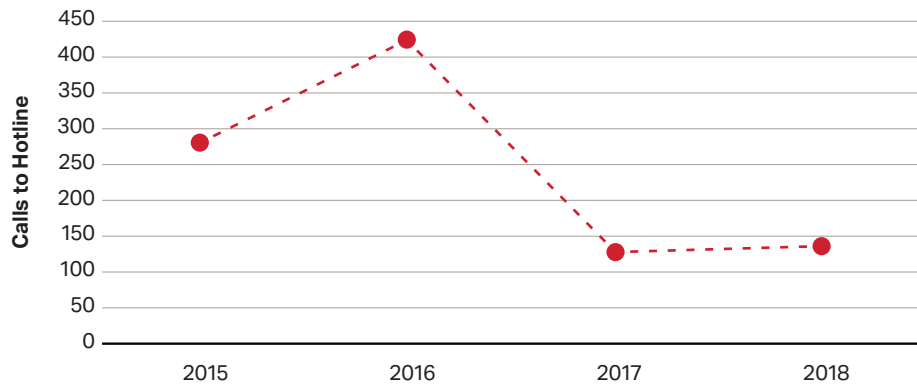


Fig 2

As seen in Figure 2, during the last year of the Obama Administration, calls to the Brooklyn IAU hotline increased from 281 to 431 calls, an increase of 53%.⁵⁹ In 2017, however, the trend reversed: call volume dropped to 132 calls and remained roughly the same the following year.⁶⁰ The number of calls received by the Brooklyn IAU dropped 67% in 2018, compared with calls received before in 2016.⁶¹

Calls to Nassau DA's IAU Decreased by 90% Post-Election

Calls decreased at a much faster rate starting in 2017

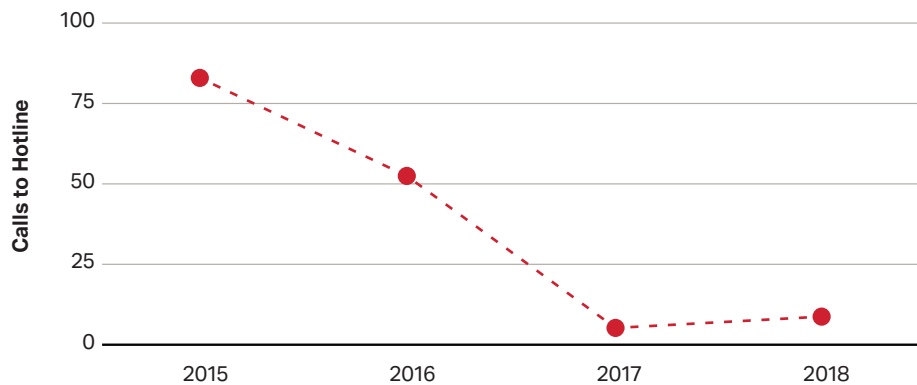


Fig 3

⁵⁹ *Id.* (App. LL).

⁶⁰ *Id.* (App. LL).

⁶¹ *Id.* (App. LL).

The Nassau District Attorney's IAU saw similar trends. From March to December 2015, the hotline received 82 calls.⁶² The following year, in 2016, the calls dropped 30% to 51.⁶³ The decline was most severe in 2017, in which call volume — a mere three calls — decreased 96%.⁶⁴ In 2018, call volume recovered only slightly, to 8, still only 16% of pre-2017 numbers.⁶⁵

Walk-in Complaints in Nassau Decreased Notably Post-Election

Unsolicited walk-in criminal complaints decreased by half

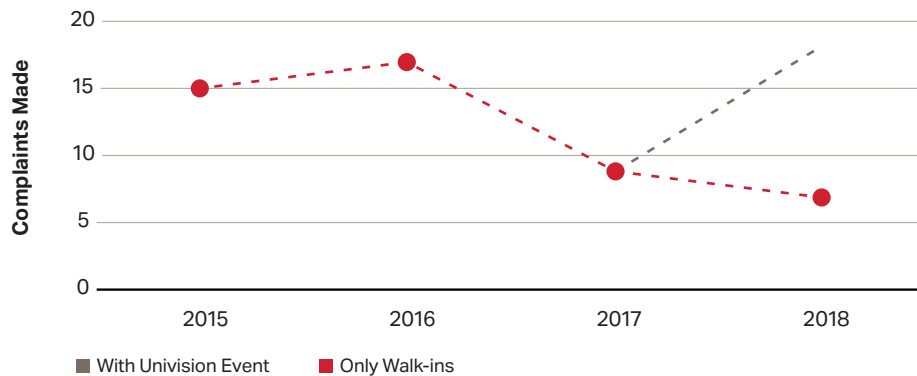


Fig 4

Added to its hotline call data, the Nassau IAU has observed a notable decrease in walk-in complaints by noncitizens since 2017.⁶⁶ From March through December 2015, the Nassau IAU confirmed 15 walk-ins.⁶⁷ In 2016, its first full year, the Nassau IAU saw 17 walk-ins.⁶⁸ The following year, the number of walk-ins dropped by more than half, to 9 in 2017, and 7 in 2018.⁶⁹

⁶² Attachment I to Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. KK).

⁶³ *Id.* (App. KK).

⁶⁴ *Id.* (App. KK).

⁶⁵ *Id.* (App. KK).

⁶⁶ *Id.* (App. KK).

⁶⁷ *Id.* (App. KK).

⁶⁸ *Id.* (App. KK).

⁶⁹ The Nassau IAU hosted a joint public event with Univision in 2018, which brought in 11 complaints. Figure 4 includes both a count of unsolicited walk-ins and a count including the complaints from the Univision event. *Id.* (App. KK).

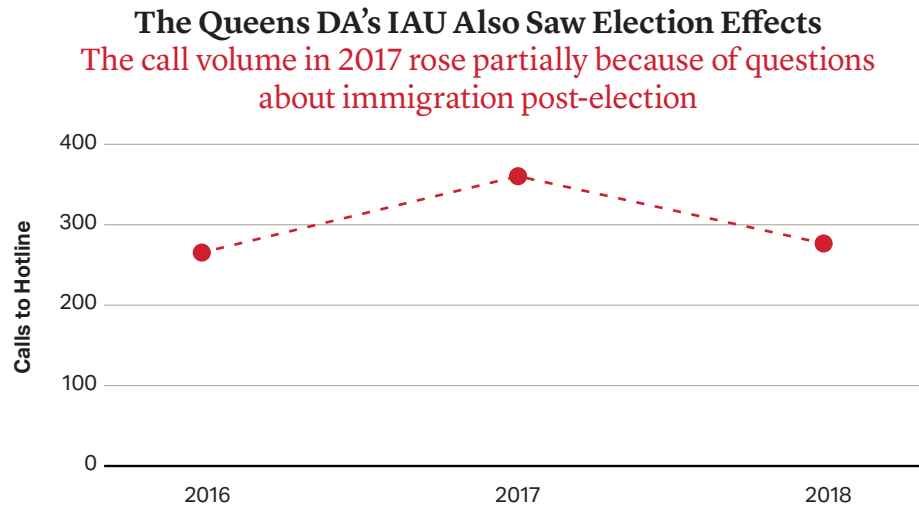


Fig 5

The Queens IAU experienced a somewhat different pattern of calls, attributable, in part, to county-specific factors and the 2017 election.⁷⁰ As shown in Figure 5, call volume increased, from 268 in 2016 to 358 calls in 2017, following increased awareness of the unit.⁷¹ Many of the 2017 calls cited concerns related to President Trump's election.⁷² In 2018, the number of calls decreased to 277.⁷³

The Bronx IAU hotline was installed in Spring of 2017, too short a period to determine yearly trends before and after President Trump's election and resulting ICE enforcement changes.⁷⁴ Additionally, while there were more calls in 2018 than 2017, that difference appears to be due to a news segment that aired on Univision.⁷⁵

⁷⁰ Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y & Reg'l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. JJ).

⁷¹ *Id.* (App. JJ).

⁷² *Id.* (App. JJ).

⁷³ *Id.* (App. JJ).

⁷⁴ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S). Additional 2018 data was provided by the Bronx District Attorney's Office for this report. *See* Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 7, 2019 (App. U).

⁷⁵ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

Decline in Clean Slate Participation

District Attorney offices often offer Clean Slate events in churches or community centers to allow individuals to resolve their summons warrants on-site without risk of arrest. The Manhattan District Attorney's office reported that since 2017, the number of people who participate in its program has decreased considerably.⁷⁶ A Clean Slate event held on November 21, 2015 drew 700 people; yet a similar event on June 17, 2017 drew only 380 people — a 46% decrease.⁷⁷ With increased reporting of ICE courthouse arrests, the attendance has decreased further: A similar event held on April 28, 2018 drew a mere 200 attendees, a decrease of about 72%.⁷⁸

According to the Deputy Chief of the Manhattan District Attorney's Trial Division, the office attributes such sudden drop off in attendance “in part due to the fear that ICE will show up and round people up,” stating further that “although undocumented witnesses were always nervous about coming to our office prior to 2017, the concerns have increased with the current administration and there is a general fear of law enforcement due to their immigration status and fear of deportation.”⁷⁹

In addition, both the Manhattan and Bronx District Attorneys' offices noted that, since 2017, they have experienced a decline in those who sought their victim-related assistance via the adjacent Family Justice Centers.⁸⁰ More data on the drop off in Family Justice Center participation is covered in section IV(B) below.

Clean Slate Event Participation (Number of people)

November 21, 2015

700

June 17, 2017

380

April 28, 2018

200

⁷⁶ Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁷⁷ *Id.* (App. OO).

⁷⁸ *Id.* (App. OO).

⁷⁹ *Id.* (App. OO).

⁸⁰ *Id.* (App. OO).

Burden of Filing Writs to Produce

Increased ICE operations in New York State courts require law enforcement to expend substantial resources to file and execute writs to produce litigants held in ICE custody.⁸¹ District attorney offices have the burden of drafting and filing these writs as well as retrieving detainees from ICE custody.⁸² Usually, two detectives from a New York City law enforcement agency are sent to ICE Enforcement and Removal Operations at the Manhattan Immigration Court on Varick Street where detainees are held in order to pick them up and transport them to the criminal court.⁸³

Despite Criminal Procedure Law 580.30, which articulates the writ process, district attorneys across New York have found the procedure to be erratic, confusing, and cumbersome.⁸⁴ Often ICE does not honor the writ to produce the defendant in a timely manner, if it does so at all.⁸⁵

ICE purports that its reluctance or failure to produce a defendant has been a concern that the writ is a ploy to recoup the defendant to New York's jurisdiction in order to dismiss the conviction and release the defendant back into a sanctuary city.⁸⁶ ICE also routinely refuses to send a detainee to New York for a post-conviction relief motion hearing, where the underlying crime was a basis for deportability.⁸⁷

⁸¹ Where noncitizen defendants with pending criminal cases have been arrested and detained by ICE, an application for a writ of habeas corpus ad prosequendum, or writ of production, must be filed by prosecuting offices and subsequently ordered by the presiding state court judge. The writ requests retrieval of the detainees from federal immigration detention to attend their criminal court proceedings. *See, e.g.*, U.S. Marshals Serv., *Service of Process: Writ of Habeas Corpus* (last visited Mar. 27, 2019), <https://www.usmarshals.gov/process/habeas.htm>.

⁸² Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁸³ *Id.* (App. OO).

⁸⁴ *Id.* (App. OO).

⁸⁵ ICE's toolkit for prosecutors, a resource created by ICE for state and federal prosecutors to facilitate cooperation between agencies, explicitly notes that as a federal agency, it is not bound by state court orders, but that it will "generally" honor such writs. *See* U.S. Immigration & Customs Enf't, *Protecting the Homeland: Toolkit for Prosecutors* at 9 (Apr. 2011), <https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

⁸⁶ Attachment to Decl. of Lee Wang, Esq., Senior Staff Attorney, Immigrant Def. Project, dated Feb. 14, 2019 (App. OO).

⁸⁷ *Id.* (App. OO).

The Manhattan District Attorney Trial Division reports that ICE detentions, resulting from New York State court ICE arrests, frustrate prosecutions that require writs to produce in three ways:

1. **the severity of the charges do not warrant a writ, i.e., most are misdemeanors;**
2. **the defendant is no longer in its jurisdiction; and**
3. **ICE fails to produce the defendant per the writ.**⁸⁸

In 2018, the Nassau District Attorney's office was forced to file 53 writs to produce ICE detainees for their court dates in District Court, though only 23 were produced.⁸⁹ In County Court, where felonies are prosecuted, the Nassau District Attorney's Office filed 47 writs for defendants in ICE custody with pending felony charges.⁹⁰

The Bronx DV Bureau observes that, "To say navigating ICE is a labyrinthine endeavor would be an understatement. There is no publicly available information about how to produce a person from ICE. I had to go up the flag pole to the Chief Counsel for New York to figure out the process."⁹¹ In one case, after ICE arrested and detained a defendant charged with criminal mischief with no attorney present, it took two and a half months for ICE to produce him to take a plea.⁹² In another case, the ADA made several attempts to have the defendant produced from ICE custody, but was unsuccessful because ICE refused to release the defendant to the detectives who had been sent to pick him up.⁹³ **The Bronx DV Bureau** reports that ICE refuses to comply with writs, citing suspicions of the District Attorney's intentions:

⁸⁸ *Id.* (App. OO).

⁸⁹ Attachment I to Decl. of Elizabeth Tonne-Daims, Esq., Padilla Attorney, Nassau Legal Aid Soc'y, & Reg'l Immigration Assistance Ctr. Attorney, dated Feb. 21, 2019 (App. KK) (revealing that some of the detainees who were not produced had already been deported or had bonded out of ICE custody).

⁹⁰ *Id.* (App. KK).

⁹¹ Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 3, 2019 (App. S).

⁹² *Id.* (App. S).

⁹³ *Id.* (App. S).

...up until recently, ICE has always complied with the writ requests so long as we send officers to pick up the defendant. However, recently, an ICE handler informed us that they are no longer producing defendants to state custody because they don't trust the state officials to return them to federal custody.⁹⁴

The experiences of the district attorney offices across New York demonstrate how ICE courthouse operations hinder their work and mission. Their significant dedicated attempts to cultivate trusting relationships with their immigrant residents through initiatives such as IAUs, Clean Slate events, and Family Justice Centers are undermined daily by ICE courthouse operations.

⁹⁴ *Id.* (App. S).

