



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

6701 W. 64TH Street,
Suite 210
Overland Park, KS 66202
T/913-490-4100
www.aclukansas.org

March 4, 2019

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By First Class Mail and E-Mail to: Katherine.Stocks@jocogov.org

Hon. Thomas Kelly Ryan
Johnson County Courthouse
100 N Kansas Ave
Olathe, KS 66061-3273

Re: Protecting Public Access to Courts in Johnson County.

Dear Chief Judge:

We write to inform this Court of its obligation to ensure access to courts for all individuals regardless of immigration status. The impetus for this letter stems from a recent and deeply concerning Immigration and Customs Enforcement (ICE) arrest in the Johnson County District Court.

On February 7, 2019, Ms. Ulfat Basic was arrested in a courthouse hallway immediately following a child custody hearing in which Ms. Basic had sought this Court's assistance in vindicating her parental rights.¹ Ms. Basic's arrest while seeking a redress of grievances reflects a fundamental breach of public trust in the judiciary and intimidates those who would otherwise seek relief before this Court.² We urge the Tenth Judicial District to adopt rules that limit ICE interference in its courts and ensure litigants are free from fear of arrest when they exercise their constitutional rights to access the judicial system.

The Supreme Court has unambiguously declared that "the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy."³ It is for this reason that the First and Fourteenth Amendments fiercely protect access to courts and render unconstitutional barriers to those seeking justice.⁴

¹ Sarah Plake, *ICE arrests KC mom outside of child custody hearing*, 41 KSHB KANSAS CITY (Feb. 18, 2019), <https://www.kshb.com/news/local-news/ice-arrests-kc-mom-outside-of-child-custody-hearing-attorneys-say-its-suspicious>.

² American Civil Liberties Union, *Freezing Out Justice* (2018), https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf; Tahirih Justice Center, *2017 Advocate and Legal Service Survey Regarding Immigrant Survivors* (2017), <http://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf>; The Fund for Modern Courts, *Protecting the Administration of Justice in New York State 16-17* (2017), <http://moderncourts.org/wp-content/uploads/2017/12/Modern-Courts-Report-December-2017-ICE-and-NY-COURTHOUSES2-1.pdf>.

³ *Cox v. Louisiana*, 379 U.S. 559, 562 (1965) (citing *Wood v. Georgia*, 370 U.S. 375, 383 (1962)).

⁴ See, e.g., *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983) ("The right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances"); *Bounds v. Smith*, 430 U.S. 817, 822 (1977) (noting that the court must ensure access to courts that is "adequate, effective, and meaningful"); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (economic barrier to court access held unconstitutional under the Fourteenth Amendment).

ICE has issued specific guidance with respect to civil immigration arrests in courthouses. That guidance indicates that ICE agents cannot perform arrests on court premises— and particularly not in family court, civil court, or any other non-criminal court— without the express approval of the ICE Field Office Director or another formal designee.⁵ Such approval cannot be granted without ICE demonstrating that it is “operationally necessary” to carry out an arrest in court.⁶

Johnson County District Court has the option to hold ICE agents to their internal guidelines and is under no legal obligation to assist or facilitate the enforcement of federal immigration laws.⁷ Vigilance in holding ICE agents to their prior-approval obligation is necessary to ensure safe and fair access to the courts for all people.⁸ Fortunately, the judges of the Johnson County District Court have broad statutory authority to implement regulations governing the operation of the district court and the conduct of court administrative and security personnel.⁹ This authority can and must be used to enact rules requiring court security to:

- (1) Ask for identification from all federal, state, and local law enforcement officers;
- (2) Demand that any identified ICE agent provide proof of authorization from their Field Office Director to be present in the courthouse;¹⁰ and
- (3) Immediately report the presence of ICE agents to the judges of the Johnson County District Court, who can take steps to protect litigants from intimidation or harassment.

The District Court would be well within its rights to make these changes under state and federal law despite any contravening pressure from ICE to use our courts as a stalking ground for immigration enforcement.¹¹ We therefore urge you and your fellow judges to take these simple steps to ensure that, in the future, all who come before your court can do so without the fear of apprehension.

⁵ U.S. Immigration and Customs Enforcement Directive Number 11072.1, *Civil Immigration Enforcement Actions Inside Courthouses*, Section 2, available at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

⁶ *Id.*

⁷ *Galarza v. Szalczyk*, 745 F.3d 634, 643 (3d Cir. 2014) (noting that state and local government cannot be “compelled” to comply with an ICE detainer order because to do so “is inconsistent with the anti-commandeering principle of the Tenth Amendment”); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014); *Buquer v. Indianapolis*, 797 F. Supp. 2d 905, 911 (S.D. Ind. 2011); *Miranda-Olivares v. Clackamas County*, Case No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 (D. Ore. 2014); *Jimenez v. Morales*, Case No. 11-CV-05452 (N.D. Ill. 2011), Dkt. 107, Def. Mem. In Support of Mtn. for Partial J., at 8-9.

⁸ Demanding compliance with this obligation is crucial. Over the last two years, one jurisdiction has seen a 1700% increase in courthouse ICE arrests notwithstanding current guidance. See Immigrant Defense Project, *The Courthouse Trap*, at 6 (2019), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/TheCourthouseTrap.pdf>.

⁹ K.S.A. § 20-342 (“each district court [...] may promulgate such rules as may be necessary to provide for the administrative operations of such court and to facilitate the regulation and supervision of the nonjudicial personnel thereof”).

¹⁰ See Directive Number 1107.21, Section 2 (noting that enforcement actions in courthouses should be “conducted in collaboration with court security staff”).

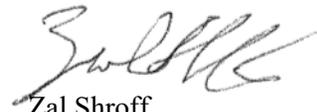
¹¹ *Galarza*, 745 F.3d at 643.

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Pursuant to the Kansas Open Records Act, K.S.A. § 45-221, we also request all correspondence between the Tenth Judicial District and U.S. Immigration and Customs Enforcement from January 1, 2018 to February 28, 2019, as well as any policies or guidelines regarding the District's handling of immigrant petitioners and detainer requests from ICE or DHS.

Do not hesitate to call me if you have any questions regarding my public records request or the recommendations in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zal Shroff', written in a cursive style.

Zal Shroff

Staff Attorney

zshroff@aclukansas.org

Direct Dial: (316) 636-7303