



September 3, 2019

*SENT VIA E-MAIL AND FIRST-CLASS U.S. MAIL*

UTCR Committee  
Attention: Bruce Miller, UTCR Reporter  
Office of the State Court Administrator  
1163 State Street  
Salem, OR 97301

**Re: Proposal for a Uniform Trial Court Rule Prohibiting Civil ICE Intrusions in and around Oregon State Courthouses**

**From: Adelante Mujeres, Causa Oregon, Immigration Counseling Service, Metropolitan Public Defender, Northwest Workers' Justice Project, Unite Oregon, and Victim Rights Law Center**

Dear UTCR Committee:

The organizations named above, together with the Innovation Law Lab, the ACLU of Oregon, and Stoll Berne, respectfully propose an amendment to the Uniform Trial Court Rules (UTCRRs) prohibiting civil immigration arrests in and around Oregon's state courthouses without a judicial warrant. Arrests by U.S. Immigration and Customs Enforcement (ICE) in and around Oregon's courthouses threaten the prosperity of our state by undermining public safety, welfare, and trust in Oregon's judicial system, especially for immigrants and communities of color. They also jeopardize the central, sovereign function of Oregon courts to administer justice for all. To address this urgent issue, we propose that the Committee adopt the following amendment to the current UTCRRs:

1. **No person may become subject to civil immigration arrest without a judicial warrant or judicial order while the person is inside a courthouse of this state and the person is present in connection with any judicial proceeding or other business with the court.**
2. **No person may become subject to civil immigration arrest without a judicial warrant or judicial order while the person is going to or coming from a courthouse of this state, or while the person is within the environs**

**of a courthouse of this state, or if the person is traveling for the purpose of any judicial proceeding or other business with the court.**

**3. Oregon courts may issue writs of protection in individual cases when appropriate in order to effectuate the common law rule.**

In December 2018, we filed a petition with the Honorable Martha L. Walters, Chief Justice of the Oregon Supreme Court, requesting that she issue the above rule on an immediate, temporary basis through a Chief Justice Order. We understand that this petition for a Chief Justice Order remains under advisement and will proceed concurrently with this proposal for an amendment to the UTCRs.

This proposal is supported by the following memorandum, the attached appendix, and a letter to Chief Justice Walters, signed by over 750 Oregon lawyers, requesting that she immediately issue the above rule by Chief Justice Order. Among those who have signed the letter are leaders of organizations focused on access to justice, including the President of the Oregon Trial Lawyers Association and the Executive Directors of the Oregon Criminal Defense Lawyers Association, Oregon Law Center, and Legal Aid Services of Oregon. The letter is also signed by Multnomah County District Attorney Rod Underhill, who advocates for domestic violence victims, child sexual abuse victims, combatting gang violence and human trafficking, and supporting crime victim's rights.

### **BACKGROUND INFORMATION**

It is a fundamental principle of law that Oregon state courts are open to all of its citizens, including Oregonians who are immigrants and persons of color, on like terms. *Greenfield v. Central Labor Council of Portland & Vicinity*, 104 Or 236, 268, 207 P 168 (1922). Our state constitution requires that “justice \* \* \* be administered \* \* \* completely,” Or Const art I, § 10, a guarantee that “ensure[s] fairness in the administration of justice” and vests courts with the authority to “control their courtrooms, including taking such actions as may be necessary to protect vulnerable participants in judicial proceedings,” *State v. Macbale*, 353 Or 789, 795, 806, 305 P3d 107 (2013).

Oregon's state courts are essential to a prosperous civil society because they serve as instruments to support the interests of all Oregonians.<sup>1</sup> In just the last year, Oregon's state circuit courts received filings in over 780,000 cases, including civil, criminal, domestic relationship, probate, and many others.<sup>2</sup> In each case filed, parties, witnesses, jurors, and other interested parties seek to protect, and are entitled to protection of, their legal rights. And, in each case, Oregon courts

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<sup>1</sup> See, e.g., Paul J. De Muniz, *Past is Prologue: The Future of the Oregon Supreme Court*, Willamette L Rev 415, 446 (2010) (“The laws that we enact and adopt affect real people, and real people have real disputes. For the last 150 years, the courts of this state have provided an accessible, open, and peaceable means for people to resolve those disputes, whether it be with a neighbor or the government. And, we will be open for business for the next 150.”).

<sup>2</sup> See Oregon Judicial Dep't, State Trial Courts Cases Filed Data (2018), available at <https://www.courts.oregon.gov/about/Documents/2018CasesFiled.pdf>.

seek to ensure access, instill trust and confidence, assist with dispute resolution, build partnerships, and administer justice,<sup>3</sup> all within the context of our statewide policy of inclusivity.<sup>4</sup> Right now, Oregon’s state court objectives, and other important courthouse services, are under threat by the activities of ICE.

**A. ICE uses Oregon’s courthouses for its deportation objectives.**

Beginning in 2017, ICE began to focus its deportation objectives at courthouses, using state courthouses as tools in its mass deportation strategy. In January 2017, the President of the United States issued two executive orders making everyone subject to removal under the federal immigration laws an immigration enforcement priority.<sup>5</sup> Shortly thereafter, the United States Department of Homeland Security (DHS) issued two memoranda implementing the President’s expanded deportation directives.<sup>6</sup> ICE’s strategy for implementing those directives includes using state courthouses as focal points for civil arrests.

Within the three months after DHS’s implementation of its expanded immigration directives,<sup>7</sup> at least six Chief Justices from states across the country, including then-Chief Justice Thomas A.

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<sup>3</sup> See Oregon Judicial Dep’t, 2014–2019 Strategic Plan at 1 (setting forth those priorities for the Oregon state courts), available at [https://www.courts.oregon.gov/about/Documents/ojdstrategicplan1222014-19\\_test%20\(4\).pdf](https://www.courts.oregon.gov/about/Documents/ojdstrategicplan1222014-19_test%20(4).pdf).

<sup>4</sup> In February 2017, Governor Kate Brown declared the State of Oregon a jurisdiction of inclusivity for its immigrant, refugee, and religious-minority residents. See Executive Order 17-04, *Renewing Oregon’s Commitment to Protecting Its Immigrant, Refugee, and Religious-Minority Residents* (Feb 2, 2017), available at [https://www.oregon.gov/gov/Documents/executive\\_orders/eo\\_17-04.pdf](https://www.oregon.gov/gov/Documents/executive_orders/eo_17-04.pdf).

<sup>5</sup> See *Enhancing Public Safety in the Interior of the United States*, Executive Order No. 13,768, 82 Fed. Reg. 8799, 8799, § 5 (Jan 25, 2017); *Border Security and Immigration Enforcement Improvements*, Executive Order No. 13,767, 82 Fed. Reg. 8793, 8793, § 2 (Jan 25, 2017).

