

GR 9 COVER SHEET

Proposed New Washington State Court Rule

(A) Names of Proponents: Northwest Justice Project, Washington Defender Association, American Civil Liberties Union (ACLU) of Washington, Northwest Immigrant Rights Project, Washington Immigrant Solidarity Network, Columbia Legal Services, Central Washington Justice For Our Neighbors, Asian Pacific Islander Institute on Gender-Based Violence, Washington State Coalition Against Domestic Violence, Washington Coalition of Sexual Assault Programs, Colectiva Legal del Pueblo

(B) Spokespersons: Annie Benson, Washington Defender Association
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(C) Purpose:

The proposed court rule is based on the civil arrest privilege. As the supplemental materials outline, the privilege has a long-established tradition in common law and Washington caselaw.¹ The privilege prohibits civil arrests without a judicial arrest warrant, or other judicial arrest order, from being carried out against a person who is inside a Washington courthouse, or who is traveling to, or returning from, a Washington courthouse to attend hearings or conduct business with the court.

As of the filing of this petition, incidents involving warrantless arrests in connection with federal civil immigration enforcement activities have been documented in courthouses in 18 Washington counties.² Federal immigration enforcement agents of the Department of Homeland Security Divisions of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) are arresting people inside, outside and adjacent to (e.g., on courthouse sidewalks and in courthouse parking lots) Washington district, municipal and superior courts. Additionally, ICE and CBP agents are following people as they leave the courthouse, pulling them over in their cars and arresting drivers and passengers.

Targeted people are at courthouses in connection with court business, such as attending a hearing or paying traffic infractions. There are no documented incidents of such individuals causing any disturbance of the peace or posing any danger to others while engaging in court business.

¹ See memorandum in supplemental materials providing an overview of the law on the civil arrest privilege.

² See factsheet *Immigration Enforcement At Washington Courthouses*, Washington Immigrant Solidarity Network, (Sept. 2019), provided in the supplemental materials and available at: <https://defensenet.org/wp-content/uploads/2019/08/Summary-2-pgr-Immig-Enforement-@-WA-Ct-Houses-AB-FINAL-0829019.pdf>

Immigration enforcement agents target people of color, predominantly Latinx Spanish speakers. Targeted people are stopped, questioned and/or simply apprehended, often forcefully.

Immigration enforcement actions at courthouses are now well-known throughout Washington's immigrant communities. As a result, noncitizens and their families and communities are afraid to engage with our state's justice system. Some of the impacts of these actions are:

- Victims are afraid to report crimes for fear that they or their family members would have to come to a courthouse as a result of their report.
- Victims and other witnesses are afraid to testify in both civil and criminal cases.
- Victims are afraid to seek domestic violence and other forms of protective orders.
- Would-be parties to civil litigation are afraid to commence civil litigation through which they could otherwise obtain orders of dissolution, parenting plans and orders for support and division of property.
- Respondents in a range of civil litigation are afraid to participate, forcing them to choose between being defaulted, or risking arrest.
- People are foregoing payment of traffic fines, seeking marriage licenses and accessing other administrative court services.
- Defendants fear showing up for court dates to answer and defend against criminal charges. They must choose risking additional charges for failing to appear (an offense with severe immigration consequences) or being arrested, detained and possibly deported by immigration enforcement officers. These circumstances compromise defense attorney's capacity and obligations to defend their clients.
- People who would otherwise accompany friends and relatives to court, are now afraid to provide that accompaniment or transportation to court.
- Prosecutors are impeded in their duties to pursue justice for alleged criminal violations.

It is a fundamental right of all Washington residents to access our courts. Const. art. 1, § 10. The purpose of Washington's court rules is to "provide necessary governance of court procedure and practice and to promote justice by ensuring a fair and expeditious process." GR 9. Targeting those who appear at our courthouses and subjecting them to arrest without a judicial warrant for alleged civil immigration violations frustrates justice and compromises our judicial process.

This civil arrest activity denies access to our justice system for large numbers of individuals and their families, the majority of whom are Spanish-speaking people of color. Their legitimate fears of arrest and deportation require justice system stakeholders to engage all possible strategies to ensure Washington courts are open, neutral and accessible to the public, free of restrictions that would otherwise impede the proper administration of justice.

The proposed rule recognizing the civil arrest privilege is one such strategy. It would prohibit unwarranted immigration enforcement actions and help to restore access to Washington's courts for all, renew confidence in our judicial system and provide a basis to pursue legal action against state and federal actors who violate orders invoking the privilege. Accordingly, it is appropriate and necessary that the Court adopt the proposed rule.

This rule does not create or resolve conflicts with statutes, case law or other court rules.

(D) Hearing:

The proponents do not believe a public hearing is needed.

(E) Expedited Consideration:

The proponents believe exceptional circumstances justify expedited consideration of the suggested rule. The current circumstances have resulted in an access to justice crisis for noncitizens, their families and communities. Much damage has already occurred, to families, and communities, as well as our courts. And federal immigration enforcement actions continue. Community members report arrests taking place multiple times each week in Grant County alone. Communities and justice system stakeholders cannot wait until September 1st, 2020. Indeed, even if the petition is processed in an expedited manner there will be significant damage to people and the mission of our courts. As such, proponents respectfully request that the proposed rule be moved through the process as quickly as possible. If the committee votes to permit the petition to proceed, proponents request commencement of a 30-day comment period as soon as possible and an expedited schedule for the remainder of the process.

(F) Supporting Materials:

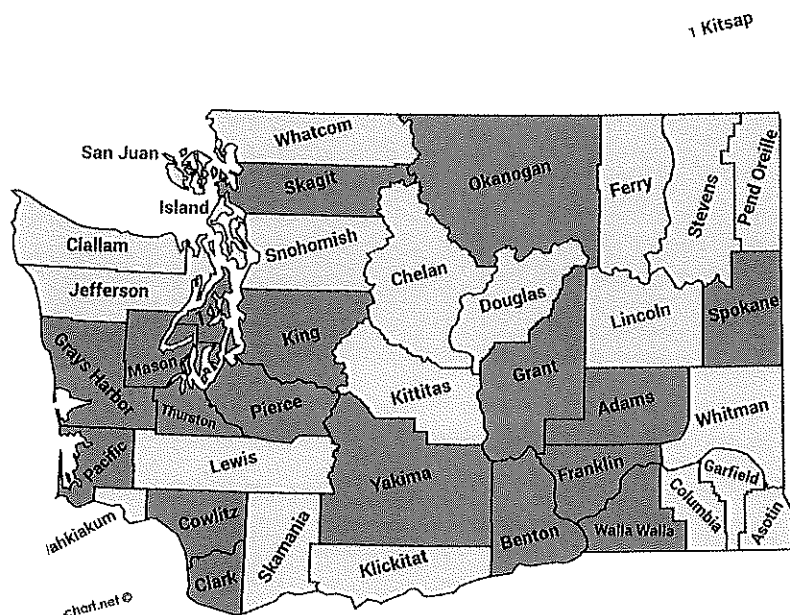
1. *Immigration Enforcement at Washington State Courthouses*, Washington Immigrant Solidarity Network, August 29, 2019.
2. Letter From Chief Justice Mary Fairhurst to Commissioner Kevin McAleenan, US Customs and Border Protection, April 15, 2019.
3. Letter from Chief Justice Mary Fairhurst to Secretary John Kelly, US Department of Homeland Security, March 15, 2017.
4. Letter from Robin L. Haynes, Washington State Board of Governors to Secretary John Kelly, US Department of Homeland Security, June 1, 2017.
5. *Justice Compromised: Immigration Arrests At Washington State Courthouses*, University of Washington Center For Human Rights, October 1, 2019.

PROPOSED WASHINGTON COURT RULE

1. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court.
2. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the traveling to a court of law of this state for the purpose of participating in any judicial proceeding, accessing services or conducting other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding, accessing services or conducting business with the court. Participating in a judicial proceeding includes, but is not limited to, participating as a party, witness, interpreter, attorney or lay advocate. Business with the court and accessing court services includes, but is not limited to, doing business with, responding to, or seeking information, licensing, certification, notarization, or other services, from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.
3. Washington courts may issue writs or other court orders necessary to enforce this court rule.



Immigration Enforcement at Washington State Courthouses



Summary of Preliminary Dataⁱ

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

Background on Immigration Enforcement Activities at Washington State Courthouses

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

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

Contrary to statements by some elected officials, these arrests are not limited to individuals who have previously been deported or who have been convicted of felony offenses. Rather, it is now a reality in many areas of our state that community members, many of whom have no or minor criminal history, who

need to attend state court proceedings or conduct business at the courthouse expect that they may be questioned or arrested by immigration officials as a consequence of seeking justice.

