



**Access to Justice Board and Minority and Justice Commission Joint Meeting Agenda**  
**Friday, June 14, 2019 – 10:00 AM to 12:00 PM**  
**Spokane Convention Center, Room 401C – 1-866-577-9294; Code 52140#**

10:00 - 10:30	<b>Welcome and Introductions</b>	Justice Mary Yu and Sal Mungia
10:20 - 10:25	<b>Introduction and Overview of ICE Courthouse Operations in Washington</b>	Annie Benson, Minority and Justice Commission and WA Defender Association  Sara Sluszka, WA Defender Association

**What Is Happening, Where, & Harm Being Caused:**

10:25 – 10:40	<b>WA Community Reports:</b>	
	• WA Immigrant Solidarity Network	Brenda Rodriguez
	• Central WA Justice For Our Neighbors	Abbigail Scholar
10:40 – 11:00	<b>Organizational Reports: (5 min each)</b>	
	• WA Defender Association	Sara Sluszka & Talitha Hazelton
	• Asian Pacific Institute on Gender-Based Violence	Grace Huang
	• Northwest Justice Project	Judith Lurie & Alyson Dimmit
	• Northwest Immigrant Rights Project	Jorge Barón

**Action Steps to Address Access to Justice Obstacles:**

11:00 – 11:25	<b>Proposed Court Rule</b>	Antonio Ginatta & Alfredo Gonzalez, Columbia Legal Services
11:25 – 11:45	<b>Model Guidelines</b>	Judith Lurie & Alyson Dimmit, Northwest Justice Project
11:45 – 11:55	<b>Rules of Professional Conduct (RPC)</b>	Enoka Herat, ACLU-WA
11:55 – 12:00	<b>Closing Comments</b>	Justice Mary Yu and Annie Benson

# Immigrant Survivors Fear Reporting Violence

In May 2019, a coalition of national organizations gathered feedback from nearly six hundred advocates and attorneys from across the United States, learning that many immigrant victims of domestic and sexual violence are now too afraid to call the police or go to court to get help. The advocates report that survivors have an increased fear of deportation, retaliation by their abusers, and separation from their children.

Perpetrators often exploit their victims' lack of immigration status as a tactic of abuse, maintaining power and control by reinforcing fears of deportation. Recognizing this, Congress created important protections for immigrant survivors of domestic violence, sexual assault, and human trafficking in the Violence Against Women Act (VAWA) and the Trafficking Victims Prevention Act (TVPA).

New policies are undermining these protections and creating a dangerous climate of fear. These policies include local law enforcement officers becoming involved in federal immigration enforcement, the elimination of reasonable deportation priorities, "zero tolerance" prosecution, family separation and detention, and narrowed pathways to asylum.

76.25%

of advocates report that immigrant survivors have concerns about contacting police

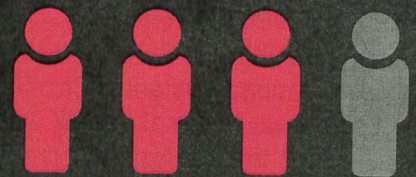
"SURVIVORS ARE AFRAID THAT THEY WILL BE REPORTED TO IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), AND BE REMOVED FROM THEIR CHILDREN. THIS HAS HAPPENED ON NUMEROUS OCCASSIONS IN OUR COMMUNITY AND CONTINUES TO HAPPEN."

"MANY VICTIMS ARE AFRAID THEY WILL BE DEPORTED WHEN THEY REPORT THEIR DOMESTIC ABUSE OR SEXUAL ASSAULT. THEY ... ARE FEARFUL THAT ANY CONTACT WITH LAW ENFORCEMENT PUTS THEM IN A MORE DANGEROUS POSITION THAN STAYING SILENT."

"IMMIGRANT SURVIVORS NO LONGER WANT TO GO TO FAMILY COURT. THEY ARE TOO SCARED. THEY PUT UP WITH ABUSE AND THEY REFUSE TO GET CHILD SUPPORT BECAUSE THEY ARE SCARED THEY WILL BE REPORTED TO IMMIGRATION [AUTHORITIES]."