<sup>6</sup> See, e.g., Memorandum from John F. Kelly, Sec’y of DHS, *Enforcement of the Immigration Laws to Serve the National Interest* (Feb 20, 2017), available at [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>7</sup> Increased surveillance and detention of immigrants and those who may be perceived to be immigrants in courthouses is consistent with the Administration’s assault on immigrant communities to further its deportation objectives. In May 2017, ICE announced that, pursuant to President Trump’s immigration enforcement directives, ICE had arrested 41,318 people between Inauguration Day and April 2017, a 38 percent increase from the same period in 2016. See Caitlin Dickerson, *Immigration Arrests Rise Sharply as a Trump Mandate Is Carried Out*, N.Y. Times (May 17, 2017), <https://www.nytimes.com/2017/05/17/us/immigration-enforcement-ice-arrests.html>; see also U.S. Immigration & Customs Enforcement, Statement of Thomas D. Homan Regarding the Fiscal Year 2018 President’s Budget Request at 3 (June 13, 2017), available at <https://docs.house.gov/meetings/AP/AP15/20170613/106057/HHRG-115-AP15-Wstate-HomanT-20170613.pdf> (explaining that “President Trump’s EOs have [caused ICE arrests to be] up 38 percent since the same time period last year”). Over the course of the government’s 2017 fiscal year, ICE made 37,734 “noncriminal” arrests—more than twice the number from the previous year. Nick Miroff & Maria Sacchetti, *Trump Takes “Shackles” off ICE, Which Is Slapping them on Immigrants Who Thought They Were Safe*, The Washington Post (Feb. 11, 2018), <https://www.washingtonpost.com/world/national-security/>

Balmer of this Court, sent letters to the U.S. Attorney General and the Secretary of Homeland Security explaining the impacts of the DHS directives on those courts' abilities to operate and administer justice.<sup>8</sup> In his letter, Chief Justice Balmer explained,

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

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

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[trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48cb07fea957bd5\\_story.html?utm\\_term=.a9d7a04f74a0](https://www.trump-takes-shackles-off-ice-which-is-slapping-them-on-immigrants-who-thought-they-were-safe/2018/02/11/4bd5c164-083a-11e8-b48cb07fea957bd5_story.html?utm_term=.a9d7a04f74a0). ICE's increased enforcement has been, and continues to be, targeted toward sanctuary jurisdictions like Oregon.

<sup>8</sup> See Letter from Tani G. Cantil-Sakauye, Chief Justice of the State of California, to Jeff Sessions, Attorney General, and John F. Kelly, Secretary of Homeland Security (Mar 16, 2017) ("As Chief Justice of California responsible for the safe and fair delivery of justice in our state, I am deeply concerned about reports from some of our trial courts that immigration agents appear to be stalking undocumented immigrants in our courthouses to make arrests."); Letter from Mary E. Fairhurst, Chief Justice of the State of Washington, to John F. Kelly, Secretary of Homeland Security (Mar 22, 2017) ("I write to express concern regarding immigration agents being in and around our local courthouses. \* \* \* [T]hey impede the fundamental mission of our courts, which is to ensure due process and access to justice \* \* \* ."); Letter from Thomas A. Balmer, Chief Justice of the State of Oregon, to Jeff Sessions, Attorney General, and John F. Kelly, Secretary of Homeland Security (Apr 6, 2017); Letter from Stuart Rabner, Chief Justice of the State of New Jersey, to John F. Kelly, Secretary of Homeland Security (Apr 19, 2017) ("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."); Letter from Chase T. Rogers, Chief Justice of the State of Connecticut, to Jeff Sessions, Attorney General, and John F. Kelly, Secretary of Homeland Security (May 15, 2017) ("As you know, the judiciary relies on the public's trust and confidence to fulfill its constitutional and statutory obligations.").

questioning based on perceived ethnicity, cases of misidentification, or other intrusive interactions with ICE agents.<sup>9</sup>

State Attorneys General made similar statements.<sup>10</sup> Despite those requests, ICE persisted in its strategy of targeting individuals at courthouses. Indeed, rather than refraining from making such arrests, in January 2018, ICE issued a directive to agents addressing how and where courthouse arrests should take place.<sup>11</sup>

Since 2017, ICE's use of Oregon's courthouses for its deportation objectives has only continued, and in recent months has escalated significantly.<sup>12</sup> In June 2019, Chief Justice Walters sent another letter to ICE, explaining,

[T]he courthouse arrests that ICE is continuing to make are continuing to have an adverse effect on the administration of justice. Our judges continue to receive reports that ICE's courthouse enforcement practices are affecting community members' willingness to participate in judicial proceedings, including applying for restraining orders and responding to eviction notices.<sup>13</sup>

Chief Justice Walters further noted that, even when ICE complies with its own law-enforcement protocols, its arrests

often create the type of public alarm that [ICE's law-enforcement protocols] seek to avoid. For example, ICE agents are usually in plain clothes, do not always identify themselves during arrests, and have refused to produce a warrant or other document authorizing the detention, when requested. An arrest made under those circumstances understandably leads to confusion and uncertainty.<sup>14</sup>

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<sup>9</sup> Letter from Chief Justice Balmer to Jeff Sessions & John F. Kelly, *supra* n 8 (emphasis added).

<sup>10</sup> See, e.g., Letter from Janet T. Mills, Attorney General of the State of Maine, to John F. Kelly, Secretary of Homeland Security, and Richard W. Murphy, Acting U.S. Attorney for the District of Maine (Apr 10, 2017); Letter from Brian Frosh, Attorney General of the State of Maryland, to John Kelly, Secretary of Homeland Security, et al. (Mar 2, 2017) ("I am concerned that the Administration's aggressive new policies will discourage the most vulnerable immigrants from seeking judicial protection.").

<sup>11</sup> U.S. Immigration & Customs Enforcement, Directive No. 11072.1: Civil Immigration Enforcement Actions Inside Courthouses ¶ 1 (Jan 10, 2018), *available at* <https://www.ice.gov/sites/default/files/documents/>.