Typical arrests by ICE and CBP involve:

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

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

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

¹ The information provided is based on government records and eye-witness accounts of community members, their families, advocates and attorneys, as reported to the contributing organizations from 2017 to 2019. Contributors include: Washington Immigrant Solidarity Network, Northwest Immigrant Rights Project, Washington Defender Association, Central Washington Justice for Our Neighbors, Northwest Justice Project, ACLU of Washington, Asian Pacific Institute on Gender-Based Violence. Information-gathering is ongoing, but the information in this report can serve as an initial sketch of the problem. It is important to note that the actual level of enforcement activity is likely higher than has been reported.

² See Directive Number 11072.1: Civil Immigration Enforcement Actions Inside Courthouses (Jan. 10, 2018), at <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

The Supreme Court
State of Washington

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April 15, 2019

Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Reference: #190412-001264

Dear Commissioner McAleenan:

I am Chief Justice of the Washington State Supreme Court and Co-Chair of the Washington State Board for Judicial Administration. In March 2017, I wrote then-Department of Homeland Security (DHS) Secretary John F. Kelly to express concern about Immigration and Customs Enforcement (ICE) officers and agents taking enforcement action in and around our local courthouses with increasing frequency. I explained that such enforcement action impeded the fundamental mission of our courts, which is to ensure due process and access to justice for everyone regardless of their immigration status, whether such persons were victims in need of protection from domestic violence, witnesses summoned to testify, or families who may be in crisis. I further explained that enforcement action in and around our local courts deterred individuals from accessing our courthouses and spread fear in our immigrant communities, both those lawfully present and those undocumented.

I was pleased that, following the publication of my letter, lawyers and advocacy communities regularly practicing at the affected courts observed a significant decrease in such ICE enforcement action. I was also pleased that, while not prohibiting civil immigration enforcement action in or around local courthouses, ICE's Directive Number 11072.1 (published in January 2018), directed ICE officers and agents to "minimize their impact on court operations," to "generally avoid enforcement actions in courthouses," and to "avoid unnecessarily alarming the public." I was additionally further pleased that ICE established a set of standards identifying when such enforcement action was appropriate (*e.g.*, to target undocumented immigrants with criminal convictions or who pose national security threats) and created processes to ensure supervisory review and documentation of such incidents.

I write you today to express my concern that, as has been publicly reported, U.S. Customs and Border Protection (CBP) officers and agents recently have taken up the troubling mantle of conducting enforcement operations against undocumented immigrants at or near our local

courthouses. As reported to local law enforcement, these operations impact court proceedings by deterring individuals from seeking the services of our courts which, in turn, curtails the capacity of our courts to function effectively. These operations have further unnecessarily alarmed those accessing court services, as it has been publicly reported that these operations have not been narrowly targeted to those class of dangerous individuals identified in the ICE Directive above.

I do not question the legitimate role of law enforcement or cooperative efforts with other law enforcement agencies. However, I am genuinely concerned when these enforcement actions take place at or around courthouses because of the impact upon our mission. Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings out of fear of apprehension by immigration officials, their ability to access justice is compromised, courts cannot function efficiently, and our communities become less safe.

As Chief Justice, I respectfully ask you to take the necessary and appropriate steps to mitigate, if not eliminate CBP's enforcement actions in and around our local courthouses because of the effect on our courts, and the people of Washington State who wish to access the courts. As I did in my letter to Secretary Kelly, I encourage you to designate the courthouses and their immediate vicinities as "sensitive locations." Such a clear designation will permit our Washington State Courts to be the safe and neutral public forum all Washington residents deserve.

Also as I stated to Secretary Kelly, I do not believe our organizations' respective missions are naturally in conflict, as long as the CBP ensures it does not impede the fundamental mission of our courts.

Finally, I would welcome the opportunity to meet with you or your staff, including those copied on the letter below, to discuss this matter further and to explore additional possible resolutions.

Very truly yours,



MARY E. FAIRHURST
Chief Justice

cc:

Todd C. Owen, Executive Assistant Commissioner, Office of Field Operations
Carla L. Provost, Chief, United States Border Patrol
Tim Quinn, Executive Director, Intergovernmental Public Liaison Office
Adele Fasano, CBP Director of Field Operations, Blaine Sector
Chris Bippley, Acting Chief Patrol Agent, Blaine Sector
Matthew Lacelle, CBP Port Director, Officer in Charge Moses Lake Office
Brian T. Moran, United States Attorney, Western District of Washington
Joe Harrington, United States Attorney, Eastern District of Washington

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March 22, 2017

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

As Chief Justice of the Washington State Supreme Court and co-chair of the Board for Judicial Administration, I write to express concern regarding immigration agents being in and around our local courthouses. Lawyers and judges working in our courts have advised me that agents from the Immigration and Customs Enforcement agency of the Department of Homeland Security are being present with increased frequency. These developments are deeply troubling because they impede the fundamental mission of our courts, which is to ensure due process and access to justice for everyone, regardless of their immigration status.

In many locations around our state, a courthouse is the only place where individuals are ensured of a trusted public forum where they will be treated with dignity, respect, and fairness. This includes victims in need of protection from domestic violence, criminal defendants being held accountable for their actions, witnesses summoned to testify, and families who may be in crisis.

We have worked diligently to earn and maintain the trust of communities throughout Washington State to ensure that courthouses are that public forum. The fear of apprehension by immigration officials deters individuals from accessing our courthouses and erodes this trust, even for those with lawful immigration status.

When people are afraid to access our courts, it undermines our fundamental mission. I am concerned at the reports that the fear now present in our immigrant communities is impeding their access to justice. These developments risk making our communities less safe.

Our ability to function relies on individuals who voluntarily appear to participate and cooperate in the process of justice. When people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access

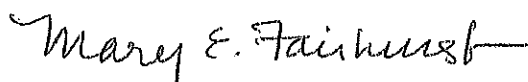
justice is compromised. Their absence curtails the capacity of our judges, clerks and court personnel to function effectively.

In light of the above, I ask that you consider taking the necessary and appropriate steps to address these concerns. For example, I encourage you to designate courthouses as "sensitive locations" as described in your Policy 10029.2. Such a designation will assist us in maintaining the trust that is required for the court to be a safe and neutral public forum. It will assure our residents that they can and should appear for court hearings without fear of apprehension for civil immigration violations.

We understand that the mission of your agency is to enforce federal laws. However, we request that the manner in which these obligations and duties are carried out aligns with, and does not impede, the mission, obligations, and duties of our courts.

My request is offered with all due respect to your commitment to serve the United States, your office, and its functions. I welcome the opportunity to meet with you or your staff to explore possible resolutions.

Very truly yours,



MARY E. FAIRHURST
Chief Justice

cc: Thomas D. Homan, Acting Director, Immigration & Customs Enforcement
Nathalie R. Asher, ICE Field Office Director, Seattle Washington
Bryan S. Wilcox, Acting Field Office Director



WSBA
BOARD OF GOVERNORS

Robin L. Haynes
President

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June 1, 2017

The Honorable John F. Kelly
U.S. Department of Homeland Security
Secretary of Homeland Security
Washington, D.C. 20528

Dear Secretary Kelly,

The Washington State Bar Association Board of Governors (BOG), at its May 18-19 meeting, unanimously approved that I write to you to express our concerns regarding the increased presence of agents from the Immigration and Customs Enforcement agency of the Department of Homeland Security in and around our courthouses. We feel this development is deeply troubling because it impedes the fundamental mission of our courts: to ensure due process and access to justice for everyone regardless of their immigration status.

In many locations around our state, a courthouse is the only place where victims in need of protection from domestic violence, criminal defendants being held accountable for their actions, witnesses summoned to testify, and families who may be in crisis are ensured of a trusted public forum where they will be treated with dignity, respect, and fairness. The fear of apprehension by immigration officials deters individuals from accessing our courthouses and erodes the trust that our courts have worked diligently to earn and maintain, even for those with lawful immigration status. This situation leads to access to justice impediments and risks less safe communities.

As a result, we ask that you consider taking the necessary and appropriate steps to address these concerns. One suggestion would be to designate courthouses as "sensitive locations" as described in your Policy 10029.2, which would assist our courts in maintaining the trust that is necessary for the court to be a safe and neutral public forum, and would assure individuals that they can appear for court hearings without fear of apprehension for civil immigration violations.