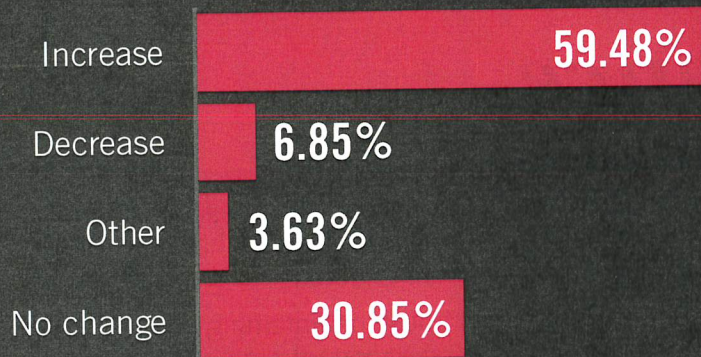
"VICTIMS ALSO BELIEVE THAT COURTS WILL AUTOMATICALLY SIDE WITH THE ABUSER REGARDLESS OF EVIDENCE OR VICTIM'S TESTIMONY, SOLELY BECAUSE THE ABUSER IS A U.S. CITIZEN. IT IS DIFFICULT TO ASSURE VICTIMS THAT COURTS ARE MEANT TO BE FAIR AND LOOK THROUGH ALL INFORMATION, ESPECIALLY WHEN ... THE NEWS SOUNDS ANTI-IMMIGRANT."

3 OUT OF 4  
ADVOCATES



report that immigrant survivors have concerns about going to court for a matter related to the abuser/offender

## IS YOUR AGENCY OBSERVING A CHANGE IN THE NUMBER OF IMMIGRATION-RELATED QUESTIONS FROM SURVIVORS?



“IF THE MEDIA DISCUSSES CHANGES IN IMMIGRATION LAW, THE CALLS INCREASE.”

“THERE HAS BEEN AN INCREASE IN CONTACT BY IMMIGRANT SURVIVORS IN WANTING TO UNDERSTAND WHAT IS HAPPENING AROUND IMMIGRATION AND A DECREASE IN SURVIVORS WANTING TO ENGAGE WITH SYSTEMS.”

# 52%

of advocates worked with immigrant survivors who dropped civil or criminal cases because they were fearful to continue with their cases

“IMMIGRANT SURVIVORS FEEL THAT DUE TO THEIR LACK OF LEGAL STATUS, THE JUSTICE SYSTEM IS NOT LISTENING TO THEIR SIDE OF THE STORY COMPARED TO THE PERPETRATORS WHO MOST OF THE TIME ARE [U.S.] CITIZENS. IMMIGRANT SURVIVORS ALSO FEAR THAT THE JUDGE OR POLICE MAY LOOK AT THEM AS CRIMINALS AND NOT CAPABLE OF SUPPORTING THEIR KIDS JUST BECAUSE THEY LACK A LEGAL STATUS.”

“THE BIGGEST CONCERN WOMEN CLIENTS HAVE IS BEING SEPARATED FROM THEIR CHILDREN; THEY [WOULD] RATHER WITHDRAW THEIR COURT CASES OUT OF FEAR OF BEING ARRESTED AND THEN PLACED IN REMOVAL PROCEEDINGS.”