<sup>12</sup> See, e.g., Letter from ACLU of Oregon to Martha L. Walters, Chief Justice of the State of Oregon (Dec 4, 2018) ("ACLU Letter"), pp. 2–7; OregonLive, ICE Arrests Guatemalan Man at Washington County Courthouse (June 4, 2018), [https://www.oregonlive.com/washingtoncounty/index.ssf/2018/06/ice\\_tries\\_to\\_arrest\\_man\\_at\\_was.html](https://www.oregonlive.com/washingtoncounty/index.ssf/2018/06/ice_tries_to_arrest_man_at_was.html); Willamette Week, *ACLU Sends Legal Observers After Reports that Plainclothes Immigration Agents Detained a Woman Outside the Multnomah County Courthouse* (Aug 3, 2018), OregonLive, *ICE Agents Mistakenly Try to Grab Latino County Worker Near Courthouse* (Sept 19, 2017), [https://www.oregonlive.com/hillsboro/index.ssf/2017/09/ice\\_mistakenly\\_tries\\_to\\_grab\\_1.html](https://www.oregonlive.com/hillsboro/index.ssf/2017/09/ice_mistakenly_tries_to_grab_1.html).

<sup>13</sup> Letter from Martha L. Walters, Chief Justice of the State of Oregon, to Bryan S. Wilcox, Acting Field Office Director for ICE Enforcement & Removal Operations (June 17, 2019).

<sup>14</sup> *Id.*

Because of ICE arrests at Oregon’s courthouses, entire communities of Oregonians have been driven into the shadows.<sup>15</sup> Some individuals are choosing not to file protective orders, seek marriage licenses, serve as witnesses, or seek the protection of their workplace rights.<sup>16</sup> Others have been deprived of their due process rights—defendants have been arrested by ICE in the middle of a pending case, exculpatory witnesses have been silenced, and victims have faced credible threats of ICE detention if they seek protection from the court.<sup>17</sup> The impact of such arrests cannot be understated—every arrest raises the specter of public harassment; separation from families, community, businesses and jobs; and financial hardship. Fear of deportation, only magnified by ICE’s courthouse practices, is stopping individuals from reporting crimes and from participating in court proceedings.<sup>18</sup> The ability of local police, prosecutors, defenders, and judges to deliver justice has definitively been obstructed.<sup>19</sup>

In 2018, Innovation Law Lab and Causa Oregon conducted a survey of statewide direct services providers about the impact of ICE courthouse arrests in Oregon.<sup>20</sup> Thirty-one diverse organizations and attorneys serving the public responded, including, among others, landlord-tenant advocates, family law service providers, public defenders, and civil legal aid lawyers. Alarming, 100 percent of organizations and attorneys reported clients who had expressed fear of visiting the courthouse because of ICE presence. Another 82 percent reported clients who had failed to appear for the same reason. The organizations that participated in the survey serve over eight legal service areas (family law, immigration, housing, etc.) in 23 counties across the state and provide critical-needs services to thousands of Oregonians.<sup>21</sup>

## **B. ICE’s activities have impacted individuals and courthouses statewide.**

The impact of ICE intrusions on Oregon’s state courts, and the fear incited by those intrusions, is well documented and statewide in scope. Based on the information available to us, we know that **between 2017 and 2019, ICE has executed or planned courthouse intrusions, at a minimum, at state courthouses in the Second (Lane), Third (Marion), Fourth (Multnomah), Fifth**

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<sup>15</sup> See, e.g., Declaration of Lisa LeSage (“LeSage Decl.”) ¶¶ 3–4; Declaration of Kayse Jama (“Jama Decl.”) ¶ 4.

<sup>16</sup> See, e.g., Declaration of McKenzie Harker (“Harker Decl.”) ¶¶ 7–11; Declaration of Bridget Cooke (“Cooke Decl.”) ¶ 5; Declaration of Michael Dale (“Dale Decl.”) ¶ 4.

<sup>17</sup> See, e.g., Declaration of Carl Macpherson (“Macpherson Decl.”) ¶¶ 7–8; Harker Decl. ¶¶ 7–11

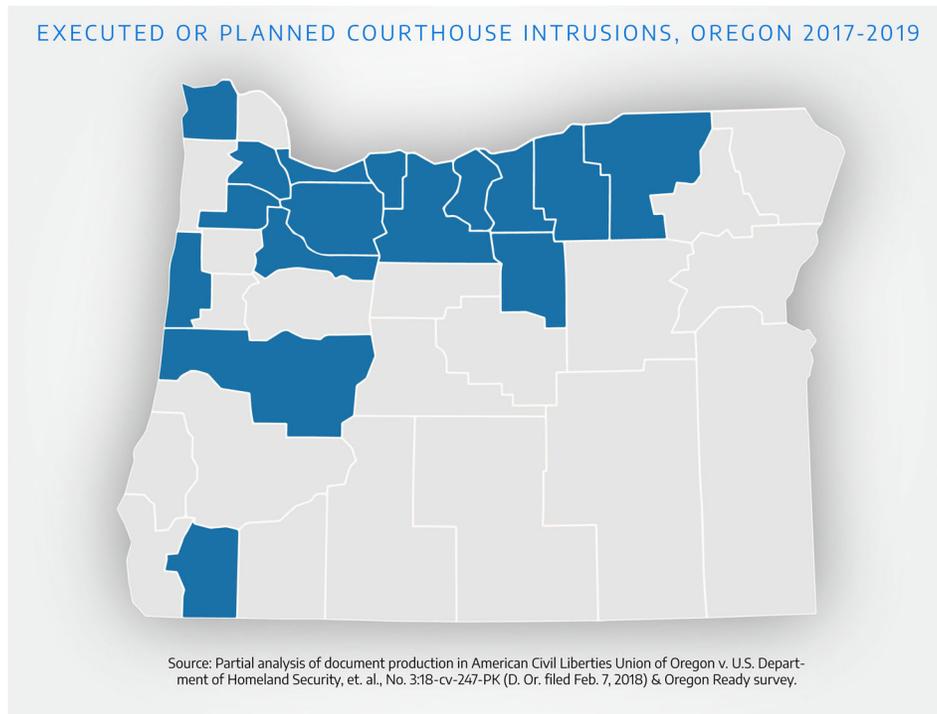
<sup>18</sup> American Civil Liberties Union, Freezing Out Justice: How Immigration Arrests at Courthouses Are Undermining the Justice System [*hereinafter* “Freezing Out”], at 1 (2018), *available at* [https://www.aclu.org/sites/default/files/field\\_document/rep18-icecourthouse-combined-rel01.pdf](https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf); *see also* National Immigrant Women’s Advocacy Project, 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 [*hereinafter* “NIWAP Report”] (May 3, 2018), *available at* <http://library.niwap.org/wp-content/uploads/Immigrant-Access-to-Justice-National-Report.pdf>; Tahirih Justice Center, Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors, *available at* <https://www.tahirih.org/pubs/key-findings-2017-advocate-and-legal-service-survey-regarding-immigrant-survivors/>.

<sup>19</sup> Freezing Out, *supra* n 27.

<sup>20</sup> Declaration of Elena CaJacob (“CaJacob Decl.”) ¶¶ 4–5.