We understand that the mission of your agency is to enforce federal laws, and request that the manner in which these obligations and duties are carried out aligns with, and does not impede, the mission, obligations, and duties of our courts.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin L. Haynes".

Robin L. Haynes

cc: Thomas D. Homan, Acting Director, Immigration & Customs Enforcement
Nathalie R. Asher, ICE Field Office Director, Seattle, Washington
Bryan S. Wilcox, Acting Field Office Director

Justice Compromised

Immigration arrests at Washington state courthouses

In recent months, media reports,¹ immigrant rights organizations,² and federal immigration officials³ have noted the increased use of courthouses as a site for civil immigration enforcement in Washington state. This is part of a nationwide trend: as advocates have documented in Colorado, New Mexico, New York, Massachusetts, and Pennsylvania, immigrants are increasingly being arrested by Immigrant and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officers inside courthouses, in surrounding areas, and while driving away from courthouses. Once apprehended by ICE or CBP in these circumstances, they face immigration detention (for weeks, months, and, in some cases years) and deportation proceedings.

This practice raises concerns about access to justice: if risk of apprehension by immigration authorities makes immigrants afraid to go to court, this could impede their ability to engage in legal proceedings by serving as witnesses, plaintiffs, or defendants; it could discourage them from paying fines, seeking a protection order, or accessing other necessary court services such as obtaining a marriage license. Around the country, rights advocates,⁴ justice professionals⁵—including chief justices of state Supreme Courts⁶—and bipartisan bodies⁷ have asked Congress and the Department of Homeland Security (DHS) to designate courthouses as “sensitive locations,” like schools or hospitals, where the agency refrains from enforcement activities.

Thus far, the Department of Homeland Security has declined such requests. Indeed, it appears that Immigration and Customs Enforcement (ICE), at least, is doubling down: in January 2018, ICE issued its first policy directive codifying its procedures on courthouse arrests, as well as a related web FAQ. It is unclear whether Customs and Border Protection (CBP) operates with

¹ See for example articles by Sydney Brownstone, Vancouver Immigrant Claims ICE Arrested Him After Eavesdropping on Him and His Lawyer, *The Stranger* (Apr 4, 2018); and Natasha Chen, More ICE agents seen waiting around local courthouses to intercept people, *KIRO 7* (March 23, 2017).

² See for example a community alert issued via social media on August 22, 2019 by the Washington Immigrant Solidarity Network regarding ICE activity at the Grant County Courthouse in Ephrata, WA; and a press release issued by Northwest Immigrant Rights Project regarding a January 2018 arrest at a courthouse in Vancouver, WA.

³ See for example a May 2019 interview with ICE Seattle acting field director Bryan Wilcox by conservative talk radio and podcast host Lars Larson.

⁴ See for example the American Civil Liberties Union’s 2018 report *Freezing Out Justice*.

⁵ In June 2017, the Washington State Bar Association Board of Governors expressed concern about courthouse arrests by immigration enforcement agents, and urged DHS Secretary John Kelly to add courthouses to ICE’s sensitive locations list. In August 2017, the American Bar Association House of Delegates urged Congress to do the same.

⁶ Washington’s own Supreme Court Justice Mary Fairhurst, in a March 2017 letter to the Department of Homeland Security, asked that ICE and CBP cease this practice and designate Justice Fairhurst’s letter reads, in part, “When people are afraid to access our courts, it undermines our fundamental mission. ...These developments risk making our communities less safe.”

⁷ See this statement by the U.S. Commission on Civil Rights, a bipartisan independent agency.

similar guidelines; both agencies are part of DHS and conduct courthouse arrests in Washington state, but only ICE has publicly addressed the practice. In other states—though notably, not in Washington—it appears that courthouse arrests are mostly conducted by ICE rather than CBP, so most of the national attention around this issue has focused on ICE alone.

In this policy memo, and in public statements, ICE recognizes that courthouse arrests are on the rise and acknowledges that they generate particular concerns. But the agency offers two claims as justifications for the practice:

- First, it alleges that courthouse arrests have become necessary since local jurisdictions' growing reluctance to accept ICE detainees,⁸ has made arresting immigrants in jails more difficult. Because those entering courthouses are typically checked for weapons, the agency argues, apprehending immigrants in courthouse settings is safer than detaining them in other locations.⁹ The memo and FAQ also emphasize that many targets of such arrests constitute a public safety threat, describing them as "criminals and fugitives" and their apprehension in areas screened for weapons as necessary steps to protect the public.
- Expressing its intention to "avoid alarming the public," ICE asserts in its memo that courthouse arrests are operations against "specific, targeted aliens," and do not aim to arrest family members or friends accompanying them except "under special circumstances." Federal agents "will make every effort to limit their time at courthouses," the policy insists, and the arrests themselves "should, to the extent practicable, take place in non-public areas of the courthouse, be conducted in collaboration with court security staff, and utilize the court building's non-public entrances and exits."

However, reports from other states suggest that there may be reasons to question the accuracy of these characterizations. Data collected by the Immigrant Defense Project in New York, for example, found that 28% of those arrested in New York had no criminal history and that of those facing criminal charges, 80% were appearing for violations and misdemeanors.¹⁰ What's more, media reports have highlighted courthouse arrests of crime victims and others appearing in court

⁸ Detainers are documents which ask jails to hold inmates in custody beyond the time they would normally serve in order to hand them directly to ICE. This practice was found to be a violation of the Fourth Amendment to the U.S. Constitution by a federal magistrate judge in the 2014 *Miranda-Olivares v. Clackamas County* decision. Several courts have found that holding people on the basis of detainers is illegal and makes the locality subject to liability. See, for example, [this recent decision](#) by the Second Circuit Court of Appeals, which could result in liability for New York City and the federal government related to the use of detainers.

⁹ See ICE's [FAQ on Sensitive Locations and Courthouse Arrests](#): "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...Individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband. Accordingly, civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents."

¹⁰ Immigrant Defense Project, "[The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018](#)", January 2019.

in an attempt to protect *against* violence—including apprehensions of those in court to seek protection orders against abusers.¹¹

In an attempt to document what is happening in Washington State, and to explore its human rights consequences, in 2019 the University of Washington Center for Human Rights began a study of the immigration arrests at courthouses in our state. This project is currently in its early stages; the present report should be understood as a preliminary presentation of findings, to be further updated as additional data becomes available. As explained below, our research draws data from a range of sources, including public records requests at the local and federal level; media coverage; and reports by eyewitnesses, community members, and legal advocates about arrests involving specific individuals known to them. Where possible, we corroborate data through multiple sources. We also incorporate insights from academic studies involving fear and its impact on access to justice, particularly among immigrant populations, and surveys conducted by advocacy organizations working to end domestic violence in Washington.

This report is divided into three sections. We explore the extent of courthouse arrests in our state; the specific circumstances of the arrests, where known; and the human rights concerns surfaced by this practice in our communities.

I. Extent of ICE/CBP enforcement at/near courthouses

In order to assess the impact of these arrests on human rights, it is important, first, to understand whether they are isolated or systematic practices: are they happening across the state? Are they occasional or frequent occurrences? Whom do they target, and how?

Yet answering these questions poses a significant challenge, first and foremost because the only entity that possesses comprehensive records of all such arrests—the Department of Homeland Security—refuses to share them. ICE claims that it does not track how many arrests occur at courthouses.¹² Though the agency's policy stipulates that all such operations should be documented using a Field Operations Worksheet which specifically notes the operation as targeting a courthouse,¹³ the agency has told UWCHR researchers that these documents are not

¹¹ For example, ICE apprehended a victim of human trafficking in a Human Trafficking Intervention Court in New York; a Michigan father attending family court to seek custody of his kids to protect them from their mother's abusive partner; an El Paso, TX woman seeking a protective order against an abusive ex-husband; and a woman and her son in Charlotte, GA following a hearing related to a domestic violence charge

¹² See Nicholas Pugliese, "New rules seek to limit ICE arrests in N.J. courthouses", Why.org.