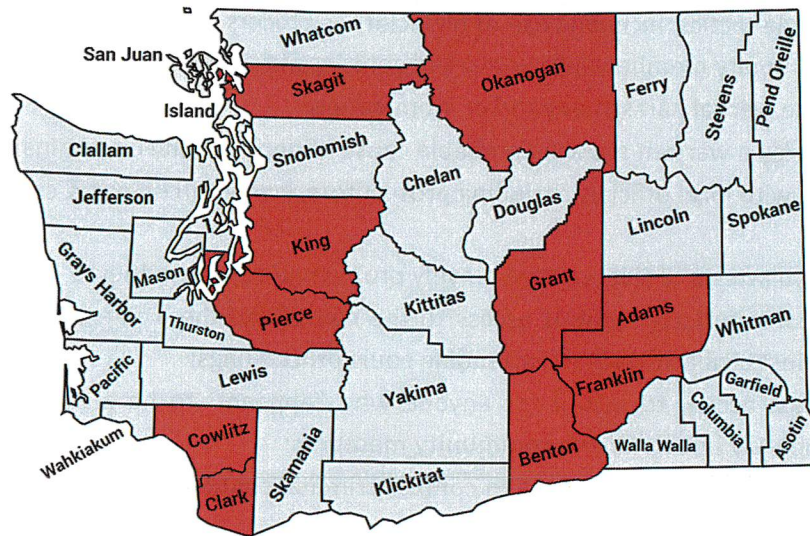
## CONTACT INFORMATION

Asian-Pacific Institute on Gender Based Violence: Grace Huang, [ghuang@api-gbv.org](mailto:ghuang@api-gbv.org)  
ASISTA Immigration Assistance: Cecelia Friedman Levin, [cecelia@asistahelp.org](mailto:cecelia@asistahelp.org)  
Casa de Esperanza: National Latin@ Network: Rosie Hidalgo, [rhidalgo@casadeesperanza.org](mailto:rhidalgo@casadeesperanza.org)  
National Alliance to End Sexual Violence: Terri Poore, [terri@endsexualviolence.org](mailto:terri@endsexualviolence.org)  
National Domestic Violence Hotline: Qudisia Raja, [graja@ndvh.org](mailto:graja@ndvh.org)  
National Network to End Domestic Violence: Monica McLaughlin, [mmclaughlin@nnev.org](mailto:mmclaughlin@nnev.org)  
Tahirih Justice Center: Archi Pyati, [archip@tahirih.org](mailto:archip@tahirih.org)



# Immigration Enforcement at Washington State Courthouses

Summary of Preliminary Data<sup>i</sup>



*Key: Incidents of ICE or CBP activity in and around courthouses, as reported to the authors. Preliminary data indicates that the highest level of activity is concentrated in Grant, Adams and Clark counties.*

## Background on Immigration Enforcement Activities at Washington State Courthouses

Over the past two years, advocates and community members in Washington State and throughout the country have seen a sharp increase in incidents in which federal immigration officials conduct arrests for alleged civil immigration violations at state or local courthouses. While this tactic is not new, its use has reached levels not seen prior to 2017, when the Trump Administration issued new enforcement policies.

In 2018, Immigration and Customs Enforcement (ICE) also issued a formal policy<sup>ii</sup> in which it makes clear that it plans to continue to conduct arrests at courthouses, which it has refused to designate as “sensitive locations.” Agents with ICE and Customs and Border Protection (CBP) are now regularly conducting arrests for alleged immigration violations in and around numerous Washington courthouses, significantly interfering with people’s ability to access justice in our courts.

Contrary to statements by some elected officials, these arrests are not limited to individuals who have previously been deported or who have been convicted of felony offenses. Rather, it is now a reality in many areas of our state that community members, many of whom have no or minor criminal history, who need to attend state court proceedings or conduct business at the courthouse expect that they may be questioned or arrested by immigration officials as a consequence of seeking justice.

**Typical arrests by ICE and CBP involve:**

- Targeting Latino community members based on appearance or use of Spanish language;
- Targeting people with no prior deportations or criminal history, or only pending charges or civil traffic or vehicle infractions;
- Surveillance of court hearings, then either pursuit of community members or communication with other officers outside who apprehend people after they leave the courtroom or courthouse;
- Kidnapping-style tactics, including use of plainclothes officers who refuse to identify themselves and drag community members into unmarked vehicles outside the courthouse;
- Excessive force, verbal harassment and or intimidation;
- Failure to display a warrant showing probable cause of deportability or criminal activity;
- Collaboration with local officials, including prosecutors, law enforcement & court security staff.

