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# Exhibit A

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; CHAD WOLF, in his official capacity as Acting Secretary of U.S. Department of Homeland Security; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MATTHEW T. ALBENCE, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; U.S. CUSTOMS AND BORDER PROTECTION; MARK MORGAN, in his official capacity as Acting Commissioner of U.S. Customs and Border Protection,

Defendants.

No. 2:19-cv-02043-TSZ

**BRIEF OF FORMER JUDGES AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
January 31, 2020

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**INTEREST OF AMICI CURIAE**

Amici curiae (listed in the Appendix) are former judges who have a strong interest in ensuring that courts remain open and accessible to the people and that the public continues to perceive courts in that way. Amici’s collective experience encompasses years on the bench, including as: justices of the Washington Supreme Court; judges from all three divisions of the Washington Court of Appeals; and Superior, Municipal, and District Court judges from across the state.

Our state courts play an essential role in upholding the rule of law in Washington. The courts touch every facet of life, and the justice they administer every day depends upon the claimants, defendants, victims, witnesses, and other important stakeholders who appear before them just as certainly as it depends upon judges and judicial personnel. Amici know firsthand that in order for the courts to function properly and do justice, ensure public safety, and serve their communities, all of these stakeholders must regard courthouses as safe and open spaces.

Unfortunately, a marked increase in arrests and enforcement activity by U.S. Immigration and Customs Enforcement (“ICE”) in and near courthouses in recent years has seriously threatened that vital perception, creating a chilling effect and deterring stakeholders from participating in the justice system. The January 10, 2018, ICE directive concerning “Civil Immigration Enforcement Actions Inside Courthouses” (the “Civil Arrest Directive” or “the Directive”), which formally permits civil immigration enforcement actions in and near federal, state, and local courthouses,<sup>1</sup> only exacerbates this chilling effect. Amici’s experience presiding over hundreds of cases in various courts uniquely qualifies them to address how the Directive and ICE’s policy of conducting civil arrests in and around courthouses jeopardize the

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<sup>1</sup> U.S. Immigration and Customs Enforcement, Directive No. 11072.1, Civil Immigration Enforcement Actions Inside Courthouses, at 1-2, (Jan. 10, 2018), <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf> (“Directive”).

1 administration of justice in Washington and beyond.

2 **SUMMARY OF ARGUMENT**

3 Informed by amici’s broad and varied judicial experience, this brief addresses the real-  
4 world ramifications of ICE’s courthouse arrests and the Directive on the judicial process in  
5 Washington courts.

6 *First*, the rising number of ICE arrests in or near courthouses, together with the federal  
7 government’s public statements endorsing such arrests, have created a damaging chilling effect  
8 deterring noncitizens from participating in the justice system. The Directive worsens this already  
9 detrimental effect. Moreover, noncitizens’ perception of judges and judicial personnel as  
10 assisting ICE harms trust in the judiciary.

11 *Second*, the chilling effect impedes the administration of justice. Fear of ICE discourages  
12 crucial participants in the judicial process from coming to court, including victims of crime,  
13 witnesses, criminal defendants, individuals pursuing child custody matters, and vulnerable  
14 civilians seeking redress for civil claims.

15 *Third*, even when individuals are not deterred from accessing the courts, ICE’s Directive  
16 and policy of conducting civil arrests in and around Washington courthouses nonetheless  
17 obstruct the judicial process. Rising ICE arrests in or near courthouses result in the  
18 unavailability of criminal defendants and witnesses, the unnecessary escalation of criminal  
19 charges, a drain on judicial resources stemming from delays and scheduling interruptions, and  
20 increased courthouse disorder and security costs.

21 *Finally*, despite states’ implementation of policies designed to curb the negative  
22 consequences flowing from ICE arrests in or near courthouses, these ramifications persist.

23 **ARGUMENT**

24 **I. THE DIRECTIVE WORSENS AN ALREADY DAMAGING CHILLING EFFECT**

25 ICE civil enforcement activity in and around courthouses throughout the nation has  
26  
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1 increased in recent years.<sup>2</sup> This surge has been dramatic.<sup>3</sup> In Washington, there has been a  
 2 “sharp increase” in immigration arrests in and around courthouses, with reports of hundreds of  
 3 arrests since 2017 in at least 20 of Washington’s 39 counties.<sup>4</sup> Critically, ICE’s practice of  
 4 making courthouse arrests for *civil*—not *criminal*—immigration violations has swept up many  
 5 noncitizens, including people without criminal records, who are not facing criminal charges, and  
 6 who are in and around courthouses for a myriad of reasons important to the fair and efficient  
 7 administration of justice and public safety.<sup>5</sup> In other words, people in vulnerable populations  
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9 <sup>2</sup> Letter from Former Judges to Ronald D. Vitiello, Acting Director, U.S. Immigration &  
 10 Customs Enforcement, Dec. 12, 2018, at 1 n. 3  
 11 <https://www.aila.org/File/DownloadEmbeddedFile/78526> (“Former Judges Letter”)  
 12 (documenting ICE courthouse arrests in Arizona, California, Connecticut, Colorado, Illinois,  
 13 Florida, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New  
 14 York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah,  
 15 Vermont, and Washington).

16 <sup>3</sup> See, e.g., ICE Out of Courts Coalition, *Safeguarding the Integrity of Our Courts: The Impact of*  
 17 *ICE Courthouse Operations in New York State* at 3 (Mar. 2019) (“Safeguarding Report”),  
 18 [https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-](https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf)  
 19 [Our-Courts-Final-Report.pdf](https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf) (reporting a 1736% increase in ICE courthouse enforcement in and  
 20 around New York’s courts since 2016).

21 <sup>4</sup> Washington Immigrant Solidarity Network, *Immigration Enforcement at Washington State*  
 22 *Courthouses* at 1 (Mar. 8, 2019), [https://defensenet.org/wp-content/uploads/2019/09/Two-page-](https://defensenet.org/wp-content/uploads/2019/09/Two-page-Summary-Immigration-Enforcement-Around-WA-Courthouses-PDF-updated-9.13.19.pdf)  
 23 [Summary-Immigration-Enforcement-Around-WA-Courthouses-PDF-updated-9.13.19.pdf](https://defensenet.org/wp-content/uploads/2019/09/Two-page-Summary-Immigration-Enforcement-Around-WA-Courthouses-PDF-updated-9.13.19.pdf)  
 24 (documenting a “sharp increase” in incidents of federal immigration officials conducting arrests  
 25 for alleged civil immigration violations at state or local courthouses in Washington since 2017);  
 26 see Complaint ¶ 52 (noting hundreds of courthouse arrests since 2017 covering 20 of 39  
 27 Washington counties).