<sup>21</sup> CaJacob Decl. ¶¶ 5–10.

**(Clackamas), Sixth (Umatilla, Morrow), Seventh (Sherman, Gilliam, Wheeler, Wasco, Hood River), Fourteenth (Josephine), Seventeenth (Lincoln), Eighteenth (Clatsop), Twentieth (Washington), and Twenty-fifth (Yamhill) Judicial Districts, and at the municipal courts in Beaverton and Molalla.**<sup>22</sup> Those courthouses combined serve nearly three million Oregonians—citizen and noncitizen alike. In other words, more than 71 percent of Oregon’s populace lives in a jurisdiction impacted by ICE intrusions:



Because of the intentional opacity with which ICE operates,<sup>23</sup> the data available to us undoubtedly underrepresents the extent of ICE intrusions that impact Oregon’s courts. That data nevertheless demonstrates that intrusion into Oregon’s courthouses is one of ICE’s core tactics. ICE routinely tracks, locates, and arrests Oregonians using state court dockets, planning arrests to coincide with state court appearances. Once ICE agents are at a courthouse, they may opportunistically arrest multiple people, based on information they gather by staking out

<sup>22</sup> The ACLU of Oregon filed a FOIA request in Fall 2017 requesting documents relating to ICE arrests at state courthouses and ICE’s communications with local government bodies and law enforcement. Complaint, *ACLU of Oregon v. U.S. Dep’t of Homeland Security*, No. 3:18-cv-247-PK (D. Or. Feb. 7, 2018). As of early August, DHS concluded production, releasing more than 35,000 documents to the ACLU of Oregon. Many of the documents released, however, were heavily redacted, impeding review and the ACLU’s ability to fully understand the scope of ICE’s courthouse actions. Review and analysis of those documents is ongoing.

<sup>23</sup> ICE shrouds its intrusions with secrecy. It does not release public data, it stymies public information requests, it refuses to answer questions about its work, and it deploys plainclothes officers who do not identify themselves in public spaces. Concealing the nature and scope of courthouse intrusions is itself a cultivated method of creating fear and instability in immigrant communities, particularly communities of color.

courtrooms or racially or ethnically profiling those around them.<sup>24</sup> It is often not clear whether ICE courthouse arrests are made pursuant to *any* warrant, much less an “administrative warrant”—indeed, an initial review of available documents strongly suggests that, in most cases, ICE has no warrant at all.<sup>25</sup> Among the 36,000 pages DHS produced to the ACLU of Oregon pursuant to a FOIA request seeking documents relating to courthouse arrests, *see supra* note 22, DHS produced only seven warrants.

We have, however, documented several arrests that demonstrate the general nature of ICE’s courthouse practices in Oregon. Back in September 2017, for instance, in a well-publicized incident that occurred at the Washington County Circuit Court, plainclothes ICE agents detained Isidro Andrade-Tafolla as he left the courthouse with his wife.<sup>26</sup> Andrade-Tafolla is a U.S. citizen, a father of three children, a public servant and county employee, and a longtime resident of Washington County. He and his wife were surrounded and interrogated by ICE officers, who demanded his identification. When ICE presented Andrade-Tafolla with a photo of an alleged suspect who looked nothing like him, he and his wife objected, pointing out the obvious misidentification. When the media arrived at the scene, the ICE agents promptly departed, offering no explanation for the intrusion. The incident was traumatic for Andrade-Tafolla and his family, causing him to seek therapy.<sup>27</sup> Since the event, he has expressed the pain of being racially profiled and the sense of injustice he suffered merely for accompanying his partner to the courthouse. This incident brought into the national spotlight ICE’s tactics of racially profiling people and using dangerous law enforcement practices in Oregon’s state courts.<sup>28</sup>

In late 2018, another high-profile arrest occurred, again at the Washington County Circuit Court. A client of Metropolitan Public Defenders (MPD) was arrested after a hearing. Bystanders reported a physical encounter, as if a fight had broken out in the courthouse hallway.<sup>29</sup> Before MPD could intervene on behalf of its client, ICE had concluded the arrest. The trial court judge presiding over the matter wrote a letter to the Oregon Supreme Court, and to the presiding judges of both the Multnomah and Washington County Circuit Courts, reporting the event. The Honorable Andrew R. Erwin wrote,

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<sup>24</sup> ICE agents admit to racial profiling to identify targets for deportation, and recent reports reveal widespread mismanagement and forgery of administrative “warrants” among ICE agents. *See* Bob Ortega, *ICE Supervisors Sometimes Skip Required Review of Detention Warrants, Emails Show*, CNN (Mar. 13, 2019, 7:30 AM), <https://www.cnn.com/2019/03/13/us/ice-supervisors-dont-always-review-deportation-warrants-invs/index.html>. (“You look every day to see who’s locked up in the jails—it’s racial profiling, really. You’re looking for odd names: a Carlos Lopez, not a John Smith.”).

<sup>25</sup> *Id.* ACLU of Oregon legal observers report that ICE has never shown an arrest warrant at any observed courthouse arrest, despite repeated requests. More recent reports reveal widespread mismanagement and forgery of administrative “warrants” among ICE agents.

<sup>26</sup> ACLU Letter, p. 3; OregonLive, *ICE Agents Mistakenly Try to Grab Latino County Worker Near Courthouse* (Sept 19, 2017), [https://www.oregonlive.com/hillsboro/index.ssf/2017/09/ice\\_mistakenly\\_tries\\_to\\_grab\\_1.html](https://www.oregonlive.com/hillsboro/index.ssf/2017/09/ice_mistakenly_tries_to_grab_1.html).

<sup>27</sup> ACLU Letter, pp. 4–5.

<sup>28</sup> ACLU Letter, p. 4.

<sup>29</sup> Macpherson Decl. ¶ 8.

ICE agents \* \* \* placed the security of this court, and those before it, in an untenable and unacceptable position. Their actions to lie in wait on the third floor of the courthouse and ambush a non-violent defendant during one of our busiest dockets directly jeopardizes the safety of everyone involved. And, the disruption was significant. \* \* \* I did want to make you aware of this incident and demand that ICE cease operations inside Oregon State Courthouses.<sup>30</sup>

Now, in 2019, ICE's courthouse practices continue unabated. The following incidents have been observed and/or publicly reported over the course of the 2019:

- In late April 2019, ICE agents grabbed a man as he exited a trial readiness hearing at the Multnomah County Circuit Court. The man was accompanied by his defense attorney, who asked the ICE agents to produce a warrant, but the agents refused. One of the ICE officers used violent physical force on the attorney as he attempted to enter the elevator where the agents had taken his client.<sup>31</sup>
- In July 2019, ICE arrested an individual in the hallway of the Clatsop County Circuit Court. The arrest involved physical force against both the individual arrested and several bystanders, including friends and family members. The individual's mother was pepper sprayed (as were several others) and struck in either the neck or the throat.
- Just a few days before the Clatsop County arrest described above, three plainclothes officers identifying themselves as DHS employees arrested an individual in the waiting area of the Marion County Court Annex. The officers refused to show any warrant before they escorted the individual out to an unmarked vehicle and drove him away.
- And, around the same time in Multnomah County, ICE agents used force on the seventeen-year-old daughter of an individual targeted outside the Multnomah County Justice Center. The minor was reportedly holding a young child at the time. During the arrest, ICE agents removed the targeted individual's GPS ankle monitor, which was required as part of his pre-trial supervision on his pending state criminal charges.