**Negative Impacts:** Civil arrests of this type are gravely problematic because they:

- **Violate the constitutional right of access to the courts** and the well-established **common law privilege against civil arrests** when attending court proceedings;
- Create **unequal access to justice** for anyone who “appears” to be a non-U.S. citizen, **which disproportionately affects Latino community members**;
- **Violate the right of accused persons to contest criminal charges** by effectively preventing them from appearing in court;
- **Make community members afraid to come to the courthouse**, and their fear is exacerbated by reports that **immigration officials are using excessive force** during their arrests;
- **Undermine public trust in law enforcement** and thus **compromise public safety**, including protection from and redress for gender-based violence and other crimes;
- **Discourage civil court claimants** seeking protection from eviction, discrimination, and consumer abuses
- **Separate families** and create additional **financial strain** on working families;
- **Disrupt** the work and mission of **public defender offices**;
- **Complicate** and frustrate the work of **prosecuting attorney offices**;
- **Complicate** the protocol and duties of **courthouse staff**;
- Ultimately **undermine the mission, administration and integrity of the entire criminal and civil justice system by preventing parties and witnesses from appearing in court.**

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<sup>i</sup> The information provided is based on government records and eye-witness accounts of community members, their families, advocates and attorneys, as reported to the contributing organizations from 2017 to 2019. Contributors include: Washington Immigrant Solidarity Network, Northwest Immigrant Rights Project, Washington Defender Association, Central Washington Justice for Our Neighbors, Northwest Justice Project, ACLU of Washington, Asian Pacific Institute on Gender-Based Violence. Information-gathering is ongoing, but the information in this report can serve as an initial sketch of the problem. It is important to note that the actual level of enforcement activity is likely higher than has been reported.

<sup>ii</sup> See Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018), at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

# DRAFT

## PROPOSED MODEL GUIDELINES CONCERNING IMMIGRATION ENFORCEMENT IN WASHINGTON COURTHOUSES

These guidelines shall apply to the courthouse and the surrounding court property, including but not limited to sidewalks, parking areas, grassy areas, plazas, and commercial spaces on courthouse property (referred to collectively herein as “Court Facilities”). Law enforcement permanently assigned to protect Court Facilities are referred to herein as “On Site Law Enforcement.” All other law enforcement officials are referred to herein as “Outside Law Enforcement.”)

### **Purpose of the guidelines:**

These guidelines are for the purpose of making Washington courts open and accessible to the public, free of restrictions that would otherwise impede the proper administration of justice, and to enforce order over the conduct of judicial proceedings. These guidelines are intended to make Washington courts open, safe and neutral places where litigants, witnesses, jurors, staff and others can participate in court proceedings and conduct other business in the courthouse free from threats to their security or freedom.

### **Access to the courthouse by law enforcement officers:**

1. Courts should request that immigration enforcement officials abstain from coming onto court property for the sole purpose of enforcing federal immigration laws. (WA AG)
2. All on-duty local, state and federal law enforcement agents and officials who come to the courthouse shall, upon entering the courthouse, present and display appropriate badge/credentials or other identifying documents to On Site Law Enforcement. (Bernalillo County, NM.)
3. No local, state or federal law enforcement officers or agents may arrest, detain, interrogate, hold, restrict or in any way hinder the freedom of any individual in or around the courthouses except (a) by lawful court order or judicial arrest warrant, or (b) when it is necessary to secure the immediate safety of judges, court staff or the public. For purposes of this policy, “restrict” and “hinder” shall mean to stop, detain, hold, question, interrogate, arrest, or delay individuals while on courthouse property. (Bernalillo County, NM.)
4. Any law enforcement officer not a member of On Site Law Enforcement who comes to the courthouse to make an arrest, must present to the sheriff’s deputy assigned to courthouse security, a copy of the judicial arrest warrant or court order. (2<sup>nd</sup> Judicial District, NM.)
5. Generally, no firearms or other weapons shall be brought into the courthouse except weapons use by the court’s On Site Law Enforcement Officers. Courts shall provide lockers or storage for Outside Law Enforcement Officers’ weapons (Bernalillo, NM.)