¹³ See the January 10, 2018 policy memo, which reads, in part, "ICE officers and agents will document the physical address of planned civil immigration enforcement actions in accordance with standard procedures for completing operational plans, noting that the target address is a courthouse... ICE maintains records generated pursuant to this policy, specifically the Field Operations Worksheets (FOW) and Enforcement Operation Plan (EOP)."

compiled or tracked in any way that would permit the release of aggregate data about courthouse arrests under FOIA. Similarly, while agency records such as I-213s¹⁴ state the location at which each individual arrest is made, to date the agency has maintained that the location of arrests are exempt from disclosure under FOIA Exemption (b)(7)(E), which allows the withholding of information compiled for law enforcement purposes that would disclose the “techniques and procedures” or “guidelines” for “law enforcement investigations or prosecutions.”¹⁵ The UWCHR is currently engaged in litigation against DHS precisely for access to these forms of documentation.

While we continue to contest these dubious interpretations of the agency’s responsibilities under FOIA, we have launched an effort in the interim to gather as much information as possible from other sources to shed light on the extent of courthouse arrests in our state. To date, we have collected data from multiple sources: ICE and CBP records, obtained through FOIA,¹⁶ records from county governments in Washington state, released under the Washington Public Records Act, federal court records,¹⁷ obtained through PACER; reports shared with advocates and

¹⁴ I-213 Record of Deportable/Inadmissible Alien forms are used by DHS to establish an individual as eligible for removal. Information included on the form includes “the respondent’s biographic information; date, place, time, and manner of entry to the United States; immigration record and any history of apprehension and detention by immigration authorities; criminal record, if any; family data; any health or humanitarian aspects; and disposition (whether or not an NTA [Notice to Appear] is to be issued).” For more information, see Collopy, Crow, and Sharpless, “Challenges and Strategies Beyond Relief”, 2014.

¹⁵ In response, for example, to our appeal of this practice by CBP, the agency argued that “The withheld location information would reveal significant of station-level operational details related to the law enforcement guidelines, techniques and procedures that are used when handling threats at U.S. borders, specifically the determination of strategies to combat against the entry of undocumented aliens and contraband into the country. These law enforcement guidelines, techniques and procedures have been withheld in order to protect CBP’s methods in evaluating and processing potential threats at the United States’ borders. Disclosure of the alien interdiction locations at or near each station, coupled with information already available to the public, including the location of each station and the specific focus and operations of each station, would give undocumented aliens the ability to circumvent and exploit less resilient stations.”

¹⁶ Under FOIA, the UWCHR has requested various sets of records that, if released, could reveal when and where ICE and CBP apprehend people at courthouses. CBP has released some apprehension records, but the locations are redacted, rendering the documents useless for answering questions about courthouse arrests specifically. ICE has declined to release any records that specify arrest locations. As of this writing, we are in discussions with both agencies for access to a representative sample of I-213s (the forms the agencies fill out upon apprehending an immigrant); these would include location information, but their usefulness for this study is limited given that, due to sampling, they might or might not contain records of courthouse arrests in particular. We have also sought records of Field Operations Worksheets—documents used to secure supervisor authorization for a given enforcement operation—for a number of known courthouse arrests, and records of correspondence between ICE’s Regional Director and subordinates, to shed light on the circumstances in which such operations are planned and authorized within the agency. All of these requests are pending.

¹⁷ UWCHR researchers read and coded PACER records for 548 cases in which an individual was federally prosecuted for immigration violations in the state of Washington from January 2016 - July 2019; this involved 209 prosecutions for illegal reentry (1326) in the Western Washington district and 391 in Eastern Washington; and 20 prosecutions for illegal entry (1325) in the Eastern Washington district. Case files for prosecutions in Western Washington include a sworn statement detailing the manner in which the defendant was apprehended; in 10 cases, all of them in the Western Washington district, this narrative specified a detention at or near a courthouse. As sworn legal declarations, these are highly reliable data sources, yet they only represent a minority of all courthouse arrests, because not all of those arrested at a

community organizations;¹⁸ and media coverage.¹⁹ Some of the reports received are more comprehensive than others. Court documents, for example, present sworn testimony about the apprehension of specific individuals in ways that permit secondary corroboration, whereas eyewitness accounts are sometimes limited to a description of an event involving unnamed individuals, and can be more difficult to verify. In this report, we note the source of all data, so that its reliability can be evaluated by readers.

To date, we have documented 49 reported arrests at courthouses since 2016, occurring in 16 counties across the state; 24 in Western WA, and 25 in Eastern WA. (For a table listing these cases, see the Appendix to this report.) This undoubtedly captures only a fraction of overall arrests. However, **the dispersion of documented arrests across the state suggests that the practice is widespread**, a characterization also upheld in public statements by ICE authorities in Washington.²⁰ At the same time, reports suggest that courthouse arrests may be concentrated in certain jurisdictions, especially Grant County, which accounts for almost a quarter of reported courthouse arrests since 2016. The next most frequent locations are Adams and King counties.

courthouse are subsequently federally prosecuted, and even in cases where they are federally prosecuted, many prosecution records, especially those from the Eastern district, do not specify the location of arrest.

¹⁸ Concerned about this practice, a number of human rights organizations began compiling data reported to them about courthouse arrests; the Washington Defender Association and the Washington Immigrant Solidarity Network shared internal records with us that included first-person accounts by those who witnessed courthouse arrests as well as secondhand reports by family members or attorneys of those detained. The arrests documented by these organizations likely represent only a small portion of those taking place: many arrests are not witnessed, in part because agents wear plainclothes and drive unmarked vehicles, and of those that are, it is impossible to know how many witnesses have connections to these organizations and choose to report what they saw. These accounts vary in detail and are not always possible to corroborate using secondary sources. We have also corresponded with lawyers from the Northwest Immigrant Rights Project and other organizations about select cases involving their clients.

¹⁹ Journalists from Crosscut, the Olympian, the Columbian, and other local media have reported on courthouse arrests. Where possible, we have sought to confirm the accuracy of these accounts through other sources.

²⁰ See for example a [May 2019 interview with ICE Seattle acting field director Bryan Wilcox](#) by conservative talk radio and podcast host Lars Larson.

II. Specific circumstances of arrests

As ICE's own statements on this practice note, the concerns around courthouse arrests stem not only from the fact that they are happening, but from the specific manner in which they occur. As a result, we sought to examine who is being targeted, and how and where they are being identified and apprehended. Here, too, obtaining across-the-board data is impossible without access to DHS records, yet our research permits a glimpse into the overall phenomenon through the individual cases we have been able to document thus far.

Most eyewitness reports describe the presence of individuals in plainclothes later identified as immigration enforcement observing hearings in the courtroom and/or surveilling court attendees in waiting areas. To carry out the arrest, multiple agents, typically in plainclothes, surround the targeted person, arresting them quickly and placing them in a vehicle which is usually described as unmarked. A minority of accounts mention the use of force by arresting agents. Due to the use of plainclothes and unmarked vehicles, it is often difficult for eyewitnesses to know whether ICE or CBP is the agency performing the arrest. In multiple cases reported by lawyers and advocates, the arresting agents reportedly refused to give their names or show warrants, even when asked by the arrestee's attorney. In some cases, agents briefly flashed agency badges.

Some eyewitness accounts describe chaotic, confusing scenes. For example, the partner of a man arrested by ICE on June 20 outside the Thurston County Superior Courthouse described troubling use of force by immigration enforcement agents in a statement provided by her lawyer to The Olympian's Sara Gentzler: "After the hearing, (name redacted) and I were walking just outside of the courthouse back to the car when he was attacked and taken away right in front of me by men in everyday clothes...I was scared. (Name redacted) had had a concussion a few months earlier, and one of the men hit him hard in the back of the head."

Similarly, in an account shared with UWCHR researchers by a legal advocate, a witness described seeing multiple attempted arrests on September 26, 2019 at Grant County Courthouse in Ephrata, Washington. He reported that he entered the main entrance of the courthouse at approximately 9:55 a.m, noticing a light tan Tahoe was parked on the side of the court house with a man waiting in the driver's seat. As he approached the front main entrance, he saw a young latinx man in handcuffs being forcefully and quickly escorted, almost dragged, to the light tan Tahoe by a man in plainclothes who put him in the back seat of the vehicle. When he emerged from the courthouse later, the same ICE officer he had seen earlier was now chasing another young latinx man around the grounds of the courthouse, with the Tahoe speeding around the corner toward them. At least one person, the client of the legal advocate who shared this account, was arrested by immigration authorities at the courthouse on that day.