28 <sup>5</sup> See Center for Human Rights at the University of Washington, *Justice Compromised:*  
 29 *Immigration Arrests at Washington State Courthouses* (Oct. 16, 2017)  
 30 <https://jsis.washington.edu/humanrights/2019/10/16/ice-cbp-courthouse-arrests/16,2017>  
 31 (“Justice Compromised”) (noting, *inter alia*, that ICE frequently arrested those attending courts  
 32 in Washington for routine traffic matters); Lilly Fowler, *More immigrants report arrests at WA*  
 33 *courthouses, despite outcry*, Crosscut (Apr. 9, 2019), [https://crosscut.com/2019/04/more-](https://crosscut.com/2019/04/more-immigrants-report-arrests-wa-courthouses-despite-outcry)  
 34 [immigrants-report-arrests-wa-courthouses-despite-outcry](https://crosscut.com/2019/04/more-immigrants-report-arrests-wa-courthouses-despite-outcry) (citing incident of ICE arresting man  
 35 attempting to register his car at the courthouse); Bobby Allyn, *In Philly halls of justices, feds*  
 36 *seizing more immigrants with no criminal past*, WHYY (Dec. 20, 2017),  
 37 <https://whyy.org/segments/philly-halls-justice-feds-seizing-immigrants-no-criminal-past/>

1 who are most in need of ready access to the legal system to ensure their safety or provide for  
 2 basic needs suffer the most from this ill-conceived policy. Indeed, among the people ICE has  
 3 arrested in and around courthouses for civil immigration violations are: domestic violence  
 4 victims,<sup>6</sup> parents appearing in family court over child custody and support matters,<sup>7</sup> and  
 5 individuals appearing on other noncriminal legal matters.<sup>8</sup> The University of Washington's  
 6 Center for Human Rights reports that many noncitizens were attending proceedings relating to  
 7 low-level traffic matters when ICE arrested them.<sup>9</sup> ICE's tactics have had a direct and harmful  
 8 effect, forcing people to choose between forgoing participation in the justice system and risking  
 9 arrest.

10 Both the federal government's public comments and the Directive itself have fed this  
 11 chilling effect. Publicly and repeatedly, federal government officials have endorsed courthouse  
 12 arrests, creating the perception that ICE deliberately targets courthouses for civil immigration  
 13 enforcement. For example, in response to a letter from the Chief Justice of the California  
 14 Supreme Court expressing concern over reports that "immigration agents appear to be stalking  
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16 (describing arrest of noncriminal at family court); *see also* Motion for Preliminary Injunction at  
 17 4-5 ("MPI").

18 <sup>6</sup> Daniel Borunda, *Agent won't be charged in controversial arrest*, El Paso Times (Sept. 22,  
 19 2017, 10:22 PM), [https://www.elpasotimes.com/story/news/immigration/2017/09/22/agent-wont-](https://www.elpasotimes.com/story/news/immigration/2017/09/22/agent-wont-face-perjury-charge-controversial-el-paso-courthouse-arrest-group-says/695087001/)  
 20 [https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/)  
 21 [unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/).

22 <sup>7</sup> *See* Steve Coll, *When a Day in Court Is a Trap for Immigrants*, The New Yorker (Nov. 8,  
 23 2017), [https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-](https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants)  
 24 [immigrants](https://www.newyorker.com/news/daily-comment/when-a-day-in-court-is-a-trap-for-immigrants) (recounting arrest of Michigan father attending family court to seek custody of his  
 25 kids to protect them from their mother's abusive partner).

26 <sup>8</sup> *See* Justice Compromised, *supra* note 5; *see also* Complaint ¶¶ 54, 56, 61-63 (detailing ICE  
 27 courthouse arrests of noncitizens paying parking tickets or attending court after an accident).

28 <sup>9</sup> *See* Justice Compromised, *supra* note 5.

1 undocumented immigrants in our courthouses to make arrests,”<sup>10</sup> then-Attorney General Jeff  
 2 Sessions and Secretary of Homeland Security John F. Kelly in March 2017 publicly defended  
 3 ICE courthouse arrests, describing them as necessary and prudent because everyone who enters  
 4 the courthouse is screened for weapons.<sup>11</sup> An April 2017 statement to reporters by a Department  
 5 of Homeland Security spokesperson went further, stating that no courthouse visitors—even  
 6 victims of crimes—are off-limits: “Just because they’re a victim in a certain case does not mean  
 7 there’s not something in their background that could cause them to be a removable alien . . . .  
 8 Just because they’re a witness doesn’t mean they might not pose a security threat for other  
 9 reasons.”<sup>12</sup> A September 2017 statement by an ICE spokesperson confirmed that civil  
 10 courthouse arrests would continue indefinitely: “If that’s the only place we can find them, why  
 11 wouldn’t we? . . . We will continue to make those arrests. . . . ICE plans to continue arresting  
 12 individuals in courthouse environments.”<sup>13</sup> And just recently, in November 2019, Attorney  
 13 General William Barr and Acting DHS Secretary Chad Wolf sent a letter to then-Chief Justice  
 14 Mary Fairhurst and Oregon Supreme Court Chief Justice Martha Walters stating that “ICE and  
 15 CBP officers are not subject to state rules that purport to resist ICE and CBP from making

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16  
 17 <sup>10</sup> Letter from Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of California to  
 18 Attorney General Jefferson B. Sessions II & Secretary of Homeland Security John F. Kelly, Mar.  
 19 16, 2017, [https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-](https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses)  
 20 [immigration-enforcement-tactics-at-california-courthouses](https://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses).

21 <sup>11</sup> Letter from Attorney General Jefferson B. Sessions II & Secretary of Homeland Security John  
 22 F. Kelly to the Hon. Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of California, Mar.  
 23 29, 2017, <https://www.politico.com/f/?id=0000015b-23c8-d874-addf-33e83a8c0001>.

24 <sup>12</sup> Devlin Barrett, *DHS: Immigration Agents May Arrest Crime Victims, Witnesses at*  
 25 *Courthouses*, Wash. Post (Apr. 4, 2017), [https://www.washingtonpost.com/world/national-](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html)  
 26 [security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html)  
 27 [courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08\\_story.html](https://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html).