How ICE Courthouse Operations Instill Fear and Undermine Gender-Based Violence Prevention



Increased ICE enforcement operations in and around New York State courthouses deter many immigrant survivors from seeking relief in court. When those harmed are discouraged from seeking legal protections, they are pushed further into the shadows and made more vulnerable to abusive partners who threaten to call ICE. New York agencies and anti-violence advocates have collected data on the chilling effect of ICE courthouse operations since January 2017. Seven observable trends in the data include:

1. **a drop in orders of protection issued against intimate partners;**
2. **a drop in survivors seeking assistance at Family Justice Centers, located in the vicinity of New York State Courts and district attorneys' offices;**
3. **fewer survivors seeking civil legal assistance;**
4. **reduced communication with law enforcement;**
5. **reluctance to pursue affirmative petitions in Family and Supreme Courts;**
6. **increased fear of compliance with court orders; and**
7. **a rise in ICE-related threats from abusive partners.**

Decrease in Orders of Protection

Orders of protection issued against intimate partners or family members⁹⁵ dropped from 235,282 in 2016 to 232,803 in 2017.⁹⁶ This decline coincides with the dramatic rise in ICE courthouse operations in 2017. A closer look at the data reveals how this decrease is greater in the local criminal courts. In particular, in New York City Criminal Courts and City and District Courts outside of New York City, there were 109,091 orders of protection issued against intimate partners or family members in 2016, compared with 103,201 in 2017 — a decline of 5.4%.⁹⁷

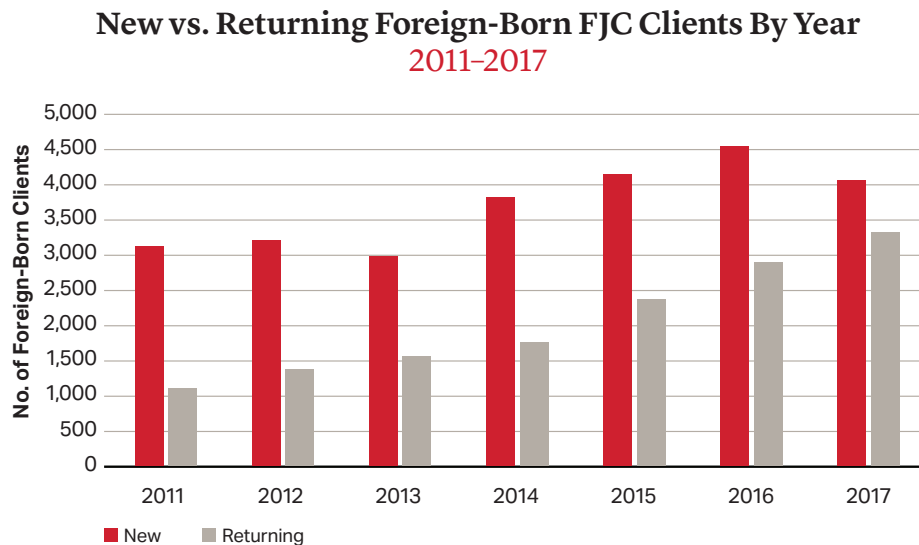
⁹⁵ “Under Executive Law § 221, the Office of Court Administration calls orders that must be filed with the registry ‘required.’ These orders involve intimate partners or family members. Other orders of protection issued against unrelated parties such as neighbors are ‘not required’ to be filed with the registry . . .” N.Y. State Office for the Prevention of Domestic Violence, *New York State Domestic Violence Dashboard 2017* at 3 n.2 (Oct. 2018), <http://www.opdv.ny.gov/statistics/nydata/2017/2017-dv-dashboard.pdf>.

⁹⁶ Compare N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/16-12/31/16, dated May 1, 2017 (App. XX) with N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/17-12/31/17, dated Jan. 8, 2018 (App. YY).

⁹⁷ See N.Y. State Unified Court Sys., Orders of Protection in UCS’s Domestic Violence Registry with an Issue Date 1/1/17-12/31/17, dated Jan. 8, 2018 (App. YY).

Decline in Visits to Family Justice Centers

In New York City, Family Justice Centers (FJCs) are operated by the New York City Mayor’s Office to End Domestic and Gender-Based Violence (ENDGBV) and are generally located in the vicinity of New York State courts and the local district attorney office. In 2017, the City’s five FJCs saw a 10% decline in the number of new, foreign-born client visitors compared to 2016.⁹⁸ According to the Mayor’s Office to End Domestic and Gender-based Violence (ENDGBV)⁹⁹, “foreign-born New Yorkers who have not yet visited a Center may face additional barriers to seeking FJC services compared to the prior year.”¹⁰⁰



Source: OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers, <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf>.

Fig 7

⁹⁸ FJCs are open, public facilities that provide a space for non-profit organizations, including legal-aid providers, to meet with survivors of domestic violence and sex trafficking. FJCs are available to anyone, regardless of “language, income, gender identity, or *immigration status*.” See N.Y.C. Mayor’s Office to Combat Domestic Violence, *OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers* (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf> (emphasis added).

⁹⁹ Formerly known as the Mayor’s Office to Combat Domestic Violence (OCDV).

¹⁰⁰ See N.Y.C. Mayor’s Office to Combat Domestic Violence, *OCDV in Focus: A Closer Look at Foreign-Born Clients Visiting the New York City Family Justice Centers* (2018), <https://www1.nyc.gov/assets/ocdv/downloads/pdf/Foreign-Born-FJC-Client-Report.pdf>.

Fewer Survivors Seeking Civil Legal Assistance

Fewer immigrants harmed by intimate partner and gender-based violence are seeking civil legal assistance in New York. Between 2017 and 2018, Sanctuary for Families (Sanctuary) closed 1,350 fewer cases and assisted 226 fewer clients seeking orders of protection, compared to the previous year.¹⁰¹ Sanctuary saw a substantial decrease in the number of clients seeking assistance for family law matters.¹⁰² Conversations with current and prospective clients lead Sanctuary staff to conclude that ICE courthouse operations were largely to blame.¹⁰³

Civil legal services providers across New York saw similar effects of ICE courthouse operations on survivors' willingness to access their services. For example, in May 2017, **Atossa Movahedi**, of the Domestic Violence Project of the Urban Justice Center (UJC), reported at least two incidents where clients stopped working with UJC due to ICE courthouse operations.¹⁰⁴ UJC supervising immigration attorney **Joy Ziegeweid** explained her experience with a woman reluctant to access her services: "Two days before Celia's scheduled consultation, her therapist called me and told me that Celia was afraid of being arrested by ICE at our offices and was afraid to come to her appointment with me."¹⁰⁵ Likewise, **Andrea Panjwani**, former Immigration Practice Managing Attorney at My Sisters' Place, recounted similar experiences with survivors who chose not to seek their services.¹⁰⁶ In the case of a woman who had been brutally attacked by her children's father:

When I asked her what happened, she reported that the father of her children raped her in a parking lot and then severely beat her about the head with his fists and "metal things." She has neurological damage and what appears to be permanent vision loss as a result. When I asked her why she did not report it or

¹⁰¹ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

¹⁰² See *id.* (App. SS).

¹⁰³ See *id.* (App. SS).

¹⁰⁴ Decl. of Atossa Movahedi, Esq., Dir., Legal Servs. & Dev., Domestic Violence Project, Urban Justice Ctr. ¶¶ 5-6, dated May 31, 2017 (App. Y).

¹⁰⁵ Decl. of Joy Ziegeweid, Supervising Immigration Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 5, dated May 31, 2017 (App. QQ).

¹⁰⁶ Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters' Place ¶ 3(b), dated May 26, 2017 (App. CC).

ask us to help her get a restraining order at Family Court, she told me she was afraid of being picked up by ICE.¹⁰⁷

New York Legal Assistance Group (NYLAG) represents an increasing number of clients who express fear in accessing our courts to seek orders of protection.¹⁰⁸ One woman, Lisa, who met with NYLAG spoke about wanting to separate from her husband, who frequently hits and pushes her in front of their three children.¹⁰⁹ After learning that she would have to appear in court to get an order of protection, Lisa decided not to file a case.¹¹⁰ Lisa specifically said that she had heard stories of ICE coming to courts in New York, and she didn't feel safe there.¹¹¹ Lisa had to weigh her and her children's safety, against the safety of being in court as an undocumented person.

Reduced Communication with Law Enforcement

Immigrant survivors of intimate partner and gender-based violence experience overwhelming fear of engaging with law enforcement as a direct result of increased ICE courthouse operations.¹¹² Surveys of legal services professionals conducted over the past two years provide quantitative data on the decreased willingness of survivors to communicate with law enforcement due to ICE in the courts. According to an internal Sanctuary survey, 78.6% of staff surveyed reported an increase in noncitizen clients who are fearful of seeking assistance from law enforcement (at least 200 clients in total) since early 2017.¹¹³ Key findings from the 2017 ICE in NYS Courts Legal Service and Advocates Survey show that 46% of providers surveyed worked with immigrants who expressed fear of serving as a complaining witness.¹¹⁴

Anti-violence advocates also provided substantial qualitative data on survivors who decline to communicate with law enforcement (police, district attorney offices, criminal courts) due

¹⁰⁷ *Id.* (App. CC).

¹⁰⁸ Decl. of Victoria Goodlof, Senior Staff Attorney, N.Y. Legal Assistance Grp. ¶ 6, dated Feb. 27, 2019 (App. K).

¹⁰⁹ *Id.* (App. K).

¹¹⁰ *Id.* (App. K).

¹¹¹ *Id.* (App. K).

¹¹² See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS).

¹¹³ Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹¹⁴ Immigrant Def. Project, *Key Findings: ICE in NYS Courts Legal Service and Advocates Survey*, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

to ICE courthouse operations in New York.¹¹⁵ For example, in May 2017, **Andrea Panjwani** explained that, in the Lower Hudson Valley:

We have several cases with pending investigations and clients are expected to appear for interviews at the District Attorney's Office, local police departments, local FBI offices and so forth. We have two cases with the Westchester District Attorney right now and their office is housed at the Courthouse. These clients, who have survived horrific crimes, including child rape and aggravated assault, are asking me to help them get the charges dropped against the defendants because they are afraid that one of the ways the defendants would retaliate would be by alerting ICE to the court dates.¹¹⁶

Similarly, **Evangeline Chan**, Director of Safe Horizon's Immigration Law Project, explained in June 2018 that a Safe Horizon client had to be hospitalized due to injuries inflicted by her husband and that the police were called by hospital staff when the client disclosed the abuse. But while discussing the case with her Safe Horizon attorney, the client expressed fear "that her husband would disclose her immigration status in open court or to immigration officials as retaliation for his arrest."¹¹⁷ As a result, Chan explained, "the client decided not to cooperate with the DA's office and is advocating with the DA to drop the charges against her husband."¹¹⁸ According to **Dorchen Leidholdt** of Sanctuary, "[O]ne of our clients declined to report domestic violence to the New York Police Department and declined to obtain an order of protection for her and her children for fear of negative immigration repercussions for herself."¹¹⁹

Attorneys at Sanctuary "overwhelmingly report that their clients are fearful of going to the police and that their clients' expressions of fear that accessing police protection will result in

¹¹⁵ The appendix contains numerous affidavits describing more firsthand accounts with survivors.

¹¹⁶ Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters' Place ¶ 3(a), dated May 26, 2017 (App. CC).

¹¹⁷ Decl. of Evangeline M. Chan, Dir., Immigration Law Project, Safe Horizon ¶ 12, dated June 29, 2018 (App. G).

¹¹⁸ *Id.* (App. G).

¹¹⁹ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 4, dated July 9, 2018 (App. II).

arrest and deportation are greater than ever before.”¹²⁰ A Sanctuary client stated that “previously she felt no fear about cooperating with the police but the presence of ICE in the neighborhood she lives in and rumors that the police cooperate with ICE have convinced her that reporting her husband’s abuse and cooperating with his prosecution will place her at great risk from immigration authorities in the U.S.”¹²¹ Sanctuary’s internal survey also found that its clients often choose not to serve as complaining witnesses, with 53.8% of staff reporting an increase in noncitizens expressing fear of serving as a complaining witness since January 2017.¹²²

Survivors’ family members are also unwilling to communicate with law enforcement, as illustrated by **Carolina Guiral**, staff attorney at Bronx Legal Services: “I have also seen how some of my clients who have had the courage to come forward to report a crime that has been committed against them are impeded from doing so due to their family members’ unwillingness to cooperate in their cases because they do not want to place themselves at a higher risk of being discovered by ICE.”¹²³ The ripple effects of ICE courthouse operations go on and on for survivors of violence.

Reluctance to Pursue Remedies in Family and Supreme Court

Immigrant survivors of intimate partner and gender-based violence are increasingly reluctant to pursue available remedies in Family and Supreme Court, due in part to ICE courthouse operations.¹²⁴ According to the 2017 ICE in NYS Courts Legal Service and Advocates Survey, 67% of providers

2017 ICE in NYS Courts Legal Service and Advocates Survey

67%

of providers surveyed have had clients who decided not to seek help from the courts

48%

worked with immigrants who failed to seek custody or visitation

37%

worked with someone who failed to pursue an order of protection

¹²⁰ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

¹²¹ See *id.* at 4 (App. SS).

¹²² See Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹²³ Decl. of Carolina Guiral, Staff Attorney, Family & Immigration Unit, Bronx Legal Servs. ¶ 3, dated Aug. 9, 2018 (App. L).

¹²⁴ See, e.g., Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D) (“Fear of ICE interaction or deportation plays a role in the overwhelming majority of my non-citizen clients’ decisions in reporting or going forward with a case.”); Written Testimony of Carmen Maria Rey, Esq. Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs., Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD); Decl. of Andrea Panjwani, Managing Attorney, Immigration Practice, My Sisters’ Place ¶ 3(a), dated May 26, 2017 (App. CC).

surveyed have had clients who decided not to seek help from the courts, 48% worked with immigrants who failed to seek custody or visitation, and 37% worked with someone who failed to pursue an order of protection, all due to fear of ICE.¹²⁵

Anti-violence advocates provide additional details about the post-January 2017 decline in participation in civil court proceedings by immigrant survivors. **Claire Thomas** says that “[o]ur clients are now anxious to enter New York State Courts for fear that they will be apprehended simply because they are not U.S. citizens.”¹²⁶ Describing his interactions with survivors at Queens Family Justice Center, UJC staff attorney **Salar Rivani** says “[a]bout half the clients [screened] are undocumented and it has become a regular occurrence that they will ask about their risk of deportation from beginning a case in any of the New York courts.”¹²⁷ **Hamra Ahmad**, Director of Legal Services at Her Justice, explains that their clients have declined to pursue Family Court actions:

One client who had filed for a U Visa with assistance from Her Justice withdrew her Family Court petitions because she was afraid of ICE enforcement in the courts. Another undocumented client whom Her Justice advised on Family Court matters over the phone was too afraid to even come to our office to seek pro bono representation because of the pervasive fear of increased immigration enforcement.¹²⁸

Carolina Guiral of Bronx Legal Services relays what happened with one of her clients who filed a family offense petition in Family Court:

During the months leading up to her hearing, my client showed signs that she did not want her case to go forward. She eventually disclosed to me that she was afraid to go forward with her case and that it was causing her an enormous amount of stress. As a result of her fear, she has requested that her

¹²⁵ Immigrant Def. Project, *Key Findings: ICE in NYS Courts Legal Service and Advocates Survey*, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

¹²⁶ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 4, dated July 9, 2018 (App. II).