Every ICE intrusion in an Oregon courthouse has a profound impact on the individuals arrested, their families, and the community's view of Oregon's courts as safe and accessible places. ICE's mere presence in courthouse spaces is often widely reported in news media, social media, and among parishioners, neighbors, and the local community. As we explain in more detail below, ICE's courthouse activities have resulted in a widespread deterrence and chilling of courthouse participation. Given the life-changing consequences of an immigration arrest, just one incident in a community's courthouse can cause Oregonians who are immigrants, or whose loved ones

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<sup>30</sup> Macpherson Decl. ¶ 8; E-mail from the Honorable Andrew R. Erwin to Thomas A. Balmer, Stephen K. Bushong, Robert Herndon, Ronald Stone, Jon R. Hill, & Norm R. Hill, *Inexcusable ICE Incident this Afternoon* (June 1, 2018, 4:48 p.m.) (attached).

<sup>31</sup> Katie Shepherd, *An ICE Agent Shoved a Lawyer While Making an Arrest At the Multnomah County Courthouse*, Willamette Week (April 26, 2018).

are immigrants, not to seek restraining orders, appear at arraignments, appear as witnesses, request assistance with housing, or file for divorce. And every time a community member is forcibly taken by ICE from the courthouse, thousands of individuals begin to feel the very real threat that they might be next.

**C. Oregonians fear coming to our state courthouses.**

Service and advocacy organizations that work with diverse communities across Oregon consistently report that ICE arrests in and around Oregon’s courthouses have deep, detrimental, and lasting effects on Oregon’s immigrant communities and communities of color. All report that their clients or members have reduced participation in the justice system, causing individuals to forgo remedies, defenses, marriages, divorces, protective orders, and all other matters of court and community concern for fear of ICE intrusion.

The organizations on whose behalf this proposal is submitted report the below impacts of ICE’s courthouse practices. Each organization has also submitted a declaration in support of the rule, which further tell the stories of their members and clients.

- **Adelante Mujeres (Women Rise Up)** is a culturally specific organization focused on serving the Latino and immigrant community in Washington County through educational and community advancement programs. Adelante Mujeres Executive Director, Bridget Cooke, reports that many of its members have chosen not to seek court assistance for name changes, real estate transactions, or to report domestic violence for fear that they will be profiled, harassed, or detained by ICE while at the courthouse.<sup>32</sup>
- **Causa Oregon (“Causa”)** works to improve the lives of Latino immigrants and their families in Oregon through advocacy, coalition building, leadership development, and civic engagement. Causa reports that community members are living in a state of constant terror due to ICE presence in our government buildings and are avoiding the courthouse at great personal cost.<sup>33</sup>
- The **ACLU of Oregon** monitors the threat to public safety, human welfare, and the constitutional rights of community members posed by ICE arrests in our courthouses. In April 2017, ACLU of Oregon legal observers filmed a violent arrest outside the Clackamas County Circuit Court, where eight plainclothes ICE agents dragged a man out of his truck and took him away in an unmarked car—without ever showing an arrest warrant.<sup>34</sup> In May 2017, due to the urgent needs of community members, the ACLU of Oregon began a dedicated legal observer and accompaniment program at the Washington County Circuit Court.<sup>35</sup> Since then, the ACLU has witnessed the arrests of numerous mothers, fathers, and individuals seeking merely to conduct ordinary business in the

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<sup>32</sup> Cooke Decl. ¶¶ 1, 2.

<sup>33</sup> Declaration of Lorena Manzo (“Manzo Decl.”) ¶¶ 4–9.

<sup>34</sup> ACLU Letter, p. 2.

<sup>35</sup> ACLU Letter, pp. 2–3.

court.<sup>36</sup> The ACLU of Oregon has several videos documenting those shocking ICE practices. And since DHS published its January 10, 2018, directive on courthouse enforcement, the ACLU of Oregon has observed that ICE conduct has become more secretive, contravening those stated policies.<sup>37</sup>

- **Metropolitan Public Defender (MPD)** reports a widespread, negative impact on its ability to provide public defender services as a result of ICE presence in the courthouses. MPD clients who want to have their case heard fear ICE arrest and often fail to appear; critical defense witnesses, including exculpatory witnesses, have not attended proceedings for fear of ICE. MPD’s Community Law program likewise reports that ICE arrests have eroded community trust in the courthouse space. Their clients have not sought protective orders or workers’ compensation benefits, and, because of ICE, they have avoided going to the courthouse to pay parking tickets.<sup>38</sup>
- **Northwest Workers’ Justice Project’s (NWJP)** clients—immigrant and contingent workers who have experienced violations of their workplace rights—are now afraid of going to court for fear of what might happen to them or their families.<sup>39</sup> NWJP illustrates the harm through the experiences of their clients, which are summarized on the Declaration of Michael Dale, attached to this proposal.

NWJP clients further demonstrate the extent of the collateral damage due to ICE presence in the courthouse—individuals are less likely to participate in full civic life because of distrust and concern about what might happen in Oregon’s public spaces. This minimizes leadership and participation from all parts of Oregon’s diverse communities, robs workers of their wages, and hurts our collective prosperity.

- **Immigration Counseling Service (ICS)** reports similar stories. ICS is Oregon’s oldest and only independent nonprofit law firm providing direct legal services to immigrants throughout Oregon and Southwest Washington. Its clients express great fear in accessing the courthouse due to recent ICE arrests in Oregon,<sup>40</sup> and its Executive Director explains that the viral news stories about ICE activities in the courthouse “creat[e] immediate

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<sup>36</sup> ACLU Letter, pp. 3–5.

<sup>37</sup> ACLU Letter, pp. 5–6.