28 <sup>13</sup> Linley Sanders, *Federal Immigration Officials Will Continue Nabbing Suspects at New York*  
 29 *Courthouses to Subvert Sanctuary City Status*, Newsweek (Sept. 15, 2017, 2:09 PM),  
 30 [https://www.newsweek.com/new-york-immigration-courthouse-arrests-continue-sanctuary-city-](https://www.newsweek.com/new-york-immigration-courthouse-arrests-continue-sanctuary-city-665797)  
 31 [665797](https://www.newsweek.com/new-york-immigration-courthouse-arrests-continue-sanctuary-city-665797).

1 administrative arrests on property that is otherwise open to the public.”<sup>14</sup> In other words:  
 2 Washington’s courthouses.

3 While the Directive provides some qualified limitations on ICE arrests in or near  
 4 courthouses, these are not enough to prevent the already significant chilling effect that has  
 5 discouraged noncitizens and those close to them from participating in the judicial process.  
 6 Specifically, the Directive identifies certain categories of people as targets, and is limited  
 7 principally in that it permits individual ICE officers and agents to exercise discretion, on a case-  
 8 by-case basis, in determining whether to arrest non-targets. Such vague permission to exercise  
 9 discretion, however, does not assuage the fears of noncitizens considering whether to come to  
 10 court, particularly against a backdrop of the increasing number of arrests. The Directive’s only  
 11 other limitation is that it also directs ICE officers to avoid courthouses and areas of courthouses  
 12 “dedicated to non-criminal (e.g., family court, small claims court) proceedings” and to make  
 13 arrests in “non-public areas.”<sup>15</sup> But this limitation is often meaningless because many  
 14 courthouses utilize the same physical space for family, civil, and criminal courts.<sup>16</sup> There may  
 15 be no “non-public” places available to make arrests. The Directive’s purported limitations, to the  
 16 extent they are even honored,<sup>17</sup> ignore the realities of court operations and do nothing to mitigate

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 19 <sup>14</sup> Letter from William P. Barr, U.S. Attorney Gen., & Chad F. Wolf, Acting Sec’y of Homeland  
 20 Sec., to Martha Walters, Chief Justice, Or. Supreme Court, & Mary E. Fairhurst, Chief Justice,  
 Wash. Supreme Court, Nov. 21, 2019, <https://www.justice.gov/ag/page/file/1219556/download>.

21 <sup>15</sup> Directive, *supra* note 1, at 2.

22 <sup>16</sup> *See, e.g.*, Compl. ¶ 65 (describing how DHS arrested a man in a Grant County courthouse  
 23 there to transfer a vehicle to his name at the Department of Licensing after they overheard him  
 24 speaking Spanish and questioned him on the courthouse steps); MPI at 18-19 (detailing how a  
 single courthouse building may be the forum for registering a vehicle, obtaining a marriage  
 license, recording a will, or accessing other local services).

25 <sup>17</sup> *See* Compl. ¶ 46 (describing how a CBP agent’s email to local employees requesting  
 26 misdemeanor court dockets suggests that CBP “had no particular target in mind and was using  
 the court docket as the starting place for the next day’s enforcement action”).

1 an already pervasive climate of fear caused by dramatically escalating courthouse arrests and the  
 2 federal government's continued public statements supporting ICE civil arrests in and around  
 3 courthouses.<sup>18</sup>

4 Moreover, data and anecdotal evidence collected since the Directive's issuance confirm  
 5 that individuals have avoided courthouses because of the federal government's actions,  
 6 messages, and the Directive. In a July 2019 survey conducted by the Washington State Coalition  
 7 Against Domestic Violence and reported in *Justice Compromised*, 78% of domestic violence  
 8 legal advocates interviewed reported that immigrant survivors have concerns about seeking civil  
 9 protection orders due to the possible presence of immigration authorities in court.<sup>19</sup> Similar  
 10 results have been reported nationwide. A 2019 report by Ceres Policy Research and the  
 11 Immigration Defense Project surveyed 1,000 people in mixed immigration status families  
 12 throughout the country. The Ceres study found that fear of ICE would cause 60% of respondents  
 13 to avoid attending court as a witness even if they were a victim of a crime.<sup>20</sup> Over 33% of  
 14 respondents reported that they would avoid appearing in *any* hearing because of a fear that ICE  
 15 would take their children away. And, out of fear of ICE: (1) 37% of respondents reported that  
 16 they would avoid appearing in a child welfare hearing in family court; (2) 40% reported that they  
 17 would avoid appearing in adult criminal court as a defendant or because of a bench warrant; and

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 19 <sup>18</sup> See, e.g., Emily Saul, *ICE sued for 'unlawful and unconstitutional' civil arrests*, N.Y. Post  
 20 (Sept. 25, 2019, 3:27 PM), <https://nypost.com/2019/09/25/ice-sued-for-unlawful-and-unconstitutional-civil-arrests/> (quoting an ICE spokesperson after a lawsuit was filed over the  
 21 agency's arrest practices in courts: "ICE's enforcement activities at courthouses are consistent  
 22 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."); Letter from Barr & Wolf, *supra* note 14.

23 <sup>19</sup> See *Justice Compromised*, *supra* note 5.

24 <sup>20</sup> Angela Irvine, Ph. D. et al., *The Chilling Effect of ICE Courthouse Arrests: How Immigration*  
 25 *and Customs Enforcement (ICE) Raids Deter Immigrants from Attending Child Welfare,*  
 26 *Domestic Violence, Adult Criminal, and Youth Court Hearings* at 8 (Ceres Policy Research Oct.  
 2019) ("Ceres Report").

1 (3) 35% reported that they would avoid attending youth court with a child making an  
2 appearance.<sup>21</sup>

3 Finally, and even more troubling, nearly 50% of court-involved survey respondents  
4 reported a belief that judges and prosecutors help ICE with arrests.<sup>22</sup> The public perception that  
5 the judiciary works hand-in-glove with ICE to arrest individuals in and around courthouses  
6 stokes a distrust that makes it impossible for judges to effectively manage their courtrooms,  
7 administer justice, and maintain their reputations as impartial arbiters of the law.