¹²⁷ Decl. of Salar Rivani, Esq., Staff Attorney, Urban Justice Ctr., Domestic Violence Project ¶ 4, dated May 31, 2017 (App. EE).

¹²⁸ Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 4, dated July 12, 2018 (App. B).

family offense petition be withdrawn. The testimony of a close family member who witnessed the abuse inflicted on my client would have been essential evidence in her case and perhaps it would have encouraged her to go forward with her case. If there were court rules prohibiting arrests of undocumented persons in the courthouse without a warrant, my client's family may have been willing to testify on her behalf and my client would have had the support she needed to proceed with her family offense petition.¹²⁹

Guiral's client spoke anonymously to Law360 regarding her fear of pursuing her rights in Family Court.¹³⁰ She explained that she knew that she could request a U visa if she continued with her Family Court matter, "[b]ut I couldn't sleep because I was fearful to go to the courthouse."¹³¹

Data from the Office of Court Administration demonstrates that Guiral's client is not alone. In 2016, there were 110 requests for U visa certifications made to the New York City Family Courts.¹³² In 2017, that number dropped to 62 requests, a 44% decline.¹³³ The number of requests recovered slightly in 2018 to 83, still a 25% decline from the 2016 number of requests.¹³⁴ While overall New York City U visa certification request numbers seem stronger in 2018, though, a closer look at the borough-specific data reveals a bleak picture for Manhattan, Staten Island, and Queens Family Courts.¹³⁵ From 2016 to 2018, there was a 100% decline in U certification requests in Manhattan (15 in 2016, 0 in 2017 and 0 in 2018); an 83% decline in Staten Island (6 in 2016, 0 in 2017, 1 in 2018); and a 72% decline in Queens (25 in 2016, 12 in 2017, and 7 in 2018).¹³⁶ The dramatic drop-off of undocumented

¹²⁹ Decl. of Carolina Guiral, Staff Attorney, Family & Immigration Unit, Bronx Legal Servs. ¶ 4, dated Aug. 9, 2018 (App. L).

¹³⁰ RJ Vogt, *With Courthouse Arrests, Is Justice Too Risky for Immigrants?*, Law360 (Mar. 3, 2019), <https://www.law360.com/articles/1133777>.

¹³¹ *Id.*

¹³² Attachment & Decl. of Terry Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs., dated Mar. 5, 2019 (App. T).

¹³³ *Id.* (App. T).

¹³⁴ *Id.* (App. T).

¹³⁵ *Id.* (App. T).

¹³⁶ *Id.* (App. T).

survivors of violence who seek U visa certifications demonstrates that survivors are not seeking available remedies from New York City Family Court.

With increased ICE courthouse operations, attorneys have been forced to change the way they advise survivors. According to **Dorchen Leidholdt** of Sanctuary:

Previously when clients expressed concern that a lack of immigration status might place them at risk of arrest and deportation if they petitioned for protective orders, custody or visitation, child support, divorce, and/or special immigrant juvenile status, or made appearances in cases for such protection and relief, we attempted to correct what was then a misapprehension. Now we must carefully review our clients' immigration status before providing legal advice and if we learn that our clients are not fully documented, we must explore with them the possibility that pursuing these remedies may place them and their children at risk of arrest, detention, and eventual deportation. Our lawyers struggle with balancing clients' often urgent needs for legal remedies against the danger that pursuing these remedies may place them in.¹³⁷

Hamra Ahmad also reports that in the eighteen-month period following January 2017:

Her Justice has changed the nature of advice to foreign-born clients and to pro bono attorneys working with our clients. We can no longer assure Her Justice clients that they will be free from apprehension by ICE in New York's courthouses . . . We help foreign-born clients weigh the risks of pursuing civil court relief or appearing as a witness in court given increased ICE enforcement in and around courthouses. Pro bono attorneys working with Her Justice are more concerned than they once

¹³⁷ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 4, dated July 6, 2018 (App. SS).

were about how to present their clients' immigration status in Family Court.¹³⁸

Joy Ziegeweid of UJC recounts similar experiences, relaying the story of what happened when she met with her client, Celia:

At our appointment, Celia, a victim of severe domestic violence at the hands of the father of her child, told me that she had filed for custody and an order of protection, but she was not sure if she should continue the case, because she was afraid that she might be arrested at the next Family Court hearing. I used to be able to tell my fearful clients that it was extremely unlikely that ICE would show up at a New York courthouse. I no longer can tell them that. Celia is a woman who has not committed a crime. She is a single mother attempting to raise her child in safety. An order of custody and an order of protection would help her to do that, but because of ICE enforcement at courthouses, she is now fearful of accessing the justice to which she is entitled.¹³⁹

Carmen Maria Rey, Brooklyn Law School professor and former Sanctuary attorney, explains her heartbreaking experience of working with a woman who lost her daughter to her abusive partner and chose not to go to Family Court for help because he threatened “that if she tries to get her daughter back, he will call immigration and have her deported” and “if she files for custody, he can tell ICE where she will be on the day of her Court hearing, and they will likely come to arrest her.”¹⁴⁰

¹³⁸ Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 5, dated July 12, 2018 (App. B).

¹³⁹ Decl. of Joy Ziegeweid, Supervising Immigration Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 5, dated May 31, 2017 (App. QQ).

¹⁴⁰ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs., Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD).

Chelsea Whipp at UJC explains that “even my clients who have legal status fear accessing the courts, because they believe it makes them visible to ICE and thus susceptible to detention.”¹⁴¹ Others explain that survivors express fear about walking past New York State courthouses alone (i.e., without legal representation). As one Sanctuary advocate explains: “I work at the Queens FJC and have had numerous clients ask me (a stereotypically “American” looking white woman) to walk them to the subway after our appointments because they are fearful of walking past the court alone.”¹⁴²

Shani Adess, Associate Director of NYLAG’s Matrimonial and Family Law Unit, states that an increasing number of immigrant survivors express fear about whether it is safe to appear in civil courts to seek orders of protection, or file for custody, support or divorce against their abusers.¹⁴³ “We used to evaluate safety in terms of survivor’s safety in relation to the abuser being brought to court. Now, . . . we have to look to whether their physical safety in this country is at risk if they come forward. We work with clients to develop safety plans that encompass all of their fears, but anytime you limit resources and options for survivors who are looking for protection, you are making survivors and their children, and our communities, less safe.”¹⁴⁴

Antoinette Delruelle at NYLAG, speaks about a client in her twenties and now raising two children as a single mom having fled physical violence at the hands of their father, who tearfully explained that she could not go get a divorce or child support because if she went to Court she was afraid that given ICE’s presence, she would be arrested and deported. “[M]y children are young and need me, I can’t risk being taken from them and having them lose me,” she said, explaining that she would have to figure out how to support her children alone, and remain formally tied to her abuser as his wife.¹⁴⁵

Even for clients who are still willing to come forward with claims, they face obstacles in pursuing their cases when witnesses to the case refuse to appear in court out of fear of immigration enforcement. NYLAG represented a client who sought an order of protection against their husband. The sole witness in her case was a friend, who refused to testify in the case fearing she would be arrested by ICE in the courthouse and deported for being

¹⁴¹ Decl. of Chelsea Whipp, Esq., Immigration Staff Attorney, Domestic Violence Project, Urban Justice Ctr. ¶ 3, dated May 31, 2017 (App. PP).

¹⁴² See Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

¹⁴³ Decl. of Shani Adess, Esq., Assoc. Dir., Matrimonial & Family Law Unit, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 28, 2019 (App. A).

¹⁴⁴ *Id.* (App. A).

¹⁴⁵ Decl. of Antoinette Delruelle, Senior Staff Attorney, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 27, 2019 (App. I).

here without status.¹⁴⁶ Not being able to produce the witness weakened the client's case substantially in the eyes of the court and other counsel.¹⁴⁷

Increased Fear of Compliance with Court Orders

ICE courthouse operations discourage trafficking survivors from complying with court orders.¹⁴⁸ After ICE agents attempted to arrest a woman in the Queens Human Trafficking Intervention Court in June 2017, **Yvonne Chen**, Outreach Manager for Sanctuary's Anti-Trafficking Initiative, described an interaction with two women scheduled to appear in the court that day:

[A]fter court broke for lunch, two Chinese women approached me anxiously, questioning why ICE was there and if they were going to be deported next. They were terrified to even exit the courtroom and asked me to escort them outside so they could get some food, as they had been waiting since early morning for their case to be heard. As we were about to exit the courthouse, they panicked and decided to remain huddled inside the courthouse rather than risk arrest. I could tell they were famished, but because they could not bring themselves to step outdoors, the best I could do was bring them some stale bagels. As I sat with them for a few minutes, they wondered how they

¹⁴⁶ Decl. of Micah Horwitz, Esq, Staff Attorney, N.Y. Legal Assistance Grp. ¶ 5, dated Feb. 28, 2019 (App. M).

¹⁴⁷ *Id.* (App. M).

¹⁴⁸ Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women's Legal Servs., Sanctuary for Families, to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS).

could possibly finish their sessions and return to court given the risk that doing so could cause them to be deported.¹⁴⁹

The woman whom ICE sought to detain on June 16, 2017 “was on track to have the charges against her dismissed after completing her mandated services” but in coming to court to “comply[] with the legal requirement to appear in court as scheduled, she suddenly risked detention and deportation.”¹⁵⁰ Because “[a]ll of this occurred in front of dozens of other immigrant defendants in the same situations,” the Sanctuary staff opined, “many surely resolved at that moment never to return or complete their services.”¹⁵¹

Abusers Threatening to Call ICE

Increased ICE enforcement in New York, especially in and around courthouses, emboldens abusive partners who weaponize threats to call ICE.¹⁵² Sanctuary’s internal survey reveals that 78.6% of survey respondents have clients (at least 100) who reported an increase in abusers threatening to call ICE.¹⁵³ **Susanna Saul**, Managing Attorney at Her Justice, explains:

Another trend that I have noticed in the past few months is that undocumented clients are increasingly reporting that their

¹⁴⁹ Written Testimony of Carmen Maria Rey, Esq. Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 3, dated June 29, 2017 (App. DD). *See also* Letter from Dorchon Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., Sanctuary for Families, to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 2, dated July 6, 2018 (App. SS). The Human Trafficking Intervention Court is one of eleven such problem-solving courts in New York State that adjudicate the cases of people arrested for prostitution, recognizing that many have been subjected to sex trafficking and all are at high risk of trafficking and other forms of gender violence. *See* N.Y. State Unified Court Sys., *Human Trafficking Intervention Courts: Overview* (last updated July 30, 2014), https://www.nycourts.gov/courts/problem_solving/htc/index.shtml; *see also* N.Y. State Unified Court Sys., *Problem-Solving Courts Overview* (last updated Dec. 18, 2017), https://www.nycourts.gov/COURTS/problem_solving/index.shtml.

¹⁵⁰ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 2, dated June 29, 2017 (App. DD).

¹⁵¹ *Id.* (App. DD).

¹⁵² *See, e.g.*, Aff. of Hamra Ahmad, Dir., Legal Servs., Her Justice ¶ 3, dated July 12, 2018 (App. B) (“In the current climate of increased enforcement, abusers’ threats to report undocumented clients to the immigration authorities feel even more real to our clients than they once did.”).

¹⁵³ *See* Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

abusive former partners are threatening to “take them to court and have them deported” if they don’t do what their former partners want. In one example, a client reported that her former partner threatened to “take her to court and have her deported” if she did not allow him to see their daughter. In some instances, their partners have actually made false allegations against my clients using the family court and criminal systems. This is a trend that I have seen in the past but it takes on an extraordinary significance to my clients now because of the extreme immigration consequences that can arise from these accusations.¹⁵⁴

Evangeline Chan of Safe Horizon states:

From our domestic violence shelters, [Child Advocacy Centers] and [Crime Victim Assistance Program], we receive constant referrals for clients . . . who want to know what options and rights they have if they are too afraid to enter government buildings because of ICE, but need protection from their abusers who threaten to report them to ICE and/or take their children away from them.¹⁵⁵

Micah Horwitz at NYLAG represented a client who routinely threatened to call ICE on her and deport her whenever she “disobeyed him”; disobeying him included leaving the house without his permission, or speaking with friends or family on the telephone.¹⁵⁶ Until she spoke with an attorney, she believed that getting a divorce or filing for an order of protection would cause her to be deported.¹⁵⁷ “ICE presence in courthouses builds on this belief that abusers often tell survivors: that they have complete power over them, that if they disobey them, or try to flee, or go to court: all their abuser has to do is make a call and ICE will detain

¹⁵⁴ Decl. of Susanna Saul, Esq., Managing Attorney, Her Justice ¶ 5, dated May 31, 2017 (App. GG).

¹⁵⁵ Decl. of Evangeline M. Chan, Dir., Immigration Law Project, Safe Horizon ¶ 10, dated June 29, 2018 (App. G).

¹⁵⁶ Decl. of Micah Horwitz, Staff Attorney, N.Y. Legal Assistance Grp. ¶ 4, dated Feb. 28, 2019 (App. M).

¹⁵⁷ *Id.* (App. M).

and deport them. True or not, the presence of ICE in courthouses makes this threat all the more real.”¹⁵⁸

Advocates have countless stories about these threats.¹⁵⁹ One Sanctuary advocate reports that “[s]everal clients mentioned their abusers were directly using the news to instill fear in clients” and that “[o]ne client mentioned her abuser screamed at her during a violent abuse ‘If Trump is president then I can do whatever I want.’”¹⁶⁰

¹⁵⁸ Decl. of Shani Adess, Esq. Assoc. Dir., Matrimonial & Family Law Unit, N.Y. Legal Assistance Grp. ¶ 3, dated Feb. 28, 2019 (App. A).

¹⁵⁹ *See, e.g.*, Decl. of Susanna Saul, Managing Attorney, Her Justice ¶ 5, dated May 31, 2017 (App. GG).

¹⁶⁰ *See* Aff. of Pooja Asnani, Deputy Dir., Immigration Intervention Project, Sanctuary for Families at 2, dated Feb. 22, 2019 (App. D).