<sup>38</sup> Macpherson Decl. ¶ 9. Moreover, MPD attorneys report that ICE presence in the courthouse makes their job, already one of the most challenging in the legal profession, even more emotionally and professionally taxing. The arrests, and threat of arrests, compel MPD attorneys to escort their noncitizen clients around the courthouse so that they have access to counsel should they be approached by ICE, and counsel clients to stay vigilant in the very place where they are supposed to be able to exert their rights. MPD reports the trauma that results from watching one’s client be taken away, in the midst of a case, in a chaotic and violent scene in the halls of Oregon’s courts. Macpherson Decl. ¶ 8. MPD notes that they do not counsel their clients not to attend court hearings but must advise as to the attendant risks of appearing.

<sup>39</sup> Dale Decl. ¶ 4.

<sup>40</sup> LeSage Decl. ¶ 2, 3.

panic among clients, including those with legal status.”<sup>41</sup> ICS’s clients worry about their safety in the courthouse because of the presence of ICE.<sup>42</sup>

- **Unite Oregon** serves immigrants, refugees, and people of color in the Rogue Valley and Multnomah and Washington counties. The organization reports that “[l]ong-standing members of our community, particularly immigrants and refugees, feel impacted by ICE interference at the courthouse, regardless of status, as they do not want to be profiled or harassed while coming and going to the courthouse.”<sup>43</sup> Kayse Jama, Unite Oregon’s Executive Director, recalls one occasion in which a father of three was detained at the Washington County courthouse when trying to pay a parking ticket.<sup>44</sup> The father was taken to the Tacoma Northwest Detention Center, leaving his wife to face the possibility of further ICE interference. She was presented with an agonizing choice: risk arrest, leaving her children without a guardian, or face further negative consequences for a civil traffic infraction.<sup>45</sup>
- Oregon’s **Victim Rights Law Center’s (VRLC)** clients are regularly faced with the unimaginable trauma of choosing family stability and continued presence in the United States over justice as survivors. Its staff attorneys have observed the chilling effect that ICE arrests have had on immigrant survivors of sexual assault and their families.<sup>46</sup> VRLC reports that its clients “unanimously express significant fear of detention or deportation when contemplating engaging in criminal justice and/or civil legal remedies in the aftermath of their assaults.”<sup>47</sup> VRLC illustrates the startling effect of these arrests through their clients’ stories, summarized on the Declaration of McKenzie Harker, which is attached to this proposal.

A national survey conducted by the National Immigrant Women’s Advocacy Project (NIWAP) documents the adverse impacts of ICE’s policies and practices nationwide.<sup>48</sup> It shows that individuals are far less likely to be willing to make police reports, assist with post-crime investigations, and work with local prosecutors, for fear of the deportation consequences that

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<sup>41</sup> LeSage Decl. ¶ 5.

<sup>42</sup> LeSage Decl. ¶ 6.

<sup>43</sup> Jama Decl. ¶ 5.

<sup>44</sup> Jama Decl. ¶¶ 6–7.

<sup>45</sup> Jama Decl. ¶¶ 6–7. Damaging collateral consequences also result from ICE arrests and presence in state buildings. Teachers report that children are suffering from emotional, physical, and mental stress for fear of having their families ripped apart and are “at a loss for how to support their students.” Jama Decl. ¶ 9. Members also report a reticence to seek health care and “healthcare providers are seeing a drop-in patient attendance.” Jama Decl. ¶ 9.

<sup>46</sup> Harker Decl. ¶ 4.

<sup>47</sup> Harker Decl. ¶ 4.

<sup>48</sup> NIWAP Report, *supra* n 18. The NIWAP Report is based on the results of a nationwide survey of attorneys, advocates, judges, law enforcement officials, and organizations that worked with or sought training or assistance in cases involving immigrant victims, women, and children. Judges from 25 states, including Oregon, participated in the survey.

might result from their decisions to do so.<sup>49</sup> For the same reasons, incidents of domestic violence, child abuse, and human trafficking are now further underreported and more difficult to investigate.<sup>50</sup> Legal advocates and service providers report fewer filings, and they report circumstances in which their clients choose to stay in abusive and sometimes dangerous situations because they are afraid to go to court.<sup>51</sup> Judges report interruptions in pending proceedings due to an immigrant crime victim’s fear of the threat of arrest.<sup>52</sup> Judges also report, significantly, “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.”<sup>53</sup>

### PROPOSED RULE

An amendment to the UTCRs prohibiting civil immigration arrests in and around Oregon courthouses would provide an effective solution to the problem caused by ICE’s intrusions. Again, the rule that we propose would read:

1. No person may become subject to civil immigration arrest without a judicial warrant or judicial order while the person is inside a courthouse of this state and the person is present in connection with any judicial proceeding or other business with the court.
2. No person may become subject to civil immigration arrest without a judicial warrant or judicial order while the person is going to or coming from a courthouse of this state, or while the person is within the environs of a courthouse of this state, or if the person is traveling for the purpose of any judicial proceeding or other business with the court.
3. Oregon courts may issue writs of protection in individual cases when appropriate in order to effectuate the common law rule.

#### A. The proposed rule is well-rooted in Oregon law.

The proposed rule is based on Oregon’s privilege against civil arrest, which is a venerable principle of Oregon’s common law. In *Wemme v. Hurlburt*, the Oregon Supreme Court held that “[p]arties and witnesses are exempt from arrest while going to, in attendance on, and returning from court.” 133 Or 460, 460, 289 P 372 (1930) (citing *Mullen v. Sanborn*, 29 A 522 (Md Ct App 1894)). The Supreme Court explained that the “exemption is not prescribed by statute, but is a part of the common law and is a power inherent in courts for the purpose of preventing delay, hindrance, or

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*; see also Cora Engelbrecht, *Fewer Immigrants Are Reporting Domestic Abuse. Police Blame Fear of Deportation.*, N.Y. Times (June 3, 2018), <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> NIWAP Report, *supra* n 18, at 21. These findings echo the findings from a similar survey conducted on the impact of ICE deportation practices on Oregon courts. See CaJacob Decl. ¶¶ 5–10.

interference with the orderly administration of justice in the courts.” *Id.* As explained in more detail below, the rule of *Wemme* is grounded in considerations of comity and therefore applies with respect to all courts—state and federal—consistently with our dual-sovereign structure of government.<sup>54</sup>

**B. Oregon’s common-law privilege mirrors the privilege recognized by other federal and state courts.**

Decisions of the U.S. Supreme Court from the early twentieth century also make clear that the privilege against civil arrest long has been recognized under the common law. By those decisions, the privilege is defined to provide immunity against civil arrest for individuals “while in attendance upon court, and during a reasonable time in coming and going.” *Stewart v. Ramsay*, 242 US 128, 129, 37 S Ct 44 (1916). The privilege is grounded in considerations of comity—that is, it is “founded, not upon the convenience of the individuals, but of the court itself” on the premise that “the due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it, \* \* \* which would prevent, or the fear of which might tend to discourage, the voluntary attendance of those whose presence is necessary or convenient to the judicial administration in the pending litigation.” *Lamb v. Schmitt*, 285 US 222, 225, 52 S Ct 317, 76 L Ed 720 (1932).<sup>55</sup>