## 8 **II. THE CHILLING EFFECT IMPEDES THE ADMINISTRATION OF JUSTICE**

9 Judges, and courts more broadly, cannot effectively administer justice in the face of this  
10 chilling effect. Indeed, in the wake of the Directive, 68 current and former judges from 23 states,  
11 including amici Justices Ireland and Bridge, asked ICE to treat courthouses as it does other  
12 “sensitive locations”—schools, hospitals, places of worship, religious ceremonies, and public  
13 demonstrations—and prohibit courthouse arrests absent “exigent circumstances,” such as risks of  
14 violence and national security matters.<sup>23</sup> These jurists, like amici, recognized that “judges  
15 simply cannot do their jobs – and our justice system cannot function effectively – if victims,  
16 defendants, witnesses, and family members do not feel secure in accessing the courthouse” and

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17  
18 <sup>21</sup> *Id.* at 8-9. The Complaint includes instances of this effect. *See, e.g.*, Compl. ¶ 77 (out of fear of  
19 ICE arrest, juvenile’s brother did not appear at court hearing for home release from state custody  
20 to attest he could support his brother).

21 <sup>22</sup> Ceres Report, *supra* note 20, at 10 (reporting 48% of court-involved respondents believed that  
22 *judges* were helping ICE arrest people and 49% believed that *prosecutors* were helping ICE  
23 make arrests); *see* MPI at 22 (describing impact of the Directive on trust in courts and law  
24 enforcement).

25 <sup>23</sup> Memorandum from Julie L. Myers, Assistant Secretary, U.S. Immigration & Customs  
26 Enforcement, to All Field Office Directors & All Special Agents in Charge, Field Guidance on  
27 Enforcement Actions or Investigative Activities At or Near Sensitive Community Locations  
(July 3, 2008); Memorandum from James A. Puleo, Acting Associate Commissioner of the  
Office of Operations, U.S. Immigration & Naturalization Serv., to District Directors & Chief  
Patrol Agents, Enforcement Activities at Schools, Places of Worship, or at funerals or other  
religious ceremonies (May 17, 1993).

1 that “this sense of security requires that courts remain open to all and, just as important, that  
 2 courts *appear* open to all.”<sup>24</sup> In April 2019, Chief Justice Mary E. Fairhurst wrote then-Acting  
 3 Secretary of Homeland Security McAleenan to report that, despite the promulgation of the  
 4 Directive, CBP’s enforcement operations at or near local courthouses had continued to “impact  
 5 court proceedings by deterring individuals from seeking the services of our courts, which in turn,  
 6 curtails the capacity of our courts to function effectively.”<sup>25</sup> Chief Justice Fairhurst explained  
 7 that “these operations have not been narrowly targeted to those class of dangerous individuals  
 8 identified in the ICE Directive,” further alarming those who need to access court services.<sup>26</sup>

9 *First*, the chilling effect discourages crucial witnesses from appearing in court, frustrating  
 10 the prosecution of serious crimes and allowing dangerous perpetrators to avoid being held  
 11 responsible for their crimes.<sup>27</sup> Crime victims and witnesses too afraid of ICE to come to court  
 12  
 13

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14 <sup>24</sup> Former Judges Letter, *supra* note 2, at 1-2 (emphasis in original); *see also* U.S. Commission  
 15 on Civil Rights Expresses Concern with Immigrants’ Access to Justice (Apr. 24, 2017),  
 16 [https://www.usccr.gov/press/2017/Statement\\_04-24-2017-Immigrant-Access-Justice.pdf](https://www.usccr.gov/press/2017/Statement_04-24-2017-Immigrant-Access-Justice.pdf) (noting  
 17 that “[s]tationing ICE agents in local courthouses instills needless additional fear and anxiety  
 18 within immigrant communities, discourages interacting with the judicial system, and endangers  
 19 the safety of entire communities” and “studies have shown that public safety is in fact  
 20 undermined when members of the community are fearful of local law enforcement and therefore  
 21 less likely ‘to report crimes, make official statements to police or testify in court’” (citation  
 22 omitted)); Letter from Washington Chief Justice Mary E. Fairhurst to Secretary John F. Kelly,  
 23 May 22, 2017,  
 24 [https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSI  
 CE032217.pdf](https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KellyJohnDHSI%20CE032217.pdf); Letter from Washington State Bar Association Board of Governors to Secretary  
 John F. Kelly, June 1, 2017, [https://crosscut.com/sites/default/files/files/proposed-rule-on-  
 courthouse-arrests-.pdf](https://crosscut.com/sites/default/files/files/proposed-rule-on-courthouse-arrests-.pdf) at PDF p. 11.

25 <sup>25</sup> Letter from Washington Chief Justice Mary E. Fairhurst to Secretary Kevin K. McAleenan,  
 26 Apr. 15, 2019  
 27 [https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KevinMcAleena  
 nUSCustomsBorderProtection041519.pdf](https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/KevinMcAleena%20nUSCustomsBorderProtection041519.pdf).

28 <sup>26</sup> *Id.*

<sup>27</sup> Ceres Report, *supra* note 20, at 9-11.

1 include domestic violence victims seeking orders of protection,<sup>28</sup> victims robbed at gun- and  
 2 knife-point,<sup>29</sup> the mother of a sexual abuse victim,<sup>30</sup> and an eyewitness to an assault.<sup>31</sup> Indeed, in  
 3 a July 2019 study by the Washington State Coalition Against Domestic Violence, 83% of  
 4 practitioners surveyed reported that immigrant survivors they worked with had dropped civil or  
 5 criminal cases related to abuse due to fear and the most common reason cited for this fear (73%)  
 6 was concern about alerting immigration authorities.<sup>32</sup> And crimes targeting immigrant  
 7 communities—such as when individuals fraudulently represent themselves as qualified to offer  
 8 legal advice or services concerning immigration, fraudulent housing schemes, and wage theft—  
 9 become almost impossible to pursue when witnesses are afraid to cooperate with law

11 \_\_\_\_\_  
 12 <sup>28</sup> Asian-Pacific Institute on Gender Based Violence, *Immigrant Survivors Fear Reporting*  
 13 *Violence* (June 2019),  
 14 <https://static1.squarespace.com/static/5b9f1d48da02bc44473c36f1/t/5d02ea986a2e6d0001537f31/1560472217547/May+2019+Advocate+Survey+Key+Findings.pdf>; Dan Satterberg,  
 15 *Crackdown on Immigrants Undermines Public Safety*, Seattle Times (Mar. 24, 2017, 2:20 PM),  
 16 <https://www.seattletimes.com/opinion/crackdown-on-immigrants-undermines-public-safety/>  
 17 (King County Prosecuting Attorney noting importance of undocumented immigrants to office’s  
 18 prosecutions); *see also* MPI at 18 (describing deterrent effect of the Directive on survivors of  
 19 domestic violence); Mark Joseph Stern, *ICE Agents Arrest Alleged Victim of Domestic Violence,*  
 20 *Likely Acting on Tip From Her Abuser*, Slate (Feb. 16, 2017, 4:47 PM), [https://slate.com/news-](https://slate.com/news-and-politics/2017/02/ice-agents-arrest-alleged-victim-of-domestic-violence.html)  
 21 [and-politics/2017/02/ice-agents-arrest-alleged-victim-of-domestic-violence.html](https://slate.com/news-and-politics/2017/02/ice-agents-arrest-alleged-victim-of-domestic-violence.html).