How ICE Courthouse Operations Disrupt the Work and Mission of Public Defender Offices



ICE courthouse operations disrupt longstanding best practices of public defender offices and inhibit zealous representation of those facing criminal charges in New York State courts. The vast majority of ICE courthouse operations in New York involve people with cases in criminal court.¹⁶¹ Institutional public defenders

¹⁶¹ See N.Y.C. Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* at 4 (Jul. 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf> (noting that although ICE has primarily targeted New York’s criminal courts, they have also executed arrests in civil courts and problem-solving courts).

identify five systemic disruptions to the administration of justice in New York:

1. clients' rising fears of attending court and increased issuance of bench warrants;
2. barriers to mounting a zealous defense;
3. litigants disappearing into ICE detention;
4. resource drain in public defender offices; and
5. ICE's escalating use of force and surveillance.

Fear of Attending Court and Increasing Issuance of Bench Warrants

The public defender offices report that noncitizen clients fear an ICE arrest at their scheduled court dates.¹⁶² Clients regularly express fear to their advocates that court appearances will result in ICE detention.¹⁶³ The ICE in NYS Courts Legal Service and Advocates Survey, which surveyed 225 legal service providers statewide, found that 3 out of 4 legal services providers worked with clients who expressed fear of going to court.¹⁶⁴ **Matt Knecht**, Managing Director of Neighborhood Defender Service of Harlem (NDS), explains “[o]ur attorneys are reporting an increased fear of our non-citizen clients to appear in court, contrary to their own legal interests and the efficiency interests of the Court.”¹⁶⁵ **New York County Defender Services** (NYCDS) elaborates:

Many of our noncitizen clients feel that they cannot risk the potential exposure to ICE in court, so they prioritize their own liberty over allowing the criminal justice process to play out.

¹⁶² See, e.g., Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 5, dated Feb. 21, 2019 (App. V).

¹⁶³ See, e.g., Aff. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 7, dated Mar. 1, 2019 (App. BB).

¹⁶⁴ Immigrant Def. Project, *Key Findings: ICE in NYS Courts Legal Service and Advocates Survey*, <https://www.immdefense.org/ice-courts-survey>.

¹⁶⁵ Decl. of Matt Knecht, Managing Dir. of Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P).

As a result, after being advised of the potential immigration consequences, many of our noncitizen clients choose to take a plea at arraignments so that they need not return to court and risk a potential ICE arrest.¹⁶⁶

Kathy Rodriguez, a former Arraignment Clerk and Administrative Assistant for NYCDS, describes the effects on clients and staff:

Clients are now calling our office to ask about the consequences of making their court dates (as opposed to missing their court dates) because they are afraid ICE is outside waiting for them. They are terrified, hysterical, and untrusting of any governmental employee because they feel like we were all out to get them. Our jobs as administrative assistants went from sources of information to counselors — a job that I am not mentally prepared to handle. These phone calls replay in my head way too often.¹⁶⁷

Cynthia C. Darrell, the Bureau Chief of Suffolk County Legal Aid Society's East End Bureau, adds that "[t]his anxiety occurs even on minor traffic offenses where the plea bargain is only a fine."¹⁶⁸ These fears disproportionately effect vulnerable populations: "My clients who are mothers, especially single mothers, worry about their children. If they are detained in court who will pick up their children at school? How will the children know what happened to them? Who will care for them?"¹⁶⁹

Clients do not attend court out of fear of ICE at an alarming rate: according to NYCDS's internal survey, 95% of respondents said that they have had clients fail to appear in court due to fear of ICE presence.¹⁷⁰ When noncitizen clients do not attend scheduled court

¹⁶⁶ Decl. of the Immigration Unit, N.Y. Cty. Def. Serv. ¶ 4, dated July 13, 2018 (App. AA).

¹⁶⁷ Decl. of Kathy Rodriguez, Arraignment Clerk & Admin. Assistant, N.Y. Cty. Def. Servs. ¶ 3, dated July 10, 2018 (App. FF).

¹⁶⁸ Decl. of Cynthia C. Darrell, East End Bureau Chief, Suffolk Cty., Legal Aid Soc'y at 4, dated July 9, 2018 (App. H).

¹⁶⁹ *Id.* (App. H).

¹⁷⁰ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

appearances, they have bench warrants issued against them.¹⁷¹ But bench warrants stall resolution of cases indefinitely and task the New York Police Department (NYPD) warrant squad with finding and arresting those who do not appear.¹⁷²

Justice Distorted in the Criminal Courts and Barriers to Zealous Defense

ICE courthouse operations negatively impact outcomes in clients' criminal cases. The Immigration Unit at NYCDS observes that their noncitizen clients choose to take pleas at arraignments, rather than litigate their cases, because they know that ICE may be at future court dates.¹⁷³ This phenomenon was reported across boroughs and public defender offices.

Over half of the NYCDS attorneys who responded to an internal survey stated that their clients have taken less favorable pleas to avoid having to return to court for fear of ICE.¹⁷⁴

Sarah Deri Oshiro, Managing Director of the Immigration Practice at The Bronx Defenders, notes that “attorneys report that their clients accept plea bargain offers that they otherwise would have declined in order to end a criminal case sooner, and reduce the risk of arrest by ICE in court.”¹⁷⁵ **Matt Knecht** observes the same phenomenon at NDS:

[M]any . . . clients' cases would be dismissed or otherwise resolved favorably, but because of ICE's presence in and around criminal court, clients are more likely to take unfavorable pleas to avoid returning to court. Clients are foregoing their right to have a trial or have a full investigation in their case because

¹⁷¹ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc'y ¶ 4, dated Feb. 21, 2019 (App. V).

¹⁷² Decl. of Matt Knecht, Managing Dir. at Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P) (“for clients who do not return to court, warrants are issued for their arrest and their cases remain in limbo indefinitely”).

¹⁷³ Decl. of the Immigration Unit, N.Y. Cty. Def. Servs. ¶ 4, dated July 13, 2018 (App. AA) (“As a result, after being advised of the potential immigration consequences, many of our noncitizen clients choose to take a plea at arraignments so that they need not return to court and risk a potential ICE arrest.”).

¹⁷⁴ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

¹⁷⁵ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 8, dated Mar. 1, 2019 (App. BB).

they feel pressured to get a case resolved as soon as possible for fear of ICE contact.¹⁷⁶

Josh Epstein, Supervising Immigration Attorney at Queens Law Associates (QLA), adds that “[i]n many cases, these at-risk clients could have received a form of a dismissal (i.e. CPL § 30.30 dismissal, adjournment in contemplation of dismissal (ACD)) at a subsequent adjournment date.”¹⁷⁷ **Justine Luongo**, Attorney-in-Charge of the Criminal Defense Practice at The Legal Aid Society (LAS), sees the same trend at LAS:

[Our] clients are so fearful of ICE’s presence in the courts that they sometimes reject dispositions which involve programs or community service, because of the additional court appearances. Non-citizen clients may even choose to remain incarcerated rather than accept a program which will involve monitoring because of the risk of ICE detention and removal from the United States. Attorneys have also observed a decrease in clients’ participation in “Clean Slate” events which allow clients to resolve old summons warrants.¹⁷⁸

The frequency of ICE courthouse operations forces public defenders to balance their duty to pursue the best possible criminal justice outcome for their clients with the risk of ICE detention, as **LAS** attests:

Non-citizens often feel pressured to accept unfavorable dispositions in their cases, because litigating will entail repeated court appearances. These non-citizens must balance their desire to exercise their due process rights in criminal court with their fear that they will be apprehended by ICE in

¹⁷⁶ Decl. of Matt Knecht, Managing Dir. of Neighborhood Def. Serv. of Harlem, dated Oct. 2, 2018 (App. P).

¹⁷⁷ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 4, dated Feb. 28, 2019 (App. J).

¹⁷⁸ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 6, dated Feb. 21, 2019 (App. V).

the courthouse, even when the charges are ultimately likely to be dismissed or result in acquittal.¹⁷⁹

Non-citizens are also forced to accept unfavorable pleas because ICE detention blocks their ability to participate in community service, anger management, or substance abuse programs, common conditions of more favorable pleas.¹⁸⁰ Appellate Advocates attorneys are also forced to advise their clients that pursuing a legal claim involves a risk of ICE detection or arrest in the courthouse: According to an internal survey, more than half of Appellate Advocate attorneys surveyed had to provide this advice.¹⁸¹

Distortions to the functioning of New York’s criminal justice system, caused by ICE courthouse operations, create serious due process and equal access issues.¹⁸² ICE courthouse operations create a separate class of litigants who experience New York’s criminal justice system very differently than their fellow New York residents with US citizenship.¹⁸³

Disappearing Litigants

When conducting courthouse operations, ICE frequently arrests and detains litigants without alerting their attorney, the district attorney’s office, or the criminal court.¹⁸⁴ **Molly Kalmus**, Staff Attorney at NYCDS, reports that she only learned of her client’s courthouse ICE arrest because her client’s friend was going through his belongings and found her business card.¹⁸⁵ ICE arrested her client on the courthouse steps as he attempted to appear

¹⁷⁹ *Id.* ¶ 5 (App. V).

¹⁸⁰ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 5, dated Feb. 28, 2019 (App. J) (“Clients in ICE detention frequently receive worse plea offers from the Queens County District Attorney’s office because the clients cannot access programs that are contingent on receiving ACDs or non-criminal dispositions such as disorderly conduct violations. These programs include assistance for anger management, parenting skills, sex-offenders, and alcohol and substance abuse.”).

¹⁸¹ Decl. of Sarah Vendzules, Esq., Staff Attorney, Appellate Advocates ¶ 7, dated Feb. 5, 2019 (App. MM).

¹⁸² Sarah Hill Rogerson, *Sovereign Resistance to Federal Immigration Enforcement in State Courthouses* 32 Geo. Immigr. L. J. 275 (2018).

¹⁸³ *Id.*

¹⁸⁴ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 4, dated Feb. 21, 2019 (App. V) (“While arrests used to take place in common, and sometimes restricted, areas of the courthouse, ICE apprehensions have expanded to the area right outside the courthouse while clients are going to and from court. Attorneys are often unaware that their clients have been apprehended by ICE and find out days or many weeks later after the client does not make their scheduled court appearance.”)

¹⁸⁵ Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶ 11, dated July 10, 2018 (App. N).

for his criminal court case, failing to inform Ms. Kalmus, the district attorney's office, or the court.¹⁸⁶

LAS reports similar experiences:

At times, our clients have been detained without our knowledge. In one such incident from summer 2018, one of our clients was arrested as he left a court appearance. He missed his subsequent appearance. After the resulting bench warrant, it took a month before we discovered that he had been in ICE custody and could take appropriate action.¹⁸⁷

Cynthia Darrell of LAS, East End Bureau, echoes her colleagues' experiences: "The only reason anyone knew why [our client] did not appear in court was because the family of this person was present when ICE detained them and the family advised the lawyer."¹⁸⁸

ICE often fails to produce clients who are in immigration custody for their criminal court dates.¹⁸⁹ Even when a New York court issues a writ ordering production of an individual in ICE custody, ICE maintains that as a federal agency, it is "not bound by state court orders."¹⁹⁰ At The Bronx Defenders, the majority of immigration attorneys who represent clients detained by ICE who have open criminal cases report that ICE has not produced their clients for criminal court hearings.¹⁹¹

¹⁸⁶ *Id.* (App. N).

¹⁸⁷ Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc'y ¶ 7, dated Feb. 21, 2019 (App. V).

¹⁸⁸ Decl. of Cynthia C. Darrell, East End Bureau Chief, Suffolk Cty., Legal Aid Soc'y ¶ 2, dated July 9, 2018 (App. H).

¹⁸⁹ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 11-12, dated Mar. 1, 2019 (App. BB); Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶ 13, dated July 10, 2018 (App. N).

¹⁹⁰ See U.S. Immigration & Customs Enf't, *Protecting the Homeland: Toolkit for Prosecutors* (Apr. 2011), <https://www.ice.gov/doclib/about/offices/osltc/pdf/tool-kit-for-prosecutors.pdf>.

¹⁹¹ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 11-12, dated Mar. 1, 2019 (App. BB).

Furthermore, in several cases, ICE has transferred clients to facilities far outside of the New York region, making it virtually impossible for clients to meet with their criminal defense attorneys and making the likelihood of ICE producing a client for future appearances even more remote.¹⁹²

The Immigrant Defense Project described the consequences of one man's arrest outside of a courthouse and subsequent transfer to Oklahoma:

After several ICE agents were caught on tape tackling a man outside of the Queens Criminal Court, the man faced long odds. He was torn from his family, locked up in a New Jersey immigration jail and facing deportation with an open criminal case. But a few days later, things got worse when ICE transferred him to a detention facility in Oklahoma. In the New York area he had been eligible to get a free immigration attorney through a special program that assigns attorneys to indigent immigrants. But in Oklahoma, he had to go it alone in immigration court. Without an attorney, he was quickly deported, but his criminal case remained open. Even though he was now out of the country, a Queens judge issued a bench warrant for his arrest because he failed to appear in court.¹⁹³

By arresting litigants in the New York Courts before they can resolve criminal cases and then failing to produce them for court appearances, ICE routinely suppresses the due process rights of New Yorkers.

¹⁹² Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* (Jan. 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>.

¹⁹³ *Id.*

Resource Drain for Public Defender Offices

ICE presence in the criminal courts requires that public defenders devote significant resources to respond. Addressing the risk of an ICE arrest in court requires additional staff time and resources to be directed towards client advisals.¹⁹⁴ Many criminal defense attorneys escort clients out of the courthouse and to the train in order to witness and invoke their clients' rights in case of ICE arrest. As **Josh Epstein** of QLA affirms:

QLA attorneys escort extremely high risk clients in and out of court. This takes a vast amount of attorney time. Additionally, this is a very stressful process and impacts the anxiety levels of clients and attorneys.¹⁹⁵

Other defenders explain how monitoring the court for ICE presence detracts from representation of other clients:

Both [my client] and I were anxious throughout the morning, and it made it difficult for me to focus on the other cases I had to handle. I was constantly scanning the courthouse for ICE presence.¹⁹⁶

Further, public defenders must develop and implement trainings and protocols to address ICE courthouse arrests.¹⁹⁷ For example, at The Bronx Defenders, the management team has had to create and deliver training on staff's ethical and professional responsibilities regarding the presence of ICE and ICE arrests in and around the courthouses.¹⁹⁸

¹⁹⁴ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶¶ 6-7, 12, dated Mar. 1, 2019 (App. BB).

¹⁹⁵ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 6, dated Feb. 28, 2019 (App. J).

¹⁹⁶ Decl. of Sarah Kaufmann, Esq., Staff Attorney, N.Y. Cty. Def. Serv. ¶ 5, dated July 13, 2018 (App. O).