As this account suggests, while some arrests take place in courthouses themselves, others occur in parking lots or surrounding areas, or even while the targeted person is driving away from the courthouse. Indeed, while ICE's policy statements refer only to "arrests *in* courthouses" or "*at* courthouses," this is far too limited a framing to capture the phenomenon itself or the concerns it

generates: while arrests of those driving away from courthouses do not take place on courthouse property, they are inextricably linked to the court because the person's appearance in court is key to their identification and subsequent apprehension. That identification can involve agents matching the person to photographs they bring with them, or their witnessing the target identifying themselves in proceedings before the court, as appears to be the case in the below excerpt from an individual's I-213, which, with permission, her attorney shared with UWCHR researchers.

Figure 1: I-213 form documenting arrest by CBP at Othello District Court

ENCOUNTER/ARREST:
During the commission of their duties, agents from the United States Border Patrol, Spokane Border Patrol Station learned that [REDACTED] would be appearing before the Othello District Court in criminal proceedings.

[REDACTED] was positively identified in court. [REDACTED] was encountered by Border Patrol Agent Nunez, who upon the encounter identified himself as a United States Border Patrol Agent (BPA). BPA Nunez asked [REDACTED] as to her citizenship. [REDACTED] stated that she was born in [REDACTED] Mexico. [REDACTED] was asked if she had immigration documents to visit, work or reside in the United States. [REDACTED] stated she did not have any immigration documents at all. [REDACTED] freely admitted to having entered into the United States illegally in 1993 near San Ysidro, California. BPA Nunez arrested [REDACTED] for being illegally in the United States and transported her to the Spokane Border Patrol Station for further interview and processing.

IDENTIFICATION:
[REDACTED]'s biographical information, fingerprints, and photo were submitted into the E3/IDENT/IAPIS databases. Fingerprint analysis revealed no prior immigration history.

Signature: JOSE NUNEZ	Title: Border Patrol Agent
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4 of 5 Pages

Form I-831 (Continuation Page (Rev. 08/01/07))

Consistent with ICE's stated policy, most courthouse arrests do appear to be of specifically targeted individuals; we have received no information about "collateral arrests" of family or friends who were also present at the time. (On the other hand, the below narrative from an I-44 form released to UWCHR by CBP under FOIA suggests that agents may sometimes visit courthouses opportunistically, to observe proceedings without advance planning.²¹)

²¹ It may be relevant to note that this document is from CBP, rather than ICE, and the agency may not have had then (or have now) a policy requiring advance planning of courthouse operations as described in ICE's 2018 directive; it is unknown whether CBP issues its officers any policy guidelines regarding courthouse arrests.

Figure 2: DHS I-44 form documenting courthouse surveillance and arrest by CBP, January 18, 2017

U.S. Department of Homeland Security		Continuation Page for Form I44	
Alien's Name (b) (6), (b) (7)(C)	File Number Event No: (b) (7)(E)	Date 01/18/2017	
ASSISTING ASSETS: ----- None			
Narrative Title: Report of Apprehension or Seizure			
On Wednesday, January 11, 2017, Detective (b) (6), (b) (7)(C) and I (b) (7)(E) (b) (7)(E) WA (b) (7)(E) (b) (7)(E) We were attempting to locate and arrest an adult male by the name of (b) (6), (b) (7)(C) (b) (7)(E) (b) (7)(E) we know (b) (6), (b) (7)(C) s a (b) (7)(E) (b) (6), (b) (7)(C) also had (b) (6), (b) (7)(C)			
Detective (b) (6), (b) (7)(C) and I were unable to locate and arrest (b) (6), (b) (7)(C) We decided to drive to the (b) (7)(E) County Courthouse to sit through court proceedings for some of our older cases. As we were driving north on (b) (6), (b) (7)(C) a black Mitsubishi passenger car (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) passed us in the southbound lane. I was able to get a good look at the driver assenger. The driver of the vehicle was (b) (6), (b) (7)(C) and the passenger was (b) (6), (b) (7)(C) Detective (b) (6), (b) (7)(C) contacted (b) (7)(E) and verified that (b) (6), (b) (7)(C) had two confirmed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)			

While the arrests in question do appear targeted, the individuals they seek do not always fit DHS' characterizations that they constitute public safety threats. Many arrestees were attending proceedings relating to traffic matters, such as charges of operating a vehicle without a license or trip permit violations. Even among those facing more serious charges, two arrests in Clark County and one in Grant were of individuals with no prior convictions attending a pre-trial hearing, and thus entitled under the U.S. Constitution to a presumption of innocence.

Many individuals had U.S. citizen children or spouses, some of whom accompanied them to court and witnessed their arrest. In at least one case, the person arrested was raising her children as a single parent following the prior deportation of a spouse. For example, a caller to the Washington Immigrant Solidarity Network's hotline reported that a woman was arrested on October 17, 2018 after attending court in Othello, Adams County, as a result of a traffic accident. She was the primary caretaker of her five children, ranging in age from 10 months to ten years of age; the children's father had been deported to Mexico a year before.

III. Human rights concerns

Many justice practitioners object to federal immigration agents conducting civil enforcement activities in courthouses on the grounds that such practices produce a “chilling effect” that discourages immigrant communities from accessing justice. There are some particular rights concerns that emerge as a result of courthouse enforcement, and some empirical evidence—from Washington state as well as nationally—that suggests these concerns may be well-founded.

Access to justice and due process

Where individuals fear apprehension in court on immigration charges, they may be deterred from participating in the legal process, even to defend their own rights in cases where they are accused of crimes. This presents a threat to due process rights, which under the U.S. Constitution should apply to all people, regardless of nationality.

The aforementioned cases of individuals detained at pre-trial hearings paint this dilemma in particularly stark relief. These people appeared in court in an attempt to defend themselves against charges brought against them, but were arrested by ICE/CBP before they were able to do so. Immigration detention often interrupts access to defense attorneys and may block defendants’ ability to appear in subsequent proceedings to defend themselves.

Fearing such consequences, those vulnerable to deportation may choose not to appear in court at all, even where this creates cascading adverse consequences for them. Indeed, courthouse enforcement can contribute to the further criminalization of immigrants by creating a disincentive for them to comply with legal requirements that they appear in court to pay fines or resolve other matters. In some cases, these initial requirements stem from very minor violations, but immigrants’ reticence to appear in court can trigger far more serious consequences.²²

For example, *Juan Rodriguez*²³ was convicted of unlawful entry in Arizona in 2013, but subsequently returned to the U.S.. He was pulled over in Vancouver, Washington, in February 2017 because he was driving with a temporary trip permit displayed upside-down in the window of a recently-purchased vehicle, and charged with Trip Permit Violation²⁴ in Clark County District Court. Federal court documents show that ICE agents observed him at the Clark County Courthouse on his scheduled hearing date, but he then left the court before the hearing began, likely upon noticing their presence. The Clark County Sheriff subsequently issued a warrant for Failure to Appear, and he was arrested and booked into jail. He was released, sentenced in Clark County District Court to two days of partial confinement at the Mabry Work Program, administered by the district court; on his final day of service, Mabry officials notified ICE, who arrived to

²² For example, failure to appear for court risks an additional criminal charge (and possible conviction) under RCW 9A.76.170’s Bail Jumping statute. In turn, such a conviction is most often classified as an “aggravated felony” under immigration law, almost always resulting in permanent banishment from the U.S. See 8 USC 1101(a)(43)(Q) and (T).

²³ To protect this individual’s privacy, we refer to him here by a pseudonym.

²⁴ RCW 46.16A.320.6

apprehend him. With only two misdemeanor convictions—for unlawful entry and Trip Permit violation—he was federally prosecuted for illegal reentry and sentenced to serve two months and one week in federal prison prior to his deportation.

Unequal protection

Numerous national studies have denounced the degree to which the perceived collaboration in immigration enforcement by government agencies charged with upholding public safety has led to greater vulnerability in immigrant communities. For example, researchers in other states have found a growing reluctance to call for emergency assistance,²⁵ to seek legal relief,²⁶ and to bring charges against abusers.²⁷

Particular concerns arise around gender-based violence, since many such crimes are systematically underreported by victims, even without the particular vulnerabilities of undocumented people. Advocates and law enforcement have noted a decline in reports of sexual assault and domestic violence among latinx populations nationwide following the 2016 presidential election, including downturns as sharp as 40% in Houston and 10-25% in Los Angeles, as reported by local police departments.²⁸

In May 2019, a coalition of national organizations working to end domestic violence, sexual assault and human trafficking conducted a survey of advocates and attorneys to gauge the impact of heightened immigration enforcement on their clients. Some sixty percent reported that survivors of domestic violence and sexual assault were increasingly contacting them with concerns about their legal status; three out of every four advocates surveyed reported that “immigrant survivors have concerns about going to court”, and 52% said that their clients had dropped civil or criminal cases because of fear of immigration consequences. While these findings are national in scope, Washington was among the states surveyed, and local findings conform to the trends identified nationally.