18 <sup>29</sup> Safeguarding Report, *supra* note 3, at 12.

19 <sup>30</sup> *See* Eric Gonzalez & Judy Harris Kluger, *How ICE Harms the Justice System: The Feds’*  
 20 *Aggressive Tactics in Our Courthouses are Emboldening Violent Criminals*, N.Y. Daily News  
 21 (Aug. 2, 2019, 5:00 AM) [https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-](https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-justice-system-20180801-story.html)  
 22 [justice-system-20180801-story.html](https://www.nydailynews.com/opinion/ny-oped-how-ice-harms-the-justice-system-20180801-story.html) (“Perhaps most disturbingly, the Special Victims Bureau is  
 23 prosecuting a case involving an undocumented single mother who witnessed the sexual abuse of  
 24 her adolescent daughter. The mother struggled with whether to come forward because she feared  
 25 her daughter would be worse off if her mother were deported after cooperating with law  
 26 enforcement.”).

24 <sup>31</sup> Safeguarding Report, *supra* note 3, at 13.

25 <sup>32</sup> Justice Compromised, *supra* note 5; *see also* Compl. ¶ 74 (describing reports from Northwest  
 26 Justice Project of clients frequently refusing to move forward with civil legal claims for fear of  
 27 immigration arrest).

1 enforcement and appear in court.<sup>33</sup>

2       *Second*, the chilling effect inhibits judges' ability to fairly administer justice for criminal  
 3 defendants. Criminal defendants fearful of arrest may fail to appear and defend themselves, even  
 4 when they are innocent or facing minor charges that lend themselves to dismissal or noncriminal  
 5 disposition.<sup>34</sup> Some defendants have taken less favorable pleas to avoid returning to court for  
 6 fear of being apprehended by ICE.<sup>35</sup> Reports of domestic violence victims afraid to defend  
 7 themselves in court against retaliatory charges (a common tactic of abusers) are especially  
 8 concerning.<sup>36</sup> Defendants may also avoid appearing for required check-ins with their probation  
 9 officers to comply with the terms of their release out of fear that the officer will inform ICE of  
 10 the scheduled check-in dates to facilitate arrest.<sup>37</sup>

11       *Third*, the chilling effect discourages civil litigants from making meritorious civil claims.  
 12 For instance, in Washington, domestic violence survivors fear filing for divorce and civil

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16 <sup>33</sup> Alexandra Ricks, *Latinx Immigrant Crime Victims Fear Seeking Help*, Urban Inst. (Sept. 25,  
 17 2017), <https://www.urban.org/urban-wire/latinx-immigrant-crime-victims-fear-seeking-help> and  
 18 Anna M. Hill & Susan E. Reed, *Immigration Scams: Good Feelings and Double-Dealing*, Am.  
 19 Bar Assoc. (Oct. 25, 2017),  
[https://www.americanbar.org/groups/young\\_lawyers/publications/tyl/topics/immigration-](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/immigration-law/immigration-scams-good-feelings-and-doubledealing/)  
[law/immigration-scams-good-feelings-and-doubledealing/](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/immigration-law/immigration-scams-good-feelings-and-doubledealing/).

20 <sup>34</sup> See Compl. ¶ 71 (describing a noncitizen's failure to appear for a post-arrest hearing after  
 hearing that DHS had arrested a noncitizen at that courthouse).

21 <sup>35</sup> Safeguarding Report, *supra* note 3, at 40.

22 <sup>36</sup> Terry Lawson, *ICE Out of Courts: Why it Matters, in Is America Fulfilling Its Promise?*  
 23 Safeguarding Legal Protections for Immigrants 113, 117 (Scott Fein & Rose Mary Bailly ed.,  
 2019).

24 <sup>37</sup> Patrick Gordon, Kelley Grad, & Shaqueil Stephenson, *Obstructing Justice: The Chilling Effect*  
 25 *of ICE's Arrests of Immigrants at Pennsylvania Courthouses*, Temple Law School at 8-9 (Jan.  
 26 2019), [https://www2.law.temple.edu/cs/publication/obstructing-justice-the-chilling-effect-of-](https://www2.law.temple.edu/cs/publication/obstructing-justice-the-chilling-effect-of-ices-arrests-of-immigrants-at-pennsylvanias-courthouses/)  
[ices-arrests-of-immigrants-at-pennsylvanias-courthouses/](https://www2.law.temple.edu/cs/publication/obstructing-justice-the-chilling-effect-of-ices-arrests-of-immigrants-at-pennsylvanias-courthouses/).

1 protection orders in family courts.<sup>38</sup> And in Massachusetts, local immigrant advocates observed  
 2 that victims of civil fraud, wage theft, and illegal evictions have also been increasingly refusing  
 3 to pursue court action over fears of the immigration consequences.<sup>39</sup> Additionally, when civil  
 4 litigants do not appear for a hearing, either because of fear of court or because of a courthouse  
 5 arrest, they could face an improper or unnecessary default judgment.<sup>40</sup>

### 6 **III. APART FROM THE CHILLING EFFECT, ICE COURTHOUSE ARRESTS OBSTRUCT THE** 7 **JUDICIAL PROCESS**

8 Even when witnesses, defendants, and other stakeholders are not deterred from  
 9 cooperating with law enforcement and coming to court, ICE's presence in and around  
 10 courthouses still obstructs the judicial process.