¹⁹⁷ Brooklyn Def. Servs., Responses to Questions for Data Collection, dated July 18, 2018 (App. F).

¹⁹⁸ Decl. of Sarah Deri Oshiro, Managing Dir., Immigration Practice, Bronx Defs. ¶ 7, dated Mar. 1, 2019 (App. BB).

ICE's Escalating Use of Force and Surveillance

The public defender offices report that ICE arrest and surveillance tactics in and around courthouses have become increasingly brazen.¹⁹⁹ QLA reports that ICE agents in unmarked cars followed their client's car when leaving criminal court, and when the agents pulled the client over, seven agents, with guns drawn, surrounded his car.²⁰⁰ In another incident, a mother and her son were leaving criminal court in Brooklyn when plainclothes ICE agents appeared out of nowhere, grabbed the son, and started dragging him into an unmarked car.²⁰¹ Confused and alarmed, the mother began to ask the agents who they were.²⁰² The agents refused to answer, and when she cried out for help, an ICE agent shoved her against a wall, causing her head to hit the wall, while repeatedly telling her to "shut up."²⁰³ A bystander who witnessed an ICE arrest in Brooklyn called 911 to report that she had seen a man being kidnapped.²⁰⁴ As **Luis Bautista** of Make the Road New York observes:

ICE raids disregard the family members and loved ones accompanying an individual and the traumatic experience of witnessing such raids. Community members have reported being scared, confused, and not sure how to respond when plainclothes ICE officers are physically detaining their loved one. Once an ICE custody, the impact on their family is tremendous. Fernando*, an MRNY community member, was arrested by plainclothes ICE officers outside of Kings County Criminal Court on January 2019. Fernando is currently in immigration detention and says that "being in here [immigration detention center] is difficult not only for me, but also on my son." Fernando's family member, Isabel*, states

¹⁹⁹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰⁰ Decl. of Joshua Epstein, Esq., Supervising Immigration Attorney, Queens Law Assocs. ¶ 7(a), dated Feb. 28, 2019 (App. J).

²⁰¹ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018* at 7 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰² *Id.* at 8.

²⁰³ *Id.*

²⁰⁴ *Id.* at 9.

that “Fernando’s son is so sad” and that he “keeps asking us when Fernando is coming home and we just tell him soon.” Fernando’s family is now scared of going to any court or making a report to the police because of fear of ICE.²⁰⁵

ICE agents use courthouses as a venue to surveil New York’s immigrant residents. There have been numerous sightings of ICE agents sitting in courtrooms or roaming the hallways of courthouses to wait for individual cases to be called.²⁰⁶ While surveilling individuals at the courthouse, ICE agents also eavesdrop on privileged attorney-client conversations and follow attorneys, litigants, and their family members.²⁰⁷ In Brooklyn, after a judge excused a party’s appearance for the day, the attorney left to meet the party at a nearby fast food restaurant.²⁰⁸ Unbeknownst to the attorney, ICE agents followed her from the court, and as soon as she and her client parted ways, five plainclothes agents arrested the client.²⁰⁹

Violent and surreptitious courthouse operations make clients and attorneys anxious and paranoid at the prospect of court appearances.²¹⁰ ICE courthouse operations cast a dark shadow over defenders’ case strategies, advice, and use of office resources.

²⁰⁵ Aff. of Luis Bautista, Esq., Staff Attorney, Make the Road N.Y. ¶¶ 5-6, dated Feb. 28, 2019 (App. E).

²⁰⁶ Immigrant Def. Project, *The Courthouse Trap: How ICE Operations Impacted New York’s Courts in 2018* at 9 (Jan. 2019), www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

How ICE Courthouse Operations Frustrate the Purpose of Problem-Solving Courts



By conducting numerous operations in New York’s problem-solving courts, ICE frustrates the creative, holistic, and rehabilitative mechanisms established by the New York Unified Court System and the Center for Court Innovation. For litigants in problem-solving courts, ICE presence deters participation in court proceedings, reduces attendance in related programs, increases anxiety, and heightens suspicions of case managers and other court staff.

ICE Presence in the Problem-Solving Courts

Federal immigration officers are a visible presence in and around New York’s problem-solving courts. Since 2016, operations by federal immigration agents have been seen in and around the following problem-solving courts:

- **Queens Human Trafficking Intervention Court;**
- **Harlem Community Justice Court;**
- **Midtown Community Court;**
- **Red Hook Community Justice Court;**
- **Brooklyn Young Adult Court;**
- **Brooklyn Mental Health Treatment Court.**²¹¹

ICE agents also frequent the programs run by the Center for Court Innovation (CCI) in connection with problem-solving courts. For example, in Bronx Criminal Court, CCI runs Bronx Community Solutions, a program that provides alternatives to incarceration and fines in non-violent cases.²¹² CCI staff report that ICE agents have been seen in the hallways near their Bronx Community Solutions offices in Bronx Criminal Court.²¹³ CCI staff for Brooklyn Justice Initiatives, a program that supports youth and individuals with mental health needs, have seen ICE agents walking the hallways outside of their offices and sitting outside of their offices.²¹⁴

²¹¹ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR) (documenting arrests at several problem-solving courts); Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT) (describing ICE operations in and around CCI-run programs).

²¹² See generally Ctr. For Court Innovation, *Bronx Community Solutions* (last visited Mar. 27, 2019), <https://www.courtinnovation.org/programs/bronx-community-solutions>.

²¹³ See Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

²¹⁴ *Id.* (App. TT).

A Deterrent to Participation

The increased presence of ICE agents in and around problem-solving courts affects participation in court proceedings and associated programs: **CCI staff** report that both youth and adult participants “have voiced concerns about coming to court appearances and clinic appointments.”²¹⁵ Participants who are not citizens “often state that they find the legal system to be increasingly unsafe and would do anything to avoid being court involved.”²¹⁶ Fears of ICE in court lead participants to decline voluntary fatherhood and workforce development programs held in the Midtown Community Court.²¹⁷ Participants also voice apprehension about attending supervised check-ins with Brooklyn Justice Initiatives.²¹⁸

Fears of ICE in the courts also cause participants to question the role of program staff.²¹⁹ With ICE agents regularly stationed outside arraignments and the Young Adult part in Brooklyn Criminal Court, a **CCI supervisor** reports that “participants have expressed concerns about our relationship with law enforcement.”²²⁰ Many staff have been asked by “if they work closely with ICE.”²²¹ Some participants ask if “agreeing to participate in the [CCI] program may be a trap of sorts.”²²²

Human Trafficking Court: ‘A Paralyzing Fear of Public Systems’ Exacerbated by ICE

Since January 2017, ICE has arrested four individuals at the Queens Human Trafficking Intervention Court (HTIC), and attempted to arrest at least one other.²²³ ICE continued these operations in 2018, arresting at least one individual as he attempted to enter the

²¹⁵ *Id.* (App. TT).

²¹⁶ *Id.* (App. TT).

²¹⁷ *Id.* (App. TT).

²¹⁸ *Id.* (App. TT).

²¹⁹ *Id.* (App. TT).

²²⁰ *Id.* (App. TT).

²²¹ *Id.* (App. TT).

²²² *Id.* (App. TT).

²²³ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS); Decl. of Justine Luongo, Attorney in Charge, Criminal Def. Practice, The Legal Aid Soc’y ¶ 3, dated Feb. 21, 2019 (App. V); Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶¶ 4-6, dated July 10, 2018 (App. N); Liz Robbins, *A Game of Cat and Mouse with High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>.

Queens Criminal Court for an appearance in the human trafficking part.²²⁴ The arrests continued despite the widespread outrage of advocates for survivors of gender violence, elected officials, and jurists.²²⁵

On June 16, 2017, as discussed in section IV(F) above, three male ICE agents sought to detain a young Chinese woman who had been arrested for unlicensed massage and identified as a possible survivor of human trafficking.²²⁶ She had been “on track to have the charges against her dismissed” after completing her mandated services.²²⁷ While one ICE agent loitered at the back of the courtroom and two more stood outside of the court part, “dozens of other immigrant defendants” watched.²²⁸

After this and other incidents, “news of ICE in the courtroom spread through the communities served by the HTIC,” resulting in an increase in non-appearances all over New York.²²⁹ CCI staff in the Midtown Community Court report that concerns about court appearances are “particularly prevalent among defendants in the Human Trafficking Court.”²³⁰ Furthermore, due to the “menacing presence of immigration agents in the courts,” attorneys often conclude that they can “no longer responsibly encourage clients to seek the lifesaving help they need in the courts.”²³¹

ICE operations in HTICs and other courts designed to meet the specialized needs of trauma survivors allow “exploiters to flourish” by “giving them an “extra layer of fear they can use to coerce their victims into submission.”²³² The presence of ICE agents in the courts also

²²⁴ Decl. of Molly Kalmus, Staff Attorney, N.Y. Cty. Def. Serv. ¶¶ 4-6, dated July 10, 2018 (App. N).

²²⁵ CBS N.Y., *NYC Officials Call for End to Immigration Raids at Courthouses* (June 22, 2017), <https://newyork.cbslocal.com/2017/06/22/ice-raids-at-courthouses/>; Liz Robbins, *A Game of Cat and Mouse with High Stakes: Deportation*, N.Y. Times (Aug. 3, 2017), <https://www.nytimes.com/2017/08/03/nyregion/a-game-of-cat-and-mouse-with-high-stakes-deportation.html>; Beth Fertig, *Outcry After Immigration Agents Seen at Queens Human Trafficking Court*, WNYC (June 16, 2017), <https://www.wnyc.org/story/outcry-after-immigration-agents-come-trafficking-victim-queens-courthouse/>

²²⁶ Written Testimony of Carmen Maria Rey, Esq., Deputy Dir., Immigration Intervention Project, Sanctuary for Families, Submitted to the N.Y.C. Council, Comm. on Courts & Legal Servs. Chair, Council Member Rory Lancman at 2 (June 29, 2017) (App. DD).

²²⁷ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

²²⁸ See *id.* (App. SS).

²²⁹ See *id.* (App. SS).

²³⁰ Immigration Enforcement in NYC Courts: Experiences and Observations of Center for Court Innovation Staff, provided by Jethro Antoine, Dir. of Centralized Cmty. Justice Projects, Ctr. for Court Innovation (App. TT).

²³¹ See Letter from Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., to Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. at 3, dated July 6, 2018 (App. SS).

²³² See *id.* (App. SS).

compounds the “overwhelming anxiety and paralyzing fear of public systems” that many immigrants carry with them from “traumatic experiences in their home countries.”²³³ ICE presence in the courts thus exacerbates the anxieties that many face, with “alarming” mental health ramifications.²³⁴

Impact of ICE Courthouse Operations on Youth

ICE presence in Youth Courts frightens young people with limited or no history with the courts and threatens to derail their futures in uniquely tragic ways. For example, when the immigration attorney for a 19-year-old, due to appear for a traffic ticket in Albany, could not assure that ICE would not be present in the courthouse, the young person was unwilling to go until she could find *pro bono* counsel to accompany him.²³⁵ According to **James Milstein**, former Dir. of the Albany County Regional Immigration Assistance Center, the young person’s concern was well-founded:

ICE often arrests individuals appearing in local courts in connection with low-level offenses. In many instances, the charges these individuals faced were so minor that the arresting officer issued desk appearance tickets to the individual arrested. Nine of the arrests I documented targeted noncitizens who appeared in court in connection with traffic violations. These violations included charges related to broken tail lights and driving on an expired driver’s license.²³⁶

On May 15, 2017, three plainclothes ICE agents took a young person into custody after he appeared to face minor charges in the youth part.²³⁷ Particularly disturbing were reports that before the young person was arrested, ICE called the Administrative Judge of Suffolk County Court to warn against “obstructing justice.”²³⁸ Reportedly, the presiding judge then

²³³ *See id.* (App. SS).

²³⁴ *See id.* (App. SS).

²³⁵ Decl. of Mary Armistead, Esq., Clinical Fellow, Immigration Law Clinic, Albany Law Clinic & Justice Ctr. ¶ 5, dated June 9, 2017 (App. C).

²³⁶ Decl. of James Milstein, Esq., Dir., Albany Cty. Office of Immigration Assistance ¶ 8, dated Aug. 6, 2018 (App. X).

²³⁷ Immigrant Def. Project, *Building a Statewide Campaign – Fact Sheet: ICE in New York State Courts* (July 2017), <https://www.immigrantdefenseproject.org/wp-content/uploads/CourthouseToolkitSection3.pdf>.

²³⁸ *Id.*

promptly called the case, which allowed ICE to identify the young person.²³⁹ The young person, who had been brought here as an 11-year-old and applied for Special Immigrant Juvenile Status (SIJS), was surrounded and taken by ICE agents outside of the courtroom.²⁴⁰

ICE uses the courthouses as bait and a venue for surveillance, as illustrated by the arrest of Matthew Rojas on November 27, 2018 outside of the New Paltz Justice Court.²⁴¹ Reportedly, on November 27, 2018, ICE agents were inside the New Paltz Justice Court, where a sign-in sheet was posted at the front of the courtroom.²⁴² The agents left “presumably to await Rojas’s arrival.”²⁴³ The 23-year-old, brought to the U.S. as a toddler, was on his way into court to respond to his first ever appearance ticket and was unprepared for the ICE apprehension outside of the courthouse.²⁴⁴

As **Sarah Rogerson**, Director of the Immigration Law Clinic at Albany Law School, explains, such baiting tactics of arresting individuals on their way into or out of courthouses is damaging to New Yorkers’ access to justice: “Anytime that you have the threat of ICE agents at or near a place where the public frequents to obtain government services or access justice, you have a problem.”²⁴⁵ Furthermore, ICE officials have lied about their identity when apprehending youth in the immediate vicinity of courthouses, as they did in the case of a twenty-year-old SIJS client at The Door who was taken by ICE from a bus stop across the street from the Queens Criminal Court.²⁴⁶

The impact of ICE detention on youth, both for the individual and their community, cannot be overstated. For example, a young SIJS client of The Door became so depressed that he was placed in solitary confinement.²⁴⁷ As Matthew Rojas’s friend explained after seeing him in detention, “It’s a struggle for him to keep his head up (and think) that this might change

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Terence P. Ward, *New Paltz Resident Nabbed by ICE Agents Outside of Court*, New Paltz Times (Dec. 3, 2018), <https://hudsonvalleyone.com/2018/12/03/new-paltz-resident-nabbed-by-ice-agents-outside-of-town-court/>.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ Roger Hannigan Gilson, *New Paltz Takes on ICE*, The Other Hudson Valley (Dec. 19, 2018), https://theotherhudsonvalley.com/2018/12/19/new-paltz-ice/?fbclid=IwAR0Y2CdB2gDgNtkuDeRuDNeaOMLCHjzMBaRKzHjfcEaSinOwqXmHWWb_Svg.