In a July 2019 survey of approximately 100 domestic violence legal advocates in Washington state conducted by the Washington State Coalition Against Domestic Violence (WSCADV),²⁹

²⁵ See Tom K. Wong, Karina Shklyan, Anna Isorena, and Stephanie Peng, “[The Impact of Interior Immigration Enforcement on the Day-to-Day Behaviors of Undocumented Immigrants](#)”, April 3, 2019, U.S. Immigration Policy Center. Wong et al surveyed a sample of undocumented immigrants and found that respondents were less likely to report crimes they witnessed or were a victim of to police when told that local law enforcement are working with ICE for federal immigration enforcement.

²⁶ See Catalina Amuedo-Dorantes and Esther Arenas-Arroyo, “[Immigration Enforcement, Police Trust, and Domestic Violence](#)”, March 16, 2019. Amuedo-Dorantes and Arenas-Arroyo find that increased immigration enforcement reduces rates of self-petitions for legal status by domestic violence survivors under the Violence Against Women Act.

²⁷ In a 2019 survey conducted by a coalition of seven national organizations, of more than 500 advocates and attorneys working with immigrant survivors of domestic violence and sexual assault, three out of four service providers reported that immigrant survivors had concerns about going to court. See a [press release](#) and [key findings](#) from the survey.

²⁸ See <https://www.nytimes.com/2017/04/30/us/immigrants-deportation-sexual-abuse.html>

²⁹ A copy of this survey, which has not been made public, was shared with UWCHR by WSCADV.

97% of advocates reported that the immigrant survivors they work with are fearful of contacting police to report domestic violence, with most reporting that their clients “worry ICE/immigration will get involved” or that they could risk losing their children, their abusive partner, or other family members to deportation as a result of contacting the police. Additionally, 78% of advocates reported to WSCADV that immigrant survivors have concerns about seeking civil protection orders due to the possible presence of immigration authorities at the court. 83% of advocates reported that immigrant survivors they worked with had dropped civil or criminal cases related to abuse due to fear; the most common reason cited for this fear (73%) was concern about alerting immigration authorities.

Similarly, in a national survey of judges, which included Washington state, a majority (54%) of participants in 2017 reported that cases in their court were interrupted because immigrant victims were afraid to come to court—up from 45% in 2016. And nationwide, the study found that the vast majority (88-94%) of judges reported concerns about the impact of immigration enforcement on access to justice for immigrant victims and witnesses.³⁰

If anything, this suggests that courthouse arrests may have a negative impact on public safety—and not only for immigrants. While fear of deportation is concentrated among immigrant communities, when survivors of crime are afraid to report incidents or press charges against their abusers, the effects radiate outwards and affect all Washingtonians. Further, public safety also relies on the integrity and credibility of the justice system as a forum to prosecute and defend against alleged criminal offenses. Everyone’s safety depends upon ensuring equal protection to all those who suffer violence.

³⁰ Rafaela Rodrigues, Amanda Couture-Carron, and Nawal H. Ammar. Promoting access to justice for immigrant crime victims and children. https://www.ncjfcj.org/sites/default/files/cpo_guide.pdf

IV. Collaboration by local officials

It is legally challenging for state and local authorities to prevent federal law enforcement agencies from operating in public places, including courthouses. However, they can more readily curtail the extent to which state or local institutions collaborate in immigration enforcement involving the courts. Concerned by the aforementioned indications that courthouse arrests imperil access to justice, a number of states have undertaken efforts to do this.

Different states have adopted different approaches. For example, in October 2018, California's Attorney General, responding to a mandate from the California State Legislature, developed guidelines for state superior courts with the goal of limiting involvement in immigration enforcement. In New York, the Office of Court Administration issued a court rule in April 2019 that prohibits ICE from arresting immigrants inside courthouses without a judicial warrant or order, and the New York's state legislature considered the Protect our Courts Act, developed by the Immigrant Defense Project as model legislation to regulate enforcement activity at courthouses. In May 2019, New Jersey's Chief Justice issued a directive restricting collection of data regarding immigration status by courts, and setting standards for court employees, including court security, regarding interactions with immigration agents. And most notably, in Massachusetts a group of prosecutors and public defenders sued the federal government over courthouse arrests, resulting in a June 2019 preliminary injunction blocking civil immigration arrests of people going to, attending, or leaving Massachusetts state courthouses.

In Washington, too, state and local authorities have made numerous efforts to ensure the rights of immigrant communities, even in cases where federal agencies may violate them. Numerous jurisdictions have adopted practices to limit collaboration with federal immigration enforcement. In 2019, the Washington state legislature passed the Keep Washington Working Act (SB 5497) to extend some of these protections statewide. In light of this, we took a closer look at three counties where advocates expressed particular concern regarding courthouse arrests—Adams, Clark, and Grant—to gauge the extent of local collaboration with immigration enforcement involving courthouses, and the likelihood that Keep Washington Working will address the problem.

We found evidence of varying degrees of assistance provided by local authorities in courthouse immigration arrests by ICE/CBP. In some counties—Clark, for example—court dockets are publicly accessible online, enabling their use for immigration enforcement without direct contact with local government employees. In others, we found evidence of more active collaboration, including: formal agreements to share court dockets; sharing of information about defendants, including court dates, at the request of immigration officers; and proactive flagging of specific defendants for review by immigration enforcement.

Agreements to share court dockets for day-to-day review

In Grant County, formal agreements appear to exist between county officials and CBP, whereby the former share daily court dockets with immigration authorities to facilitate courthouse arrests. This appeared to result from a January 24, 2018 meeting between Grant County Prosecutor Garth Dano and CBP agent Thomas D. Watts. Following the meeting, Dano wrote to Watts, "Tom, it was great meeting you and the fellas today. [...] Look forward to your help here in Grant county," to which Watts replied, "It was great meeting you today as well. I look forward to working together in a mutually beneficial relationship." (See Appendix II, Record 1 below.)

In an exchange of emails following this meeting, Watts sent Grant County employees the email addresses of several CBP officers who he says "will be heavily involved in the day to day docket review." (See Appendix II, Record 2 below.) Indeed, records released to UWCHR show that employees of the Grant County Prosecuting Attorney's office began to forward calendars for upcoming dockets at the Moses Lake and Ephrata courthouses to the CBP agents the next day, January 25, 2018.³¹

In subsequent weeks, CBP agent Watts sent updates regarding courthouse arrests to employees of the Grant County Prosecuting Attorney's office; for example, on February 14, 2018, Watts wrote to Deputy Prosecuting Attorney Chad A. Jenks, "Just wanted you to know we have picked up three already this week. This program is a success, I feel. In addition, we've developed several targets off criminal aliens that have skipped their court dates. We'll get them as well. :)" When Jenks copied his supervisor Garth Dano on his response to Watts, Dano chimed in, "Great news Tom -garth." Later, on February 23, 2018, Watts replied to an emailed court docket with another update: "By the way, we picked up three more yesterday morning. It's been fun. :)" (see Appendix II, Records 3-4 and 5, below).

These practices are not limited to Grant County, however. In Adams County, correspondence obtained through public records requests suggests that the Adams County Prosecuting Attorney's office also routinely sent court dockets to a list of CBP officers (see Appendix II, Record 6 below).³²

Sharing information about specific individuals

The Grant County Sheriff's Office and the Grant County Prosecuting Attorney's office also sent emails directly to ICE Deportation Officer (DO) Jaimie Waite regarding specific individuals' court dates, including details about their cases (see Appendix II, Record 7 below). In some cases, this information was shared following specific requests by DO Waite, or in regards to defendants whose immigration status was a relevant factor in their prosecution, such as "Alien in Possession of a Firearm" cases. But in others, employees of the Grant County Prosecutor's office proactively

³¹ We note that the earliest reported courthouse arrests by ICE/CBP in Grant County included in the Appendix to this report occurred in February 2018.

³² A public records request for email correspondence between employees of the Adams County Sheriff's Office and ICE/CBP officials from November 1, 2017 to April 29, 2019, submitted by UWCHR in April 2019, remains pending as of the date of this preliminary report.

reached out to DO Waite to send him information about defendants, including where the defendant's immigration status was not pertinent to the charges in question. Given that all of the defendants whose information was shared with DO Waite have Latinx surnames, and that some were US citizens with latinx surnames (see Appendix II, Record 8), these communications raise concerns about possible ethnic profiling.