11 *First*, ICE arrests of criminal defendants in or near courthouses undermine judges' ability  
 12 to fairly and efficiently administer justice. Advocates report that noncitizen clients arrested by  
 13 ICE are often transferred to detention facilities out of state, making it difficult or impossible for  
 14 them to communicate with their lawyers and defend themselves.<sup>41</sup> In one case, ICE arrested and  
 15 removed a defendant appearing in court on a noncriminal trespassing charge, even though he had  
 16 been determined incompetent to stand trial due to "learning disabilities, physical illness, and a  
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 18

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19 <sup>38</sup> Compl. ¶ 74; *see also* Justice Compromised, *supra* note 5 (citing study of Washington legal  
 20 advocates to conclude that out of immigrant survivors that dropped civil or criminal cases, the  
 most common reason cited was "concern about alerting immigration authorities").

21 <sup>39</sup> Compl. ¶¶ 70-72, *see generally* Ryan v. U.S. Immigration and Customs Enforcement, No.  
 22 1:19-cv-11003 (D. Mass. Apr. 29, 2019), ECF No. 1.

23 <sup>40</sup> *See* Justice Compromised, *supra* note 5 (stating that although initial court appearances may  
 24 "stem from very minor violations, ... immigrants' reticence to appear in court can trigger far  
 more serious consequences").

25 <sup>41</sup> New York City Bar, *Recommendations Regarding Federal Immigration Enforcement in New*  
*York State Courthouses* at 6 (July 2018, Appendix updated Oct. 10, 2019),  
 26 <https://s3.amazonaws.com/documents.nycbar.org/files/2017291-ICEcourthouse.pdf>.

1 history of trauma.”<sup>42</sup> Long periods of detention likewise delay justice for victims,<sup>43</sup> and could  
 2 lead to a loss of witnesses or evidence with the passage of time. ICE’s presence in courthouses  
 3 also hampers litigants’ ability to confer with their attorneys while in the courthouse, which is  
 4 essential to the efficient administration of justice. For example, a recent news report from  
 5 Vancouver, Washington, revealed that an ICE agent eavesdropped on a conversation between a  
 6 noncitizen and his lawyer in a courtroom hallway, ascertained his immigration status, and  
 7 arrested him while he was driving away from the courthouse.<sup>44</sup>

8 ICE arrests may also needlessly escalate charges for defendants, meaning additional  
 9 costly and unnecessary involvement in the criminal justice system. To illustrate, in a case in  
 10 which ICE arrests a defendant in or around a courthouse before a hearing, the judge may not be  
 11 aware that this has occurred and may issue a bench warrant, stalling resolution of the case and  
 12 leading to another arrest if law enforcement later apprehends the defendant.<sup>45</sup> For example, in  
 13 December 2018, ICE agents arrested a man outside of Seattle Municipal Court before his court  
 14 appearance on a misdemeanor shoplifting charge.<sup>46</sup> Not knowing the reason for his absence, the  
 15 judge issued a warrant for his failure to appear and the case was delayed.<sup>47</sup> Attorneys who work  
 16 with immigrants throughout Washington have expressed concern that fearful clients will miss  
 17

18 \_\_\_\_\_  
 19 <sup>42</sup> Lawson, *ICE Out of Courts*, *supra* note 36, at 113, 116.

20 <sup>43</sup> Former Judges Letter, *supra* note 2, at 2-3.

21 <sup>44</sup> Sydney Brownstone, *Vancouver Immigrant Claims ICE Arrested Him After Eavesdropping on*  
 22 *Him and His Lawyer*, *The Stranger* (Apr. 4, 2018),  
[https://www.thestranger.com/slog/2018/04/04/26000666/vancouver-immigrant-claims-ice-  
 22 arrested-him-after-eavesdropping-on-him-and-his-lawyer](https://www.thestranger.com/slog/2018/04/04/26000666/vancouver-immigrant-claims-ice-arrested-him-after-eavesdropping-on-him-and-his-lawyer); *see* Compl. ¶ 65.

23 <sup>45</sup> *See* MPI at 19 (describing impact of arrests before criminal proceedings).

24 <sup>46</sup> Complaint ¶ 58.

25 <sup>47</sup> *Id.*; *see also id.* ¶ 73 (describing arrest warrant issued to man who left the Clark County  
 26 District Court without attending his misdemeanor hearing upon observing ICE agents at the  
 27 courthouse).

1 their court dates and receive bench warrants.<sup>48</sup> ICE arrests additionally can prevent defendants  
 2 from qualifying for noncriminal alternative dispositions that allow courts to focus on the most  
 3 serious offenders.<sup>49</sup> Finally, ICE arrests have even caused some defendants to request detention,  
 4 rather than release, because they know ICE officers are waiting outside the courtroom.<sup>50</sup> In all of  
 5 these cases, arrests in or near courthouses obstruct judges' ability to fairly and efficiently manage  
 6 their cases.

7 *Second*, delays and scheduling changes resulting from ICE actions disrupt state court  
 8 systems. There are 39 district courts, 39 superior courts, three appellate courts, and dozens of  
 9 municipal courts in the Washington state court system, with two million new cases filed each  
 10 year in district and municipal courts and over 250,000 new cases filed in the superior courts.<sup>51</sup>  
 11 When defendants or witnesses fail to appear because they are afraid, or are actually arrested  
 12 before a court hearing can occur, the state absorbs the cost by requiring state employees—judges,  
 13 lawyers, court reporters, interpreters, and security personnel—to spend their time and resources  
 14 addressing otherwise unnecessary disruptions. In one report, over half of the judges surveyed  
 15

16 <sup>48</sup> See, e.g., Sara Gentzler, *ICE arrest at Thurston County courthouse begs the question: What*  
 17 *does sanctuary mean?* (July 6, 2019), <https://www.theolympian.com/news/local/article232346022.html>.

18 <sup>49</sup> Ryan Devereaux, *ICE Arrests at New York City Courthouses are Increasing – This Video*  
 19 *Captures One*, The Intercept (Nov. 2, 2018, 2:09 PM), [https://theintercept.com/2018/11/02/ice-](https://theintercept.com/2018/11/02/ice-arrests-video-nyc-courts)  
 20 [arrests-video-nyc-courts](https://theintercept.com/2018/11/02/ice-arrests-video-nyc-courts) (reporting on the arrest of a defendant who appeared in court on a  
 21 misdemeanor but who, according to his lawyer, likely could no longer settle his case for a  
 22 noncriminal disposition while in ICE custody).