²⁴⁵ *Id.*

²⁴⁶ Decl. of Eve Stotland, Esq., Legal Dir., The Door’s Legal Servs. Ctr. ¶ 3, dated July 5, 2018 (App. HH).

²⁴⁷ *Id.* (App. HH).

soon, when in reality he's sitting there with people who have been there for 18 months...it's definitely very tough on him in there.”²⁴⁸

According to **Eve Stotland**, Director of The Door's Legal Services Center, “[a]s the young people we serve and their families confront news of courthouse arrests, their access to immigration relief shrinks.”²⁴⁹ Potential caregivers for young people routinely decline to move forward with guardianship petitions due to their fear of ICE in the courts.²⁵⁰ A Bronx Legal Services client, a 17-year-old boy from Honduras, was unable to move forward on his guardianship and SIJS cases because his aunt, who houses, feeds, and clothes him, was afraid she would be arrested by ICE in Family Court.²⁵¹ An Urban Justice Center client struggled to get guardianship of her own child because her fellow household members were too afraid to be fingerprinted by the Queens Family Court.²⁵² One father declined to be the guardian for his own son when Professor **Vanessa Merton** of Pace University “could not reassure him there was no risk” of being taken into ICE custody, deciding that “if he is deported, he cannot be of any help to his son.”²⁵³

The presence of ICE in and around courts also has a chilling effect on the practical training and education of New York law students. Professor **Claire Thomas** of New York Law School (NYLS) reports that her students who are not US citizens have expressed concerns about appearing in New York state courts.²⁵⁴ As Professor Thomas explains, “[s]uch observation is crucial to students’ legal education and growth in the profession,” but she is

²⁴⁸ Roger Hannigan Gilson, *New Paltz Takes on ICE*, The Other Hudson Valley (Dec. 19, 2018), https://theotherhudsonvalley.com/2018/12/19/new-paltz-ice/?fbclid=IwAR0Y2CdB2gDgNtkuDeRuDNeaOMLCHjzMBaRKzHjfcEaSnOwqXmHWWb_Svg.

²⁴⁹ Decl. of Eve Stotland, Esq., Legal Dir., The Door's Legal Servs. Ctr. ¶ 7, dated July 5, 2018 (App. HH).

²⁵⁰ *Id.* ¶ 6 (App. HH).

²⁵¹ Decl. of Terry D. Lawson, Dir., Family & Immigration Unit, Bronx Legal Servs. ¶ 4, dated May 31, 2017 (App. R).

²⁵² Decl. of Salar Rivani, Esq., Staff Attorney, Urban Justice Ctr., Domestic Violence Project ¶¶ 3-4, dated May 31, 2017 (App. EE). *See also* Decl. of Atossa Movahedi, Dir., Legal Servs. & Dev., Domestic Violence Project, Urban Justice Ctr. ¶ 7, dated May 31, 2017 (App. Y) (“Our family court attorneys are experiencing push back with Judges and Referees when making their requests to waive fingerprints in Guardianship proceedings for household members. This has had an impact on the number of matters we have been able to file for SIJS (Special Immigrant Juvenile Status) out of fear of our clients that their loved ones will be picked up by ICE after being fingerprinted”); Decl. of Mary Armistead, Esq., Clinical Fellow, Immigration Law Clinic, Albany Law Clinic & Justice Ctr. ¶¶ 6-7, dated June 9, 2017 (App. C) (whose SIJS client almost lost her guardian sponsor due to guardian's fears of being arrested and separated from her USC children).

²⁵³ Decl. of Vanessa Merton, Esq., Faculty Dir., Immigration Justice Clinic, John Jay Legal Servs., Inc., Elisabeth Haub Sch. of Law, Pace Univ. ¶ 3, dated May 31, 2017 (App. W).

²⁵⁴ Aff. of Claire R. Thomas, N.Y. Law Sch. ¶ 5, dated July 9, 2018 (App. II).

“unable to reassure NYLS students who are not U.S. citizens that they will not be at risk for apprehension by ICE upon entering New York State Courts.”²⁵⁵

As illustrated above, when they enter problem-solving courts, ICE agents arrest the most vulnerable individuals, including youth, survivors of human trafficking, the mentally ill, and reentry program participants.

²⁵⁵ *Id.* ¶¶ 6-7 (App. II).

How ICE Courthouse Operations Discourage Claimants in Civil Courts



ICE courthouse operations discourage immigrants and their family members from accessing New York State civil courts. This effect is pronounced in housing courts where landlords threaten to call ICE on immigrant tenants, pressuring them to resolve their cases sooner and against their best interests. According to the ICE in NYS Courts Legal Service and Advocates Survey, 56% of respondents said that their clients expressed fear of filing a

housing court complaint due to fear of ICE.²⁵⁶ As one respondent explained, “Tenants regardless of status are typically extremely scared and skeptical about fighting for their rights in court proceedings” and that “[t]his fear has transformed into crippling paralysis in the wake of ICE activity in New York State Courts.”²⁵⁷

Through its Universal Access to Counsel program, New York City provides free legal counsel to its residents in eviction proceedings.²⁵⁸ Since 2014, the number of citywide evictions has dropped 37%,²⁵⁹ with tremendous investment by New York City government.²⁶⁰ Yet, the success of this program depends on New Yorkers having access to the courts.

As **Norey Lee Navarro**, an attorney with Legal Services NYC, which receives funding under the Universal Access to Counsel program, explains, “[t]he cases that my office handle on a daily basis illustrate how [the proposed] court rules are critical to the general safety [and] well-being of our clients, due process of our client’s rights, and the preservation of affordable housing in New York.”²⁶¹ However, when some landlords suspect that their tenants are immigrants, they threaten to call ICE during the course of a housing proceeding.²⁶² “Landlords present in court often make derogatory statements towards tenants based on tenants’ actual or incorrectly assumed immigration status, such as ‘He wants an abatement in his rent? He is lucky that I don’t report him to ICE!’”²⁶³

Tenants who come to housing court to fight an eviction proceeding settle their cases quickly, agreeing to resolutions that do not account for all of their rights, due to fear of ICE in the courts. In Navarro’s experience:

²⁵⁶ Immigrant Def. Project, *Key Findings: ICE in NYS Courts Legal Service and Advocates Survey*, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-out-of-courts-survey-final-1.pdf>.

²⁵⁷ *Id.*

²⁵⁸ N.Y.C. Hous. Court, N.Y. State Unified Court Sys., *About the Universal Access to Legal Services Law*, (last updated Feb. 4, 2019), <https://www.nycourts.gov/COURTS/nyc/housing/aboutUniversalAccess.shtml>.

²⁵⁹ Will Drickey, *NYC Eviction Down Thanks to Legal Aid Program for Tenants*, Metro (Feb. 4, 2019), https://www.metro.us/news/local-news/new-york/universal-access-legal-counsel-evictions?fbclid=IwAR3ArCd-8Kwy4qVOgBqr9ZxWrrmjKr3rL_ZPBAdlFtIA-mJOlfWzqIJLHYE.

²⁶⁰ Office of Civil Justice, N.Y.C. Human Res. Admin., *Universal Access to Legal Services: A Report on Year One of Implementation in New York City* (Fall 2018), <https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ-UA-2018-Report.pdf>.

²⁶¹ Decl. of Norey Lee Navarro, Esq., Staff Attorney, Bronx Legal Servs. ¶ 3, dated July 27, 2018 (App. Z).

²⁶² *Id.* ¶ 5 (App. Z).

²⁶³ *Id.* (App. Z).

In an effort to avoid ICE in housing court during a first court appearance, a tenant will likely feel pressured to resolve a housing court case as quickly as possible and not ask for a new court date to seek advice of counsel — this in turn will likely result in the tenant unknowingly waiving defenses and counterclaims, and signing judgment agreements with unjust terms (i.e. an inaccurate amount of rent arrears, an overly harsh probationary period, an unnecessary move out agreement from a rent stabilized or rent controlled apartment, etc.). Or in the worst possible scenario, immigrant [and] refugee tenants will be unnecessarily evicted from their homes because such tenants avoid appearing in housing court all together in an effort to avoid ICE [and] the fear of deportation.²⁶⁴

Not only does the lack of court rules encourage landlords to continue to use scare tactics, it also discourages New Yorkers from going to court to seek repairs. Navarro says, “[m]any of our clients often adamantly decline to sue their landlords in HP actions for repairs and instead continue to live in deplorable and unsafe conditions in their apartments.”²⁶⁵ **Justin La Mort**, Supervising Attorney at Mobilization for Justice, likewise explains:

It has been increasingly challenging to convince immigrant tenants to organize and assert their rights in court. When I’m asked if we can promise their safety I have to honestly respond that I cannot make any guarantees. Many tenants are given the choice from their landlords to abandon their rent stabilized home or risk forcible deportation. My office has clients who were courageous enough to fight back but who are now hesitant or outright refuse to return to court after being explicitly threatened by their landlords or agents of the landlord that ICE will be contacted. Their voices will go unheard if their cases go

²⁶⁴ *Id.* (App. Z).

²⁶⁵ *Id.* ¶ 4 (App. Z).

to trial as housing court is no longer a place they feel safe from immigration enforcement.”²⁶⁶

Navarro would like to see court rules to address her clients’ fears of ICE in the Courts: “As a housing attorney that regularly represents low-income immigrant [and] refugee tenants in Bronx Housing Court, I strongly support the creation and implementation of court rules that would prohibit/regulate the presence of United States Immigration & Customs Enforcement (ICE) in New York State Courts.”²⁶⁷

²⁶⁶ Aff. of Justin La Mort, Supervising Attorney, Mobilization for Justice, dated Feb. 28, 2019 (App. Q).

²⁶⁷ Decl. of Norey Lee Navarro, Esq., Staff Attorney, Bronx Legal Servs. ¶ 3, dated July 27, 2018 (App. Z).

How ICE Courthouse Operations Complicate the Protocol and Duties of Courthouse Staff



Increased ICE courthouse operations complicate the duties of court officers and other courthouse staff. In response to Freedom of Information Law (FOIL) requests, the New York State Office of Court Administration (OCA) disclosed 66 unusual occurrence reports (UOR) covering the period from February 2, 2017 to August 13, 2018.²⁶⁸ These UORs revealed disparities in the

²⁶⁸ Mazin Sidahmed & Felipe De La Hoz, *Documents Show New York Officers Alerted ICE About Immigrants in Court*, Documented (Jan. 26, 2019), <https://documentedny.com/2019/01/26/documents-show-new-york-court-officers-alerted-ice-about-immigrants-in-court/>.

documentation, or lack thereof, that ICE agents provided to court officers when executing courthouse arrests.²⁶⁹ They also showed cooperation between court officers and ICE agents.²⁷⁰

When conducting operations, ICE agents utilize administrative warrants, issued by the agency itself, rather than judicial warrants.²⁷¹ Recently, in *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018), the Second Department recognized the difference, describing ICE “detainers” and “warrants” as civil, and “administrative, not judicial.”²⁷² Further, ICE administrative warrants are often based on outdated information and require only internal, supervisory review.²⁷³ In contrast, judicial warrants contain information reviewed and approved by a judge, which helps prevent collateral arrests like the one on October 24, 2017 at the Saratoga City Court.²⁷⁴

Further, the UORs indicate that most often, ICE agents presented neither administrative nor judicial warrants, nor any authorizing documentation whatsoever.²⁷⁵ Only one of the 66 arrests documented in the UORs referenced a judicial warrant.²⁷⁶ In other cases, the UORs reference documents presented by ICE but provide no details regarding their substance or

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Statement of Supreme Court of Ill. Chief Justice Lloyd A. Karmeier, ICE Arrests Threaten to Chill Access to Justice (Aug. 28, 2017), http://www.illinoiscourts.gov/Media/enews/2017/082517_chief_justice.asp (explaining that ICE warrants are “merely civil administrative documents” that “are issued without review by a neutral magistrate, do not meet the requirements necessary to support issuance of warrants in criminal cases, and do not confer authorization for entry into locations where persons have a reasonable expectation of privacy.”).

²⁷² *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018).

²⁷³ N.Y.C. Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* at 21 (July 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

²⁷⁴ See N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR) (showing that an individual went to answer a traffic ticket at the Saratoga City Court, with an “unknown companion,” and despite having no scheduled appearance and submitting a not guilty plea, two ICE agents arrived and arrested them both).

²⁷⁵ On July 17, 2017, a court officer in the Queens Criminal Court reported that an agent informed him that he planned to arrest the subject in court but “no warrant was presented by agent.” On May 15, 2017, court officers in the Suffolk County District Court reported that “no warrant was presented to court staff” by Homeland Security Investigations agents, who “were present inside courtroom D31 to detain the [defendant].” See *id.* (App. RR).

²⁷⁶ On May 22, 2018, in the Bronx Supreme Court, “agents referenced a US District Court Arrest Warrant” and the subject was arrested. See *id.* (App. RR).

validity.²⁷⁷ The UORs describe the documentation as an “ICE detainer warrant,” “warrant for deportation,” or “worksheet.”²⁷⁸ These descriptions suggest that some court officers may not understand the distinctions between federal judicial warrants, ICE administrative warrants, ICE detainer requests, and other agency documents.

The *Wells* court made three key holdings with respect to ICE warrants and cooperation between state and federal officials related to immigration: 1) New York state law does not authorize state and local law enforcement to effectuate warrantless arrests for civil immigration law violations; 2) New York state and local officers do not have inherent police power authority to make civil arrests, including civil immigration arrests; and 3) an administrative warrant, such as those issued by ICE, is not issued by a judge or a court, and thus does not give state and local officers the authority to arrest, seize, or detain someone for civil immigration purposes.²⁷⁹ Accordingly, New York court officers are not authorized by New York State or federal law to make or participate in civil immigration arrests.²⁸⁰

The UORs show, however, that some New York State court staff have assisted ICE agents in making their civil arrests.²⁸¹ According to the UORs, court staff have physically assisted with

²⁷⁷ In cases where ICE has provided documentation, UORs describe the documentation as an “ICE detainer warrant,” “warrant for deportation,” or “worksheet.” *See id.* (App. RR). These descriptions suggest that some court officers may not understand the distinctions between federal judicial warrants, ICE administrative warrants, ICE detainer requests, and other agency documents. Recent guidance from the California Attorney General’s office on implementation of California Senate Bill SB 54 includes a model policy regarding the training of court staff as well as examples of commonly used ICE documents. *See* Cal. Dep’t of Justice, Office of the Attorney Gen., *Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues* (Oct. 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf>.