Confirming whether this information-sharing led to actual arrests is impossible without accessing ICE/CBP's own records. In at least one case, an individual whose court date was proactively shared with DO Waite by a Grant County Prosecutor's office employee in December 2017 was shortly thereafter booked into Yakima County jail as an immigration detainee under the jail's intergovernmental service agreement with ICE. But Yakima County Jail records do not specify the location of his arrest; if he were arrested at a Grant County courthouse, only ICE records would contain this information. UWCHR is currently in litigation with ICE for access to such records.

In at least one case—the aforementioned one of Juan Rodríguez, federal court records show that officials from Mabry Work Crew, a court-operated work program in Clark County, notified ICE that Mr. Rodríguez was completing his scheduled service, and they showed up and arrested him in the lobby of the Mabry facility.

In recognition of the detrimental consequences of the active involvement of local law enforcement in federal immigration enforcement, the legislature included significant prohibitions on such collaboration in the Keep Washington Working Act. While numerous Washington counties had already adopted many of these prohibitions, for others, implementation of this new law will necessitate significant changes to policy and internal culture. The new law became effective on May 21, 2019 and requires the Attorney General to publish model policies to implement its provisions within 12 months. Local law enforcement agencies will be required to adopt these policies or provide the Attorney General with their alternative policies for complying with the law.

Yet initial monitoring and enforcement of this new law is likely to be a challenge, since as the following example suggests, much of this communication between ICE and local law enforcement and prosecutors takes place behind the scenes. Community members, advocacy organizations and state and local governments are already engaged in promoting interim policies for local law enforcement agencies to implement Keep Washington Working's provisions. Once the Attorney General's policies are released, jurisdictions that fail to implement effective policies and who continue to collaborate with ICE and CBP's immigration enforcement actions will face an increased risk of legal action and liability.

Keep Washington Working does not expressly limit collaboration between prosecutors and immigration authorities³³ of the sort happening in Grant County, although such collaboration does undermine the intent of the legislature and the Governor in making the Keep Washington Working Act the law in Washington State, and it can be argued that the law's provisions implicitly include

³³ In Massachusetts, prosecutors and public defenders joined together to contest ICE's arrest of immigrants in courthouses, but in Washington, at least some prosecutors have been directly supportive of such practices.

prosecutorial conduct. As such, the law's passage may have a limited impact on curtailing current practices in this regard. Whether it will be an effective tool to limit prosecutor engagement with ICE and CBP, or whether other means will be necessary to do so, remains an open question.

Additionally, ICE's stated policy of "coordinating with courthouse security" and conducting civil immigration arrests in non-public areas of courthouses raises questions about the extent to which the federal immigration enforcement is commandeering resources provided through local government in apparent contravention of Washington's new law. Again, documenting such practices is difficult, since only ICE/CBP have access to records of these arrests. But some measures can be taken to, at minimum, instruct security officers on the appropriate boundaries of their interaction with federal agents. UWCHR's preliminary research has found that contracts for courthouse security do not currently offer any guidelines for how to interact with immigration enforcement.³⁴

Lastly, in many cases the collaboration of local government with immigration enforcement is passive rather than active. Digital tools made available by many local governments may facilitate ICE/CBP's identification of apprehension opportunities in courthouses. These include the online posting of daily court dockets, such as in the case of Clark County Superior Court and Clark County District Court; public jail rosters; and the sharing of information to federal databases which can be accessed for civil immigration enforcement.³⁵ The availability of these digital tools is uneven across the state; in light of the deleterious effects of courthouse arrests, guidelines for their appropriate use could be helpful.

³⁴ See for example Grant County's security service agreement with a private security contractor.

³⁵ For this reason, some other jurisdictions like King County Sheriff's Office have decided to suspend information-sharing with federal databases.

Conclusion

Our research shows that ICE's justification of courthouse arrests do not hold up to scrutiny based on what we know about the practice in Washington state.

First of all, as noted above, ICE claims that courthouse arrests are necessary public safety measures, both because the arrests target individuals who represent a threat to public security, and because now that fewer jails are collaborating with ICE detainers, courthouses present a weapons-free zone where arrests can be conducted more safely than at large in the community. Our research shows this reasoning is flawed on both counts. Many of the individuals apprehended at courthouses in Washington state had no prior criminal convictions, and/or were appearing in court on nonviolent charges, including, frequently, traffic offenses; their designation as public safety risks is questionable. Furthermore, many of these individuals were apprehended outside the courthouse itself, where their access to weapons would not be restricted anyway. And lastly, the counties where courthouse arrests are reportedly most frequent are precisely those where current local authorities collaborate *most* with federal immigration enforcement³⁶. Far from being a response to the limitations imposed by so-called “sanctuary” provisions, and a necessary means to protect officers and the public from dangerous individuals, courthouse arrests appear to be taking place because they are convenient for ICE and CBP: when it's publicly known where and when immigrants attending to matters of justice will appear, apprehending them in those places is easy and efficient.

Second, ICE acknowledges that courthouse arrests can generate alarm; its policy memo suggests that agents should refrain from conducting courthouse arrests in public view, and presumably, the use of plainclothes agents and unmarked vehicles is intended to render these operations less visible. But far from increasing safety, secret-police-like practices raise a host of deeply troubling issues and render us all more vulnerable. If anything, secrecy surrounding courthouse arrests may augment their corrosive impact on immigrants' trust in the judicial system.

ICE's assertion that concealing itself—the agency calls it “operating discreetly”—will avoid sowing fear is fundamentally wrongheaded. As the aforementioned studies show, alarm is already widespread among the immigrant community, for whom widely-reported courthouse arrests generate waves of fear registered throughout the nation. What's more, recent arrests in Washington state—such as the June 20, 2019 incident in which plainclothes agents wrestled a man to the ground outside a courthouse in Thurston County, described by Judge Buckley described as “having all the lookings of a kidnapping”—call into question what exactly ICE means by “discreet”.

Lastly, by making accountability near impossible, secrecy facilitates abuse. In several of the accounts we reviewed, indications of potential misconduct arise, including ICE/CBP officers

³⁶ We refer here to practices like complying with ICE/CBP detainer requests, allowing ICE/CBP agents to interview inmates in local jails without a lawyer present, and notifying ICE/CBP of the date and time an inmate will be released. All of these forms of collaboration are prohibited under Keep Washington Working, and will therefore cease as the law is implemented.

reportedly refusing to identify themselves; declining to present warrants; and eavesdropping on conversations between attorneys and their clients to discern a target's place of birth. ICE and CBP's failures to respond to lawfully submitted requests for documentation about known arrests show that this aversion to transparency is not the result of misdeeds by individual agents who defy scrutiny, but characteristic of the institution as a whole.

In this climate, it is not entirely surprising that accessing the courts has become an increasingly tenuous proposition among immigrant communities in our state. Community advocates and lawyers report that immigrants increasingly avoid going to court, frequently compromising their own safety, as well as their ability to participate in their own defense against criminal charges, in order to avoid the possibility of deportation. This undermines the fundamental mission of Washington Courts, which is to ensure access to justice for all. It also threatens trust in other public institutions essential to the rule of law, undermining the security of all Washington residents.

Appendix I: Reports of courthouse arrests by ICE/CBP in Washington state

Case #	Date ³⁷	City	County	Source ³⁸
Adams 1	7/13/2018	Othello	Adams County	WAISN
Adams 2	10/17/2018	Othello	Adams County	WAISN
Adams 3	11/10/2018	Othello	Adams County	WAISN
Adams 4	1/22/2019	<i>Not specified</i>	Adams County	WAISN
Adams 5	2/6/2019	<i>Not specified</i>	Adams County	WAISN
Adams 6	2/6/2019	Othello	Adams County	WAISN
Adams 7	2/24/2019	Ritzville	Adams County	WAISN
Benton 1	4/29/2019	Kennewick	Benton County	WAISN
Clark 1	4/27/2017	Vancouver	Clark County	WDA, Media (Columbian)
Clark 2	10/1/2017	<i>Not specified</i>	Clark County	WDA
Clark 3	1/24/2018	Vancouver	Clark County	NWIRP
Clark 4	5/8/2018	Vancouver	Clark County	Court records
Clark 5	1/7/2019	Vancouver	Clark County	Public records
Clark 6	<i>Not specified</i>	<i>Not specified</i>	Clark County	WDA
Cowlitz 1	3/1/2019	Kelso	Cowlitz County	WDA
Franklin 1	3/11/2019	Pasco	Franklin County	WAISN
Franklin 2	4/1/2019	<i>Not specified</i>	Franklin County	WAISN
Grant 1	2/6/2018	<i>Not specified</i>	Grant County	WDA
Grant 2	2/22/2018	<i>Not specified</i>	Grant County	WDA
Grant 3	3/1/2018	Moses Lake	Grant County	WDA
Grant 4	3/27/2018	<i>Not specified</i>	Grant County	WDA
Grant 5	<i>Early 2019</i>	Ephrata	Grant County	NWIRP, Media (Crosscut)
Grant 6	3/18/2019	Ephrata	Grant County	WDA, Media (Crosscut)
Grant 7	7/11/2019	Ephrata	Grant County	NWIRP

³⁷ In some cases, the date included here is the date that the incident was reported, not the date of the arrest itself. In addition to the likelihood of other, unreported cases, it is possible that some cases represented here may be duplicated.