23 <sup>50</sup> Christina Carrega, *Defense attorneys protest outside Brooklyn courthouse after ICE cuffs one*  
 24 *lawyer's client*, N.Y. Daily News (Nov. 28, 2017, 2:51 PM), [http://www.nydailynews.com/new-](http://www.nydailynews.com/new-york/brooklyn/defense-attorneys-protest-client-ice-arrest-brooklyn-article-1.3663018)  
 25 [york/brooklyn/defense-attorneys-protest-client-ice-arrest-brooklyn-article-1.3663018](http://www.nydailynews.com/new-york/brooklyn/defense-attorneys-protest-client-ice-arrest-brooklyn-article-1.3663018).

26 <sup>51</sup> Washington Courts, *Courts of Limited Jurisdiction* (last visited Jan. 15, 2020)  
 27 [https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo\\_jury.display&altMenu=Citi&folde](https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=limited)  
 28 [rID=jury\\_guide&fileID=limited](https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=limited); Washington Courts, *Superior Court Annual Caseload Reports*  
 at 2 (last visited Jan. 15, 2020),  
<https://www.courts.wa.gov/caseload/content/pdf/superior/Annual/filyr.pdf>.

1 nationwide reported interruptions in their cases due to an immigrant crime survivor’s fear of  
 2 coming to court.<sup>52</sup> And judges around the country have resoundingly raised concerns about the  
 3 drain on scarce judicial resources caused by ICE arrests in or near courthouses.<sup>53</sup>

4 *Third*, because the Directive mandates that courthouse arrests “be conducted in  
 5 collaboration with court security staff, and utilize the court building’s non-public entrances and  
 6 exits,”<sup>54</sup> it requires state court security personnel to devote resources and attention to ICE  
 7 courthouse activity, which interferes with normal court security functions.<sup>55</sup> Given the  
 8

9  
 10 <sup>52</sup> American Civil Liberties Union, *Freezing Out Justice: How immigration arrests at*  
*courthouses are undermining the justice system* at 2 (2018),  
 11 <https://www.aclu.org/report/freezing-out-justice>.

12 <sup>53</sup> See, e.g., Former Judges Letter, *supra* note 2, at 2 (“The environment created by these [ICE  
 13 courthouse] incidents, in addition to the delays and rescheduling that result when fear prevents  
 14 parties from appearing in court, only makes it more difficult for judges and court staff to do their  
 15 jobs.”); Tani G. Cantil-Sakauye, *California chief justice: The courthouse is not the place for*  
 16 *immigration enforcement*, Wash. Post (Apr. 19, 2017),  
 17 [https://www.washingtonpost.com/opinions/california-chief-justice-the-courthouse-is-not-the-](https://www.washingtonpost.com/opinions/california-chief-justice-the-courthouse-is-not-the-place-for-immigration-enforcement/2017/04/19/b35d5320-2054-11e7-be2a-3a1fb24d4671_story.html)  
 18 [place-for-immigration-enforcement/2017/04/19/b35d5320-2054-11e7-be2a-](https://www.washingtonpost.com/opinions/california-chief-justice-the-courthouse-is-not-the-place-for-immigration-enforcement/2017/04/19/b35d5320-2054-11e7-be2a-3a1fb24d4671_story.html)  
 19 [3a1fb24d4671\\_story.html](https://www.washingtonpost.com/opinions/california-chief-justice-the-courthouse-is-not-the-place-for-immigration-enforcement/2017/04/19/b35d5320-2054-11e7-be2a-3a1fb24d4671_story.html) (“ [I]mmigration arrests, or the fear of arrests at or near courthouses,  
 20 disrupt court activities and the lives of those seeking justice.”); Letter from Washington Chief  
 21 Justice Mary E. Fairhurst to Secretary John F. Kelly, at 1-2, Mar. 22, 2017,  
 22 <https://www.ncsc.org/~media/Files/PDF/Topics/ICE/WA%20Letter.ashx> (“When people are  
 23 afraid to appear for court hearings, out of fear of apprehension by immigration officials, their  
 24 ability to access justices is compromised. Their absence curtails the capacity of our judges, clerks  
 25 and court personnel to function effectively.”); see also MPI at 19-20.

26 <sup>54</sup> Directive, *supra* note 1, at 2.

27 <sup>55</sup> See Victoria Bekiempis, *Undocumented immigrant arrests surge inside and outside of NYC*  
 28 *courthouses*, N.Y. Daily News (May 2, 2018, 9:01 PM), [https://www.nydailynews.com/new-](https://www.nydailynews.com/new-york/immigrant-arrests-surge-nyc-courthouses-article-1.3968590)  
 29 [york/immigrant-arrests-surge-nyc-courthouses-article-1.3968590](https://www.nydailynews.com/new-york/immigrant-arrests-surge-nyc-courthouses-article-1.3968590) (reporting on a cell phone  
 30 video appearing to show uniformed New York State Court Officers assisting in the ICE arrest of  
 31 a defendant outside the Queens County Criminal Court); Mark Joseph Stern, *ICE Agents Are*  
 32 *Using Pennsylvania’s Courthouses as a Stalking Ground. The State Supreme Court Can Stop*  
 33 *Them*, Slate (Jan. 31, 2019), [https://slate.com/news-and-politics/2019/01/ice-agents-](https://slate.com/news-and-politics/2019/01/ice-agents-pennsylvania-courthouse-arrests-domestic-violence-victims.html)  
 34 [pennsylvania-courthouse-arrests-domestic-violence-victims.html](https://slate.com/news-and-politics/2019/01/ice-agents-pennsylvania-courthouse-arrests-domestic-violence-victims.html) (reporting that “ICE agents  
 35 stake out Pennsylvania courts and persuade personnel to reveal the immigration status of  
 36 plaintiffs, defendants, parolees—anyone with business before a judge”).

1 Directive’s stated purpose to “*reduce* safety risks to the public, target alien(s), and ICE officers  
2 and agents” by conducting ICE arrests in courthouses,<sup>56</sup> it is particularly troubling that ICE  
3 arrests appear instead to be contributing to *disorder* in courthouses<sup>57</sup> and distracting court  
4 security personnel from their primary focus—public safety.

5 **IV. STATE POLICIES CANNOT OVERCOME THE HARMFUL IMPACT OF ICE COURTHOUSE**  
6 **ARRESTS**

7 While stakeholders around the country have implemented state policies designed to curb  
8 negative consequences flowing from ICE courthouse activity and its chilling effect, those  
9 policies cannot forestall all such activity.<sup>58</sup> Washington is no exception. Judicial relief,  
10 however, could create the unequivocal protection needed to restore public confidence in the  
11 courts.