²⁷⁸ *See* N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

²⁷⁹ *People ex rel. Wells v. DeMarco*, No. 2017-12806, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dep’t Nov. 14, 2018).

²⁸⁰ *Id.*; *see also* N.Y. Crim. Proc. Law § 2.10(21)(a)-(f).

²⁸¹ *See* N.Y. State Office of Court Admin., Unusual Occurrence Reports, attached to Letter from Shawn Kerby, Assistant Deputy Counsel, in response to Freedom of Information Law (“FOIL”) request, dated Aug. 13, 2018 (App. RR).

the arrests,²⁸² called ICE agents to notify them when a particular case would be called,²⁸³ and provided information to immigration officials by phone.²⁸⁴ Court staff and judges have also given ICE agents access to non-public areas of the courthouse, leading individuals to those areas where ICE agents were waiting to make the arrest.²⁸⁵

The UORs make clear that ICE courthouse operations create a work environment rife with confusion and guesswork for court officers and staff. Inadequate and nonexistent documentation forces court officers to guess at the ICE agents' authority and jurisdiction, leading inevitably to wrongful and collateral arrests. Further, under *Wells*, court officers are at risk of participating in civil immigration arrests, contrary to New York law, leaving them open to civil liability for rights violations, when they cooperate with ICE in the absence of a judicial warrant.

²⁸² On September 21, 2017, four court officers from an unspecified NYC Civil Court in Brooklyn "assisted [ICE agents] in effecting the arrest" of an individual outside of the courthouse. On November 9, 2017, a participant in the Center for Court Innovation Parole Re-Entry program at the Harlem Community Justice Center was taken into custody by ICE officers "with the assistance of [the reporting officer] and Sgt. []." On November 28, 2017, four court officers in the Kings County Criminal Court observed ICE officers attempting to handcuff an individual in the hallway outside of a courtroom. The court officers separated the individual from his attorney and "instructed ICE officers" to take the individual to a restricted area of the court. *See id.* (App. RR).

²⁸³ On February 21, 2017, a court officer from the New York County Criminal Court noted: "[ICE agents] left a business card and asked to be notified before the case was called, which [the court officer] did." On March 19, 2017, another court officer from the New York County Criminal Court, reported: "[ICE] Officer Outlaw gave R/O [reporting officer] his business card and left at approximately 1045 hours. [Defendant] appeared in the courtroom for his court date and R/O called [ICE] Officer Outlaw[.]" *See id.* (App. RR).

²⁸⁴ On August 1, 2017, a clerk in the Suffolk County Court "received a call from Homeland Security inquiring if [defendant] was on the calendar and Clerk [] stated he was and the caller hung up. At 1400 hours, Defendant's attorney [], reported that his client was taken into custody by Homeland Security in the parking lot during lunch recess." *See id.* (App. RR).

²⁸⁵ On February 3, 2018, in the Cortland City Court, a court officer informed a Judge that two ICE agents were present to arrest an individual scheduled to appear before her. The report notes: "I informed Judge [] of the situation in her chambers prior to the case and we agreed that she would proceed with the case with immigration officers waiting in the conference room next to the courtroom. At the conclusion of the court case, [the defendant] went to the courtroom where he was taken into the conference room where he was taken into custody." On November 28, 2017, in the Kings County Criminal Court, the reporting officer notes that he "separated the subject from [defense counsel] and instructed the ICE officers to take the subject to the DV Pen area which is a restricted, safe, and secure area." On January 31, 2018, a court officer notes that ICE agents arrested a 26-year-old man outside of a courtroom. A report issued by the Department of Homeland Security in this case notes that ICE agents exited the building using a "non-public elevator escorted by New York State Court Officers." *See id.* (App. RR).

How Legal Professional Associations Have Responded to ICE Courthouse Operations



Since ICE courthouse operations began in earnest, national, state, and local legal professional associations have publicly condemned them, issuing their own reports and recommendations.

On July 6, 2017, the **Association of Pro Bono Counsel** (APBCo), a professional organization of the pro bono departments of 107 leading law firms, wrote a letter urging Chief Judge Janet DiFiore to “exercise [her] authority pursuant to the State Constitution” to issue certain protective court rules to “preserve the professionalism and dignity of the

courtroom while safeguarding immigrants' access to justice."²⁸⁶ As reported in section IV above, APBCo noted how alleged criminals can weaponize their accusers' immigration statuses as "a de facto form of witness intimidation, abetted by ICE."²⁸⁷ APBCo also bolstered claims that lawyers are "now faced with the difficult choice of being obligated to encourage [their] immigrant clients to attend court appearances, while knowing that doing so may result in their arrest and deportation."²⁸⁸ APBCo laid out the repercussion of intensifying ICE courthouse operations: "The rising ICE presence in our courts says to New York's huge immigrant community — and those that represent, work with, employ and rely upon them — that the removal of a few is more important than safety for all, that even our courts will step back and allow spot arrests to trump even-handed justice for all."²⁸⁹

On August 15, 2017, the **American Bar Association's** (ABA) House of Delegates passed a resolution calling for: 1) ICE to add courthouses to the list of sensitive locations in which immigration enforcement actions can be taken only in emergency circumstances, and 2) Congress to amend the Immigration and Nationality Act (INA) to codify this expanded definition of sensitive locations.²⁹⁰ The ABA passed this resolution in recognition of "the critical importance of the fair and unfettered administration of justice and in order to protect the right of all persons to access [courthouses]."²⁹¹ The ABA described ICE's courthouse arrest tactics as "impact[ing] some of our most vulnerable populations and interfere[ing] with the proper administration of justice."²⁹²

On December 5, 2017, the **Fund for Modern Courts** (the Fund) issued a report on the impact of ICE courthouse arrests on the administration of justice.²⁹³ The Fund report details the efforts of Chief Judge Janet DiFiore and OCA to meet with Department of Homeland Security (DHS) officials to urge designation of courthouses as sensitive locations and issuance of a protocol governing activities in courthouses by law enforcement agencies. However, the Fund pointed out that such positive steps unfortunately were not enough to

²⁸⁶ Letter from Kevin J. Curnin, President, Ass'n of Pro Bono Counsel, to N.Y. State Court of Appeals Chief Judge Janet DiFiore (July 6, 2017), <https://apbco.org/wp-content/uploads/2018/11/2017-07-06-Ltr-to-Judge-DiFiore-fr-APBCo-re-ICE-INcursions-in-NYS-Courthouses.pdf>.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Am. Bar Assoc., *ABA House Urges Congress Add Courthouse to 'Sensitive Locations' to ICE Guidelines* (Aug. 15, 2017), https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/aba_house_urges_cong/.

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ The Fund for Modern Courts, *Protecting the Administration of Justice in New York State: Impact of ICE Arrests on New Yorkers' Access to State Courthouses* (Dec. 2017), <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>.

ameliorate the concerns and forcefully stated that “it falls to the New York State judiciary to do what is within their power to protect New Yorkers” by enacting “policy changes.”²⁹⁴ The Fund recommended that: 1) OCA require judicial warrants for civil immigration law enforcement actions conducted in New York State courthouses; 2) the presiding judges be required to notify the targets of civil enforcement of the presence of agents; 3) OCA limit cooperation of court employees in civil immigration enforcement to those actions required by law; and 4) OCA reduce the frequency with which parties need to appear in court.²⁹⁵

In January 2018, the **New York State Bar Association’s** House of Delegates adopted a resolution similarly calling on ICE to include courthouses in its list of sensitive locations and on Congress to amend the INA to codify the policy around this expanded list of sensitive locations.²⁹⁶

In July 2018, the **New York City Bar Association** (City Bar) published an extensive report including recommendations for OCA regarding ICE courthouse operations. The City Bar acknowledged OCA’s close monitoring of these types of civil enforcement actions and its dialogue with ICE on the practice as well as ICE’s January 2018 directive.²⁹⁷ However, the City Bar also observed that “[d]espite these steps, ICE’s courthouse arrests continue to adversely impact the administration of justice and leave many individuals fearful of going to court.”²⁹⁸ The City Bar voiced serious concern that ICE courthouse arrests will have the effect of “creating a class of state residents who are denied access to the justice system” and “erod[ing] the effectiveness of the state’s justice and court system.”²⁹⁹ Given these serious concerns, the unlikelihood of a response or solution being generated at the federal level, and the “essential rights at issue,” the City Bar recommended that “the Chief Judge exercise her authority under the New York State Constitution and Judiciary Law to issue five administrative rules to better protect access to justice and the due process rights of all New Yorkers.”³⁰⁰ The first four largely tracked the recommendations for policy changes proposed by the Fund for Modern Courts. However, the City Bar expressly tied the need for judicial,

²⁹⁴ *Id.* at 4, 18.

²⁹⁵ *Id.* at 18-19.

²⁹⁶ N.Y. State Bar Assoc., *January 26, 2018: NYS Bar Association Approves Domestic Violence Initiative, Resolution to Protect Immigrants in Courts* (Jan. 26, 2018), <https://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=79676>.

²⁹⁷ U.S. Immigration & Customs Enf’t, *Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses* (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

²⁹⁸ N.Y.C. Bar Assoc., *Recommendations Regarding Federal Immigration Enforcement in New York State Courthouses* at 1-2 (July 2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

²⁹⁹ *Id.* at 2.

³⁰⁰ *Id.*

not administrative warrants, for civil immigration enforcement actions to the common law privilege against civil arrests while attending judicial proceedings.³⁰¹ The City Bar added a recommendation that OCA should make available for public review the information obtained and recorded by court personnel with respect to ICE enforcement activities in courthouses.³⁰²

³⁰¹ *Id.* at 2, 11.

³⁰² *Id.* at 2.

How Judicial Stakeholders Have Responded to ICE Courthouse Operations



As reports of ICE courthouse operations increase, many sitting and former judges have spoken out against ICE's tactics.

Statements of Sitting Judges Across the Country

According to a May 2018 report by the **American Civil Liberties Union** (ACLU), 54% of the 103 judges surveyed reported interruptions due to an immigrant crime survivor's fear of coming to court.³⁰³

³⁰³ See Am. Civil Liberties Union, *Freezing Out Justice: How Immigration Arrests at Courthouses are Undermining the Justice System* (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf.

Judges have been vocal about how ICE’s courthouse operations are disruptions to the paramount purpose of courthouses — the fair and equitable administration of justice.³⁰⁴ Chief judges across the country have spoken out against ICE’s courthouse operations.³⁰⁵ Chief Justice **Lloyd A. Karmeier** of The Supreme Court of Illinois called attention to the erosion of equal access to justice for all Illinois residents caused by ICE’s tactics:

Concerns over the negative effects of ICE enforcement actions on access to state judicial services may have particular resonance in Illinois, where our state constitution enshrines the philosophy that every person, not just citizens, ‘shall obtain justice by law, freely, completely, and promptly’ and guarantees to all persons, not just citizens, that they shall not be ‘deprived

³⁰⁴ See generally Letter from Supreme Court of Wash. Chief Justice Mary E. Fairhurst to the Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Mar. 22, 2017), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSICE032217.pdf> (“When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice.”); Press Release, R.I. Judiciary, *Courts Must Remain Open and Accessible to All, Chief Justice Tells Lawyers, Judges* (June 16, 2017), <https://www.courts.ri.gov/PublicResources/media/PDF/ICE%20enforcement%20061617%20web.pdf> (Chief Justice Paul A. Suttell spoke at the annual meeting of the Rhode Island Bar Association about his concern regarding ICE arrests “either inside or near state court buildings,” remarking that “[i]f people in our immigrant communities are afraid to come to court, out of fear of federal apprehension, our core mission is compromised and there is a risk of our neighborhoods becoming less safe.”).

³⁰⁵ See generally Letter from Supreme Court of Cal. Chief Justice Tani G. Cantil-Sakauye to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Mar. 16, 2017), <https://www.ncsc.org/~media/Files/PDF/Topics/ICE/CA%20Letter.ashx> (“[E]nforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary’s ability to provide equal access to justice.”); Letter from Supreme Court of N.J. Chief Justice Stuart Rabner to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Apr. 19, 2017), <https://www.ncsc.org/~media/Files/PDF/Topics/ICE/NJ%20Letter.ashx> (“To ensure the effectiveness of our system of justice, courthouses must be viewed as a safe forum. Enforcement actions by ICE agents inside courthouses would produce the opposite result and effectively deny access to the courts.”); Letter from Supreme Court of Or. Chief Justice Thomas A. Balmer to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (Apr. 6, 2017), http://res.cloudinary.com/bdy4ger4/image/upload/v1506703695/CJ_ltr_to_AG_Sessions-Secy_Kelly_re_ICE_rrubnc.pdf (“I trust that [DHS] understand[s] 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.”); Letter from Supreme Court of Conn. Chief Justice Chase T. Rogers to Sec’y of the Dep’t of Homeland Sec. John F. Kelly (May 15, 2017), <https://www.ncsc.org/~media/Files/PDF/Topics/ICE/CT%20Letter.ashx> (“I believe that having ICE officers detain individuals in public areas of our courthouses may cause litigants, witnesses and interested parties to view our courthouses as places to avoid, rather than as institutions of fair and impartial justice.”).

of life, liberty or property without due process of law nor be denied the equal protection of the law.’³⁰⁶

Statement from Retired Judges from Across the Country

Recently, a group of nearly **70 former state and federal judges**, including **26 state supreme court justices** and **12 chief justices** from across the ideological spectrum, wrote a letter to Ronald D. Vitiello, Acting Dir. of ICE, urging the agency to stop making civil immigration arrests at our nation’s courthouses.³⁰⁷ With decades of experience presiding over thousands of cases in trial and appellate courts, these judges explained that “judges simply cannot do their jobs — and our justice system cannot function effectively — if victims, defendants, witnesses, and family members do not feel secure in accessing the courthouse.”³⁰⁸

According to the **judges**, “ICE’s reliance on immigration arrests in courthouses instills fear in clients and deters them from seeking justice in a court building. . . .”³⁰⁹ This fear “has meant valid law enforcement prosecutions are abandoned, or never pursued.”³¹⁰ In addition, it has made it more difficult for courts to remain orderly places of business:

ICE’s courthouse activities have led to physical altercations involving court employees, court staff burdened by ICE requests to facilitate arrests, and disputes between court administration and legal service providers. The environment created by these incidents, in addition to the delays and rescheduling that result when fear prevents parties from

³⁰⁶ Statement of Supreme Court of Ill. Chief Justice Lloyd A. Karmeier, ICE Arrests Threaten to Chill Access to Justice (Aug. 28, 2017), http://www.illinoiscourts.gov/Media/enews/2017/082517_chief_justice.asp (internal citations omitted).