### **Courthouse arrests:**

6. Arrests based on immigration status are discouraged in or on Court Facilities.
7. Law enforcement officers, agents or other persons shall not arrest, detain or question any person in or on Court Facilities unless:
  - a. The arrest, detention or questioning is performed by the On-Site Law Enforcement officers while engaged in the performance of their duties; or
  - b. the presiding judicial officer orders the arrest; or
  - c. the public's safety is at immediate risk.
8. The presiding judicial officer shall require that any Outside Law Enforcement Officer seeking to make an arrest, present a lawful court order for arrest or judicial warrant issued by a state or federal judge or magistrate judge. Warrants and subpoenas issued by an immigration enforcement officer are not court orders or judicial warrants.
9. The presiding judicial officer shall review the court order or judicial warrant to confirm compliance with this guidance prior to any arrest taking place. (Unified Court System, NY.)

### **Information sharing and collecting:**

10. Unless necessary to perform their official duties or unless required by law, courthouse staff shall not inquire into the immigration status of individuals, and shall not collect or maintain personal information related to immigration status. (WA AG, CA AG)
11. Courthouse staff shall not provide immigration officials with non-public, sensitive information about an individual unless otherwise required to do so by law. (WA AG, CA AG.)
12. Unless court ordered, on-site Law Enforcement Officer(s) and courthouse staff will not assist Outside Law Enforcement Officers by providing access to or use of the court's security video surveillance system. (Bernalillo County, NM.)
13. The court shall refer individuals to and make available and post in conspicuous locations, know-your-rights materials regarding immigration enforcement, and a listing of immigration resources, including but not limited to the Northwest Immigrant Rights Project, accredited representatives, immigration lawyers in private practice, and other immigration legal aid agency.
14. Taking photographs, making audio recordings, or making video recordings inside the courthouse is prohibited by all persons other than: \_\_\_\_\_.  
(Bernalillo County, NM.)
15. Courthouse staff shall make a report for each law enforcement action taken by Outside Law Enforcement Officers in or on courthouse property. For purposes of this guidance, "law enforcement action" includes but is not limited to observation of court proceedings by Outside Law Enforcement in their official capacity. (UCS, NY.) The record should include the date, time and location of the action, the identity of the Outside Law Enforcement officer and agency, and a description of the event. (CA AG.)

### **Alternatives to court appearances:**

16. Where feasible and permitted by law, the court shall minimize nonessential in-person court appearances, and shall reduce the frequency with which parties are required to appear. The court shall minimize appearances by:
  - a. using technology to allow for remote appearances by phone or if available, video or other available electronic media;
  - b. promoting the use of remote audio and video services for hearings, without inquiring as to whether the request for remote appearance is related to immigration status; (CA AG.)
  - c. permitting appearances through an attorney rather than requiring the presence of the party; (CA AG)
17. Where feasible, the court shall allow for continuances and not assess penalties for an individual's failure to appear, if that person has a credible fear of immigration enforcement. (CA AG.)

### **Other:**

18. The court shall allow matters to be special set to minimize contact with immigration enforcement officials in and on Court Facilities.
19. The court shall close the courtroom when appropriate and permitted by law.
20. The court shall require that any document that alleges or reveals the immigration status of a person, be sealed.
21. The court shall permit the use of pseudonyms under limited circumstances, where feasible and permitted by state law in order to protect an individual's safety. (CA AG.)

### **Resources:**

Guidance Concerning Immigration Enforcement, Washington State Office of the Attorney General, April 2017. <http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/AGO%20Immigration%20Guidance.pdf#page=31> (WA AG)

New Mexico Judicial Branch, Second Judicial District Court, Courthouse Access Policy, Nov. 2017.  
<https://seconddistrictcourt.nmcourts.gov/uploads/files/News/SJDCCourthouseAccessPolicy20171120.pdf>.

New Mexico Bernalillo County Metropolitan Court, Courthouse Access Policy, Sept., 2018. (Bernalillo County, NM)

State of New York Unified Court System Protocol Governing Activities in Courthouses by Law Enforcement Agencies. <http://www.courts.state.ny.us/ip/Immigration-in-FamilyCourt/PDFs/OCA%20Directive%201-2019.pdf> (UCS NY)



Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California's Superior Courts in Responding to Immigration Issues. CA Attorney General, Oct. 2018.  
<https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf> (CA AG)

National Center for State Courts. <https://www.ncsc.org/Topics/Courthouse-Facilities/Improving-Relationships-with-ICE/ICE.aspx>