The U.S. Supreme Court reaffirmed that principle and further explained its contours in *Page Co. v. MacDonald*, 261 US 446, 43 S Ct 416, 67 L Ed 737 (1923), where the defendant MacDonald had moved to quash service of summons on a federal complaint because she was served while in attendance on a state court matter. *Id.* at 447. Plaintiff Page Co., seeking to distinguish the Court’s earlier decision in *Stewart*, contended that the privilege did not apply and “immunity cannot be claimed \* \* \* from the judicial process of a different sovereignty.” *Id.* The Supreme Court disagreed, reaffirming its decision in *Stewart* and explaining that both federal and state courts have equal interest in “the necessities of the judicial administration,” and so “neither they

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<sup>54</sup> Witnesses in Oregon are afforded an identical privilege against arrest. ORS 44.090 provides, “Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other officer, *is exonerated from arrest, in a civil case*, while going to the place of attendance, necessarily remaining there and returning. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of the court; and the officer making the arrest is responsible to the witness for double the amount of the damages which may be assessed against the officer, and is also liable in an action by the party serving the witness with the subpoena, for the damages sustained by that party in consequence of the arrest.” (Emphasis added.)

<sup>55</sup> The privilege is likewise well documented in the commentaries of law reported by William Blackstone and early English cases. As Blackstone described the privilege,

“Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during the 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.”

William Blackstone, *Commentaries on the Laws of England* 766 (1877).

nor their witnesses [may] be embarrassed or vexed while attending.” *Id.* at 448. As much as the privilege protects the individual, it is a “privilege of the court.” *Id.*; *see also Lamb v. Schmitt*, 285 US at 225 (“The general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit, are immune from civil process in another, is founded, not upon the convenience of the individuals, but of the court itself.”).

State courts across the country likewise have found the privilege deeply rooted in the common law. *See, e.g., In re Greene*, 85 A 552, 552 (RI 1913) (“It is well settled that parties and witnesses attending in good faith any legal tribunal \* \* \* are privileged from arrest on civil process during their attendance, and for a reasonable time in going and returning, whether residents or nonresidents of the state, whether they attend on summons or voluntarily, or whether they have or have not obtained a writ of protection.”); *Christian v. Williams*, 20 SW 96, 97 (Mo 1892) (“Witnesses as well as parties are protected from arrest while going to the place of trial, while attending there for the purpose of testifying in the cause, and while returning home.”); *Halsey v. Stewart*, 4 NJL 366, 368 (1817) (same); *Ex parte M’Neil*, 6 Mass 245, 245 (1810) (same). And many state legislatures have codified as state law some form of privilege against civil arrest. *See, e.g.,* Ind Code Ann § 34-29-2-1; Ohio Rev Code § 2331.11; SC Code Ann 1976 § 14-1-140.

### **C. Civil immigration arrests fall within the scope of the privilege.**

The common-law privilege against civil arrests applies to civil immigration arrests. When ICE makes an arrest at an Oregon courthouse to initiate deportation or removal proceedings, it is engaging in an arrest that is civil in nature, in the furtherance of civil proceedings. *Arizona v. United States*, 567 US 387, 407, 132 S Ct 2492, 183 L Ed 2d 351 (2012) (“As a general rule, it is not a crime of a removable alien to remain present in the United States.”); *INS v. Lopez-Mendoza*, 468 US 1032, 1038, 104 S Ct 3479, 82 L Ed 2d 778 (1984) (“A deportation proceeding is a purely civil action to determine eligibility to remain in this country.”); *Woodby v. INS*, 385 US 276, 285, 87 S Ct 483, 17 L Ed 2d 483 (1966) (“To be sure, a deportation proceeding is not a criminal prosecution.”).<sup>56</sup> According to ICE itself, the arrests are “[a]ction[s] taken by an ICE officer or agent to apprehend, arrest, interview, or search an alien in connection with enforcement of administrative immigration violations,” not enforcement of federal criminal laws. ICE Directive § 3.1.

### **D. The privilege should be provided for by order and, in appropriate cases, by writ.**

The common-law privilege against civil arrest traditionally was enforced through the writ of protection, which were issued to litigants, witnesses, or others who feared arrest while coming to court. *See Parker v. Marco*, 20 LRA 45, 62 (NY App 1893) (so stating). Oregon’s common law likewise vests state trial courts with the authority to issue, in an appropriate case, writs of

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<sup>56</sup> *See also* Christopher N. Lasch, *A Common-Law Privilege to Protect State and Local Courts During the Crimmigration Crisis*, 127 Yale L J Forum 410, 431–32 (2017).

protection to individuals going to, in attendance on, or returning from, court, where those individuals fear arrest by federal immigration agents.

**E. The proposed rule is consistent with Tenth Amendment principles of federalism and comity.**

As explained above, the privilege against civil arrest exists principally to protect the business of the courts. *Long v. Ansell*, 293 US 76, 83, 55 S Ct 21, 79 L Ed 21 (1934) (explaining that the privilege “is founded upon the needs of the court”).<sup>57</sup> It is grounded in concerns for comity, pursuant to which courts seek “to brook no interference with their efforts to administer justice”:

“No court will direct its process to be served upon litigants before another court where it would protect its own litigants from a like service. Every court will aid every other court by permitting attendance upon one free from the danger of service of process by another. All courts recognize this principle of immunity involved.”

*Feister v. Hulick*, 228 F 821, 823 (ED Pa 1919). Thus, in one of the seminal U.S. Supreme Court decisions addressing the privilege, the Court’s reasoning likewise was grounded in concerns for comity and ensuring that “both instruments of judicial administration”—federal and state courts—are afforded protection. *Page Co.*, 261 US at 448.

Oregon’s authority to privilege from civil arrest all individuals going to, attending, and returning from Oregon’s state courthouses for the purpose of conducting legitimate business at those courthouses falls well within its sovereign power and is protected from interference by and from the courts of other sovereigns. It is consistent with the Tenth Amendment’s principles of federalism and comity, and under Supreme Court precedent must be respected by other sovereigns. *See Page Co.*, 261 US at 447–48; *see also* Wright & Miller, 4A *Federal Practice & Procedure* § 1078 (describing the immunity doctrine and explaining that “notions of judicial cooperation dictate that state courts should grant immunity to persons who have entered the jurisdiction for the purpose of attending federal proceedings and that federal courts should quash service made on those who are in the jurisdiction to attend pending state proceedings”).<sup>58</sup>

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<sup>57</sup> *See also Kaufman v. Garner*, 173 F 550, 554 (WD Ky 1909) (stating that the rule is based on “the dignity and independence of the court first acquiring jurisdiction”).