12 Here, King County Superior Court enacted a policy banning execution of arrest warrants  
13 based on immigration status in courtrooms unless directly ordered by the presiding judicial  
14 officer. The policy also states that these arrests “shall be discouraged in . . . courthouses unless  
15 the public’s safety is at immediate risk.”<sup>59</sup> Despite the fact that this policy was enacted in 2008,  
16

17 <sup>56</sup> Directive, *supra* note 1, at 1 (emphasis added).

18 <sup>57</sup> See Sara Gentzler, *Thurston County Leaders Meet to Discuss Courthouse ICE Arrest and Next*  
19 *Steps*, *The Olympian* (Sept. 8, 2019, 6:00 AM)  
20 <https://www.theolympian.com/news/local/article234805392.html> (quoting Judge Buckley  
21 describing an ICE arrest at Thurston County Superior Court as a “kidnapping”); Justice  
22 Compromised, *supra* note 5 (detailing ICE misconduct in courthouses, including “refusing to  
23 identify themselves; declining to present warrants; and eavesdropping on conversations between  
24 attorneys and their clients to discern a target’s place of birth”); *see also* Complaint ¶¶ 50-51  
(describing disruptions caused by the presence of plain clothes DHS agents in courthouses); MPI  
25 at 4-5, 20-21 (describing use of force in courthouse arrests).

26 <sup>58</sup> See, e.g., Nicholas Pugliese, *New rules seek to limit ICE arrests in N.J. courthouses*, *WHYY*  
27 (May 24, 2019), <https://whyy.org/articles/new-rules-seek-to-limit-ice-arrests-in-n-j-courthouses/>.

28 <sup>59</sup> King County Superior Court Judges, *Court Policy: No Courtroom Arrests Based on*  
29 *Immigration Status* (Apr. 22, 2008)  
30 [https://www.ilrc.org/sites/default/files/resources/king\\_county\\_courts.pdf](https://www.ilrc.org/sites/default/files/resources/king_county_courts.pdf).

1 and that the Seattle Municipal Court enacted a similar policy in 2017, ICE arrests in Washington  
2 courthouses continue unabated.<sup>60</sup>

3 Washington is currently considering a court rule, Proposed GR 38, that would prohibit  
4 civil arrests without a judicial warrant or judicial order for arrest while the targeted person is  
5 inside or travelling to or from a Washington court of law.<sup>61</sup> As noted above, the federal  
6 government has taken the unequivocal position that neither ICE nor CPB officers can be subject  
7 to such a state court rule.<sup>62</sup> The proposed rule also relies on state court personnel to navigate  
8 complex legal distinctions, leading to uneven and imperfect policy implementation. While the  
9 proposed rule permits ICE arrests in courthouses based only on *judicial* warrants, ICE officers  
10 can arrest people outside of court based on less stringent *administrative* warrants. Reports from  
11 New York, which adopted a similar court policy, show that court personnel often do not  
12 recognize or understand warrant distinctions, resulting in ICE courthouse arrests that the court  
13 policy otherwise would have prohibited.<sup>63</sup> Thus, even if Proposed GR 38 were adopted, the need  
14 for an injunction is not obviated. And the fact remains that GR 38 is only a proposed rule, and  
15 this Court should not shy away from issuing an injunction because there is a proposed rule that  
16 *might* address *some* aspects of the problematic actions of ICE and CPB officers.

17 Despite Washington's efforts, ICE's enforcement activities in and around courthouses  
18 continue to deter witnesses, victims, and litigants, and Washington's noncitizens and those close  
19 to them continue to avoid court. Injunctive relief is essential to restoring immigrants' access to  
20

21 \_\_\_\_\_  
22 <sup>60</sup> See Compl. ¶¶ 52-66; Justice Compromised, *supra* note 5, at App'x 1 (citing six instances of  
23 courthouse arrests in King County in 2017-2018); Municipal Court of Seattle Judicial Policies  
24 and Procedures, Apr. 7, 2017,  
<http://www.seattle.gov/Documents/Departments/Court/ImmigrationPolicy2017.pdf>.

25 <sup>61</sup> Washington Courts, Proposed New General Rule 38,  
[https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=2718](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2718).

26 <sup>62</sup> Letter from Barr & Wolf, *supra* note 14.

27 <sup>63</sup> See Safeguarding Report, *supra* note 3, at 61-62.

1 Washington's courts and, thus, to ensuring the fair and efficient administration of justice.

2 **CONCLUSION**

3 For the foregoing reasons, Plaintiff's motion for a preliminary injunction should be  
4 granted.

5 Dated: Seattle, Washington  
6 January 22, 2020

7 Respectfully submitted,

8 /s/ Robert S. Chang

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**APPENDIX: LIST OF AMICI**

- Justice Bobbe Bridge (ret.), Washington Supreme Court and King County Superior Court
- Judge Harriett M. Cody (ret.), King County Superior Court
- Judge Ronald E. Cox (ret.), Washington Court of Appeals, Division I
- Judge Tari S. Eitzen (ret.), Spokane County Superior Court
- Judge Deborah Fleck (ret.), King County Superior Court
- Justice Faith Ireland (ret.), Washington Supreme Court and King County Superior Court
- Judge Eileen Kato (ret.), King County District Court
- Judge Kenneth Kato (ret.), Washington Court of Appeals, Division III, and Spokane County Superior Court
- Judge C. Kimi Kondo (ret.), Seattle Municipal Court
- Judge James M. (Jim) Murphy (ret.), Spokane County Superior Court and Spokane County District Court
- Judge Alicia Nakata (ret.), Chelan County Superior Court and Chelan County District Court
- Judge Kathleen O'Connor (ret.), Spokane County Superior Court
- Judge Karen Seinfeld (ret.), Washington State Court of Appeals, Division II, and Pierce County Superior Court
- Judge T.W. Small (ret.), Chelan County Superior Court
- Judge Mariane Spearman (ret.), King County Superior Court
- Judge Michael Spearman (ret.), Washington Court of Appeals, Division I, and King County Superior Court
- Judge Dennis Yule (ret.), Benton and Franklin Counties Superior Court

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2020, the foregoing document was electronically filed with the United States District Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

s/ Robert S. Chang

Robert S. Chang