³⁰⁷ Letter from Hon. Wallace B. Jefferson et. al. to Ronald D. Vitiello, Acting Dir. of U.S. Immigration & Customs Enf’t (Dec. 12, 2018), https://www.scribd.com/document/395488473/Letter-From-Former-Judges-Courthouse-Immigration-Arrests#fullscreen&from_embed.

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

appearing in court, only makes it more difficult for judges and court staff to do their jobs.³¹¹

The **judges** also noted that:

[I]nterrupting criminal proceedings with civil immigration arrests undermines the justice system. Immigration arrests delay both exoneration and prosecution, including for the many low-level offenses resolvable quickly and without incarceration. ICE arrests have even put judges in the position of facing defendants who *request to be detained*, rather than released, because they know ICE officers are waiting outside the courtroom.³¹²

For these reasons, the judges urged ICE to take steps to restore confidence in safe access to the courts, including by treating courthouses as “sensitive locations,” similar to hospitals, schools, and religious centers.³¹³ The letter was signed by six former state and federal judges who served in New York: **Hon. Jonathan Lippman (ret.), Chief Judge of the New York Court of Appeals, Hon. Howard Levine (ret.), Associate Judge, New York Court of Appeals, Hon. Katherine B. Forrest (fmr.), U.S. District Court, Southern District of New York, Hon. John Gleeson (ret.), U.S. District Court, Eastern District of New York, Hon. Shira A. Scheindlin (ret.), U.S. District Court, Southern District of New York, and Hon. Gloria Sosa-Lintner (ret.), New York City Family Court.**³¹⁴

³¹¹ *Id.*

³¹² *Id.* (emphasis added).

³¹³ *Id.*

³¹⁴ *Id.*

How Elected Officials Have Responded to ICE Courthouse Operations



Elected officials from across New York State have also expressed strong concerns regarding the escalation in ICE operations in and around New York courthouses, and the chilling effect that this activity has had on access to justice in our state. For example:³¹⁵

³¹⁵ Press Release, Immigrant Def. Project, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-press-release-6.5.2018-FINAL.pdf>.

Thirty-eight Members of the New York State Assembly wrote in a letter to the Secretary of the Department of Homeland Security: “The increasingly aggressive actions of Immigration and Customs Enforcement (ICE) agents over the past year, especially in New York State courthouses, has raised serious concerns in our districts throughout New York, including in our immigrant communities, and threatens to sow distrust in the relationship among our constituents and state and local law enforcement. The aggressive behavior and nature of ICE’s recent activities exhibits a lack of respect for fairness and for due process and other rights afforded under the New York and United States Constitution.”³¹⁶

New York City Comptroller Scott M. Stringer published an investigation of ICE enforcement in New York City that concluded that ICE courthouse arrests were part of an aggressive new push to detain and deport New Yorkers. The report, which found that deportations from the New York City area surged by 150% during the first years of the Trump administration, recommended passage of the Protect Our Courts Act. “ICE’s predatory targeting of people who appear in State court for any reason is harmful to New York’s justice system,” the report noted. “[The Protect Our Courts Act] would add additional protections for immigrants and ensure that they could appear in court and obtain justice without being arrested for an unrelated civil immigration matter.”³¹⁷

³¹⁶ Letter from Member of N.Y. State Assembly Patricia Fahy et. al. to Sec’y of U.S. Dept. of Homeland Sec. Kristjen M. Nielsen (Feb. 5, 2019), <https://www.scribd.com/document/399491138/DHS-Secretary-Nielsen-Letter>.

³¹⁷ Office of N.Y.C. Comptroller Scott M. Stringer, *The Demographics of Detention: Immigration Enforcement in NYC Under Trump* (Feb. 2019), https://comptroller.nyc.gov/wp-content/uploads/documents/Demographics_of_Detention_022019.pdf.

Assemblymember Michaelle C. Solages said: “Residents of our State rely on the court system to address important legal issues that affect our communities. All New Yorkers regardless of income, race, religion or immigration status should have the opportunity to use the court system to advocate for themselves and their interests. Federal immigration agents searching and detaining immigrants inside our courts, deters individuals from interacting with the court system which in turns has a chilling effect on our rights. I join the Immigrant Defense Project, SEIU 32BJ and all other advocates to ensure that our courts remain safe for all New Yorkers.”³¹⁸

Assemblymember Ron Kim said: “While President Donald Trump and ICE continue to target and punish law abiding immigrants, here in New York, we stand strong together to protect all New Yorkers.”³¹⁹

Assemblymember Harvey Epstein said: “Emboldened by Donald Trump’s xenophobia, ICE has accelerated the contemptible tactic of courthouse arrests, which pervert the course of justice for immigrant and undocumented New Yorkers and have a chilling effect on victims and witnesses attending proceedings. New Yorkers, regardless of immigration status, should not be afraid to seek justice.”³²⁰

³¹⁸ Press Release, Immigrant Def. Project, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-press-release-6.5.2018-FINAL.pdf>.

³¹⁹ *Id.*

³²⁰ *Id.*

Assemblymember Dan Quart said: “ICE has no place in our courts — their presence severely threatens equal access to justice. Everyone, regardless of their immigration status, should feel safe to seek help from the legal system. New York’s state court system should not be used as a tool by ICE agents to arrest and deport people. As federal authorities ramp up their enforcement of deportation orders, we must work together on the state level to ensure immigrants are not fearful of entering a courtroom.”³²¹

Senator Brad Hoylman said: “We’re all safer when everyone can feel comfortable participating in the justice system, regardless of their immigration status. President Trump’s racist immigration policy, carried out by federal immigration agents serving as his personal deportation force, is instead undermining trust and forcing undocumented New Yorkers who have witnessed or been the victims of crimes into the shadows. Since the start of the Trump Administration, we’ve seen an outrageous 1700% increase in ICE arrests and attempted arrests in and around courts in New York. That’s unacceptable.”³²²

Senator Jamaal Bailey said: “Having ICE in our courts has the potential to force individuals to not appear because of fear. The presence of ICE agents in a court is not related to the instant proceedings one may face in our justice system. No witness or individual should feel intimidated because of the presence of individuals who do not belong there.”³²³

³²¹ *Id.*

³²² Press Release, Immigrant Def. Project, DAs, Defenders & Community Stand Together as Hoylman, Solages Intro ICE Out of Courts Bill (Jan. 31, 2019), <http://www.immigrantdefenseproject.org/wp-content/uploads/Press-Release-POCA-1.31.2019.pdf>.

³²³ *Id.*

New York State Attorney General Letitia James said: “Safe and universal access to the court of law is key to a fair, democratic society and a basic requirement in the vindication of individual rights. ICE’s indiscriminate campaign of courthouse arrests puts all New Yorkers at risk and goes against everything we stand for.”³²⁴

Former Attorney General Eric Schneiderman said, “Targeting immigrants at our courthouses undermines our criminal justice system and threatens public safety. If the Trump Administration continues to arrest people in the heart of our justice system, immigrants will be less likely to serve as witnesses or report crimes – and that leaves us all at risk. I join District Attorney Gonzalez in calling for ICE to stop immigration raids in our courthouses. Everyone, regardless of their immigration status or the status of their loved ones, should have access to equal justice under the law.”³²⁵

NYC Councilmember, Chair Immigration Committee, Carlos Menchaca said: “ICE must go through the rigorous process of obtaining a judicial warrant as required under our Constitution. In a dangerous move, our New York City Mayor De Blasio has decided that some immigrants are worthy of legal representation and some are not and Chief Judge Janet DiFiore has refused to act even though she has the authority to ban ICE from disrupting judicial proceedings. Both need to understand that they are standing in the way of justice and facilitating the emerging deportation machine President Trump has been setting up since day one in office.”³²⁶

³²⁴ Press Release, Immigrant Def. Project, New York Assembly Introduces Groundbreaking New Bill to Protect Immigrants From Unlawful ICE Arrests at Courthouses (June 1, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-Press-Release-6.1.2018.pdf> (Letitia James was a public advocate when she made this statement.).

³²⁵ Press Release, N.Y. State Office of the Attorney Gen., New York AG Eric Schneiderman and Acting Brooklyn DA Eric Gonzalez Call for ICE to End Immigration Enforcement Raids in State Courts (Aug. 3, 2017), <https://ag.ny.gov/press-release/new-york-ag-eric-schneiderman-and-acting-brooklyn-da-eric-gonzalez-call-ice-end>.

³²⁶ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

NYC Councilmember, Chair Committee on the Justice System, Rory Lancman said: “ICE enforcement activity at city courts undermines our justice system and creates fear within immigrant communities. We won’t have a system of justice if people are afraid to come and be a part of that system.”³²⁷

Manhattan District Attorney Cy Vance, Jr. said: “Deporting New Yorkers who show up to court is antithetical to our values and detrimental to our public safety. The fear of unjust deportation stops crime victims from coming forward, and stops defendants from responsibly attending their court dates.”³²⁸

Brooklyn District Attorney Eric Gonzalez said: “I have been calling on ICE for months to treat our courthouses as sensitive locations and to stop arresting people inside those buildings. These actions jeopardize public safety by instilling fear in immigrant communities, which makes victims and witnesses afraid to come forward to report crimes, and unable to get justice. Keeping Brooklyn safe and strengthening community trust in law enforcement are my top priorities as Brooklyn DA, and ICE’s actions undermine those important goals. I support the efforts to end this misguided practice.”³²⁹

³²⁷ Press Release, Immigrant Def. Project, DAs, Defenders & Community Stand Together as Hoylman, Solages Intro ICE Out of Courts Bill (Jan. 31, 2019), www.immigrantdefenseproject.org/wp-content/uploads/Press-Release-POCA-1.31.2019.pdf.

³²⁸ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³²⁹ Press Release, Immigrant Def. Project, New York Assembly Introduces Groundbreaking New Bill to Protect Immigrants From Unlawful ICE Arrests at Courthouses (June 1, 2018), <https://www.immigrantdefenseproject.org/wp-content/uploads/Protect-Our-Courts-Act-Press-Release-6.1.2018.pdf>.

Bronx District Attorney Darcel D. Clark said: “I encourage people to report crimes so that they can be processed through the criminal justice system. If a victim or witness who is essential to the prosecution of a heinous case is arrested by Immigration and Customs Enforcement when he or she shows up at the courthouse, we cannot go forward with the case, resulting in cases being dismissed and dangerous individuals being released back into the community. This could have a chilling effect on getting witnesses to assist in our cases, potentially resulting in a threat to public safety. We need everyone to cooperate in our fight to keep the streets of the Bronx safe.”³³⁰

Nassau County District Attorney Madeline Singas said: “New York’s justice system works best when everyone has access. Immigrants who are victims of domestic violence, wage theft, fraud, or violent crime should be able to seek justice regardless of their status, and they should be able to come to court for that purpose without fear that their appearance will lead to civil arrest by ICE.”³³¹

Albany County District Attorney David Soares said: “Courthouses should be safe spaces for everyone. Prosecutors, advocates, and police have spent decades researching and applying best practices in an effort to encourage the reporting of violent crimes, including sexual assaults and domestic violence crimes. Demagoguery of the issue has caused fear and confusion in many citizens and has led to decreased reporting. The activities of Immigration and Customs Enforcement is compromising our ability to hold accountable perpetrators who prey upon victims from vulnerable immigrant communities.”³³²

³³⁰ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³³¹ Immigrant Def. Project, *The Protect Our Courts Act: Endorsements from New York Prosecutors, Statements from Prosecutors Nationwide*, https://www.immigrantdefenseproject.org/wp-content/uploads/prosecutors-pro_308923131.pdf.

³³² *Id.*

Brooklyn Borough President Eric L. Adams said: “ICE’s overaggressive behavior in and around our courts has been counterproductive to public safety in our city and our state.”³³³

Bronx Borough President Ruben Diaz Jr. said: “ICE’s presence in the New York State Court System has a chilling effect on justice. The agency’s presence in our courts is preventing the fair adjudication of cases within our system, and is an affront to the concept of impartial justice. . . I will continue to work with immigration advocates, attorneys and others to protect our immigrant community from needlessly splitting up families through detention and deportation.”³³⁴

³³³ Press Release, Office of the Bronx Borough President, Elected Officials, Advocates, and Public Defenders Gather to Introduce Groundbreaking New Bill to Protect Immigrants from Unlawful ICE Arrests at Courthouses (June 5, 2018), <http://bronxboropres.nyc.gov/2018/06/05/elected-officials-advocates-and-public-defenders-gather-to-introduce-groundbreaking-new-bill-to-protect-immigrants-from-unlawful-ice-arrests-at-courthouses/>.

³³⁴ *Id.*

Recommendations for Court Rules

This report identifies the vast array of stakeholders in New York’s justice system negatively affected by ICE’s enforcement operations in and around the state’s courthouses, extending far beyond crime victims, witnesses, defendants, and family members arrested at courthouses. The impacted stakeholders include every actor involved in ensuring the functioning and upholding of the justice system: district attorney offices, anti-violence advocates, public defender offices, problem-solving courts and staff, and current and former judges.

This report also quantifies and clarifies the disruptions to the New York State judicial system, as experienced by these stakeholders. Taken together, the picture that emerges is a systemic denial to New York state residents of their full and equal access to courts and guaranteed protections of their state, federal, and constitutional rights.

In a state where one in five residents is an immigrant, where there are over 750,000 undocumented immigrants, where one in twelve US-born children lives with at least one undocumented family member, immigrants are integral to New York.³³⁵ When so many of our residents, especially the most vulnerable among us, are unsafe, we are all unsafe. When so many of our residents, especially family members, friends, and co-workers of other New Yorkers, are denied access to justice and equal opportunity to exercise their rights, we are all less free. To address the systemic hindrance to the administration of New York’s justice system that ICE courthouse operations have become, the Coalition strongly urges OCA to promulgate the following court rules.

³³⁵ Am. Immigration Council, *Immigrants in New York* (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_new_york.pdf.

1. Employees of the Unified Court System shall not:

- i. **Assist with federal immigration enforcement activities in the course of their employment, in any courthouse of the New York State Unified Court System except to the extent they are described in Section (2).**
- ii. **Inquire into the immigration status of any individual within any courthouse of the Unified Court System unless such information about a person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of services.**
- iii. **Provide any information to immigration enforcement officers regarding persons appearing before the court, except information regarding citizenship or immigration status, as required by 8 U.S.C. § 1373, and then only if known.**

2. Civil arrests without judicial warrants:

Civil arrests may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant or judicial order authorizing that the person who is the subject of such warrant be subjected to a civil arrest. "Judicial warrant" is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government. "Judicial order" is defined as an order issued by a magistrate sitting in the judicial branch of local, state, or federal government.

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