<sup>58</sup> *See also Sofge v. Lowe*, 176 SW 106, 108 (Tenn 1915) (“Justice, in such connection, is to be conceived of as a thing integral and not partible by state or jurisdictional lines; all courts must be presumed to interest themselves alike in promoting and keeping unhampered its fair administration.”).

## EFFECTIVENESS OF THE PROPOSED RULE

The proposed amendment to the UTCRs is key to the efficacy of any available remedy to ICE’s courthouse activities. Most importantly, the rule will convey to ICE that its intrusions interfere with courthouse operations and the ability of our courts to administer justice. That alone should serve to minimize, if not eliminate, disruptive ICE intrusions. But the rule will also provide a basis for an effective remedy in immigration court—that is, suppression of the evidence obtained from an intrusion in an individual’s later removal proceeding.

We believe that the above-proposed rule will serve as an effective deterrent against ICE’s activities in and around Oregon’s state courthouses. Other jurisdictions that have either adopted similar rules or otherwise enforced the common-law privilege against civil arrest have experienced a decrease in unconstitutional ICE arrests in courthouse spaces:

In **Massachusetts**, for instance, a federal judge issued a preliminary injunction in June, blocking ICE from “civilly arresting parties, witnesses, and others attending Massachusetts courthouses on official business while they are going to, attending, or leaving the courthouse.”<sup>59</sup> The court concluded that the privilege against civil arrest—on which this UTCR proposal is also based—existed in United States common law at the time that Congress enacted the statutes authorizing civil arrests for the enforcement of immigration law.<sup>60</sup> The court then concluded that ICE’s policy of making courthouse arrests likely “exceeds the authority granted to ICE by the Congress in the civil arrest provisions of the INA and should be invalidated pursuant to the Administrative Procedure Act.”<sup>61</sup>

In **New York**, the Office of Court Administration issued a directive in April limiting law enforcement activities inside New York state courthouses. Under that directive, arrests by ICE agents “may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest.” The directive specifies that “[a] ‘judicial warrant’ or ‘judicial order’ is a warrant or order issued by a federal judge or federal magistrate judge.”<sup>62</sup> We understand that ICE activity in and around New York state courthouses has decreased significantly since the new rule was issued.<sup>63</sup>

In **Washington**, the Seattle Municipal Court issued a policy in April that prohibits immigration arrests in Seattle Municipal courtrooms “unless directly ordered by the Presiding Judge or assigned Judicial Officer.” The policy also “discouraged” arrests

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<sup>59</sup> *Ryan v. U.S. Immigration & Customs Enf’t*, 382 F. Supp. 3d 142, 161 (D. Mass. 2019).

<sup>60</sup> *Id.* at 156–57.

<sup>61</sup> *Id.* at 159.

<sup>62</sup> Office of the State Court Adm’r, N.Y. Unified Court Sys., Directive No. 1-2019, Protocol Governing Activities in Courthouses by Law Enforcement Agencies (2019), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/OCA-ICE-Directive.pdf>.

<sup>63</sup> DOCUMENTED, *Early Arrival: ICE Arrested 6 People in NYC Courts So Far in 2019* (June 26, 2019), <https://documentedny.com/2019/06/26/early-arrival-ice-arrested-6-people-in-nyc-courts-so-far-in-2019/> (reporting 97 percent drop in ICE arrests since implementation of NY rule).

anywhere in the Seattle Municipal Courthouse “unless the public's safety is at immediate risk.”<sup>64</sup>

In **New Mexico**, both the Bernalillo County Metropolitan Court and the Second Judicial District Circuit Court (also located in Bernalillo County) have imposed court rules limiting ICE enforcement inside the respective courthouses. The policy issued by the Bernalillo County Metropolitan court prohibits any “local, state, or federal law enforcement officers or agents” from “arrest[ing], detain[ing], interrogat[ing], hold[ing], restrict[ing], or in any way, hinder[ing] the freedom of any individual in the Courthouse except by lawful Court order or judicial arrest warrant, or when it is necessary to secure immediate public safety.”<sup>65</sup> The Second Judicial District Circuit Court’s policy similarly prohibits arrests by federal law enforcement “in or around the courthouse” unless the officers “display a lawful warrant or lawful court order” to court deputies upon entering the courthouse.<sup>66</sup>

In **California**, pursuant to legislation passed in 2018, the Attorney General published a series of model policies “‘limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law’ at several locations, including courts.”<sup>67</sup> California courts are required to adopt these or equivalent policies.<sup>68</sup> As relevant here, the California Attorney General instructed courts to adopt a policy to prohibit federal law enforcement, including ICE agents, from “access[ing] restricted areas of court facilities for immigration enforcement purposes” unless they have “a judicial warrant or exigent circumstances.”<sup>69</sup> The policy specifically notes that ICE’s administrative warrants are insufficient to allow ICE agents to access nonpublic areas of a courthouse.<sup>70</sup> The policies further limit information that courts may collect about a person’s immigration status as well as what information ICE may obtain from the court system.<sup>71</sup> The policies also encourage courts to allow parties and witnesses to use pseudonyms and avoid nonessential in-person appearances.

Oregon would therefore not be the first jurisdiction to apply the common law privilege against civil arrest to protect community members from ICE’s reckless courthouse intrusions.

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<sup>64</sup> Seattle Mun. Court, MCS-720-6.10, Arrests of Persons Based Upon Immigration Status (2017).

<sup>65</sup> Bernalillo Cnty. Metro. Court, Courthouse Access Policy 1 (2015), available at <https://www.kob.com/kobtvimages/repository/cs/files/Courthouse%20Access%20Policy.pdf>.

<sup>66</sup> Second Judicial District Court, N.M. Judicial Branch, 2017-SJDC-010, Courthouse Access Policy 2 (2017).

<sup>67</sup> Office of the Cal. Attorney General, Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues 1 (October 2018) available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf>.

<sup>68</sup> *Id.* at 2.

<sup>69</sup> *Id.* at 11, 18-19.

<sup>70</sup> *Id.* at 12, 19.

<sup>71</sup> *Id.* at 5-6, 17.

## CONCLUSION

The rule that we seek will provide critical guidance to Oregon's courts in preventing disruptive ICE arrests. It will also do much to restore the faith of the immigrant community in our justice system and our state institutions. The legal and factual basis for the court rule is clear, and the need is urgent.

Respectfully submitted,



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