³⁸ Cases sourced to the Washington Immigrant Solidarity Network (WAISN) include incidents reported via the network's rapid response hotline as well as arrests witnessed by WAISN volunteers; cases sourced to the Washington Defenders Association (WDA) were reported in response to a survey of public defenders and other attorneys who witnessed or received reports of courthouse arrests of their clients or other individuals; cases sourced to Northwest Immigrant Rights Project (NWIRP) and the ACLU of Washington include individuals represented by these organizations.

University of Washington Center for Human Rights - October 1, 2019
<https://sis.washington.edu/humanrights/2019/10/01/ice-cbp-courthouse-arrests/>

Grant 8	8/19/2019	Moses Lake	Grant County	WAISN
Grant 9	8/19/2019	Ephrata	Grant County	WAISN
Grant 10	8/20/2019	Ephrata	Grant County	WAISN
Grant 11	8/22/2019	Ephrata	Grant County	WAISN
Grant 12	9/26/2019	Ephrata	Grant County	Attorney report to UWCHR
King 1	5/5/2017	Kent	King County	Court records
King 2	8/2/2017	Seattle	King County	WDA
King 3	10/20/2017	Federal Way	King County	Court records
King 4	10/23/2017	Auburn	King County	WDA
King 5	10/30/2017	Bellevue	King County	Court records
King 6	12/31/2018	Seattle	King County	Court records, media reports (Patch)
Kitsap 1	10/19/2016	Bremerton	Kitsap County	Court records
Kitsap 2	11/16/2016	Bremerton	Kitsap County	Court records
Mason 1	3/16/2016	Shelton	Mason County	Court records
Mason 2	3/22/2018	Shelton	Mason County	Court records
Okanogan 1	10/12/2018	Okanogan	Okanogan County	WAISN
Pacific 1	3/4/2019	South Bend	Pacific County	ACLU
Pierce 1	1/12/2018	<i>Not specified</i>	Pierce County	WDA
Pierce 2	1/19/2018	Tacoma	Pierce County	Court records
Pierce 3	1/31/2018	<i>Not specified</i>	Pierce County	WDA
Skagit 1	9/13/2018	Mount Vernon	Skagit County	WAISN
Skagit 2	1/7/2019	Mount Vernon	Skagit County	WAISN
Spokane 1	10/15/2018	Spokane	Spokane County	WDA
Thurston 1	6/20/2019	Olympia	Thurston County	Public records, media (Olympian)
Yakima 1	4/1/2018	Yakima	Yakima County	WDA

Appendix II: Selected public records detailing local collaboration with ICE/CBP courthouse arrests

Record 1: Email correspondence between Garth Dano (Grant County Prosecuting Attorney) and Thomas D. Watts (CBP), January 24, 2018

From: WATTS, THOMAS D [mailto: [REDACTED]@cbp.dhs.gov]
Sent: Wednesday, January 24, 2018 4:28 PM
To: Garth Dano
Cc: Kevin J. McCrae; Kaye Burns; Chad A. Jenks; Alan White
Subject: RE: (No Subject)

It was great meeting you today as well. I look forward to working together in a mutually beneficial relationship.

You can reach out to me directly or to

[REDACTED]@cbp.dhs.gov

[REDACTED]@cbp.dhs.gov

if I can't provide immediate assistance.

Thanks again, Tom

From: Garth Dano
Sent: Wednesday, January 24, 2018 4:09:23 PM
To: WATTS, THOMAS D
Cc: Kevin J. McCrae; Kaye Burns; Chad A. Jenks; Alan White
Subject:

Tom, it was great meeting you and the fellas today. Could you all send me your phone and email info please. Look forward to your help here in Grant county

Record 2: Email correspondence between Kaye Burns (Grant County Prosecuting Attorney's Office) and Thomas D. Watts (CBP), January 24, 2018

From: WATTS, THOMAS D <[REDACTED]@cbp.dhs.gov>
Sent: Wednesday, January 24, 2018 4:48 PM
To: Kaye Burns; Garth Dano
Cc: Kevin J. McCrae; Chad A. Jenks; Alan White; ABBINK, BRIAN W; WEBB, MARC D
Subject: RE: (No Subject)

My apologies. You can use either email address for me. They both get to me. :)

As far as who to add to the distribution list, I would choose different names other than Agents Garcia and Clift. Please use the following addresses:

[REDACTED]@cbp.dhs.gov

[REDACTED]@cbp.dhs.gov

[REDACTED]@cbp.dhs.gov

They will be heavily involved in the day to day docket review.

Thanks,
Tom

From: Kaye Burns
Sent: Wednesday, January 24, 2018 4:37:52 PM
To: WATTS, THOMAS D; Garth Dano
Cc: Kevin J. McCrae; Chad A. Jenks; Alan White
Subject: RE: (No Subject)

Mr. Watts – I noticed your e-mail address is different than the one I was provided ([REDACTED]@dhs.gov). Could you please verify it for me so that I can forward our daily list to you? Also, do you wish the list to also be sent to the other two individuals you mentioned? Thank you.

Kaye Burns
Administrative Assistant
Grant County Prosecutor's Office
PO Box 37
Ephrata WA 98823
(509) [REDACTED]
(509) [REDACTED]
e-mail – [REDACTED]@grantcountywa.gov

Records 3-4: Email correspondence between Thomas D. Watts (CBP), Garth Dano (Grant County Prosecuting Attorney), and Chad A. Jenks (Grant County Deputy Prosecuting Attorney), February 14, 2018

From: WATTS, THOMAS D <[REDACTED]@cbp.dhs.gov>
Sent: Wednesday, February 14, 2018 2:29 PM
To: Chad A. Jenks
Subject: RE: 2.20 ML and 301 Calendars

Just wanted you to know we have picked up three already this week. This program is a success, I feel. In addition, we've developed several targets off criminal aliens that have skipped their court dates. We'll get them as well. ☺

Thanks again,
Tom

From: Garth Dano <[REDACTED]@grantcountywa.gov>
Sent: Wednesday, February 14, 2018 4:13 PM
To: Chad A. Jenks; WATTS, THOMAS D
Subject: RE: 2.20 ML and 301 Calendars

Great news Tom -garth

From: Chad A. Jenks
Sent: Wednesday, February 14, 2018 2:31 PM
To: WATTS, THOMAS D
Cc: Garth Dano
Subject: RE: 2.20 ML and 301 Calendars

Thanks Tom. Glad to hear that the laws are being enforced.

Chad A. Jenks
Deputy Prosecuting Attorney
District/Juvenile Division Supervisor
Grant County Prosecuting Attorney's Office
PO Box 37
Ephrata, WA 98823
Phone: [REDACTED]
Fax: [REDACTED]
[REDACTED]@grantcountywa.gov



Record 5: Email correspondence between Thomas D. Watts (CBP) and Chad A. Jenks (Grant County Deputy Prosecuting Attorney), February 23, 2018

From: WATTS, THOMAS D <[REDACTED]@cbp.dhs.gov>
Sent: Friday, February 23, 2018 10:03 AM
To: Chad A. Jenks
Subject: RE: Calendar for 3.01.2018 RM 301

No problem. By the way, we picked up three more yesterday morning. It's been fun. ☺

From: Chad A. Jenks [mailto:[REDACTED]@grantcountywa.gov]
Sent: Friday, February 23, 2018 9:52 AM
To: ABBINK, BRIAN W <[REDACTED]@cbp.dhs.gov>; WEBB, MARC D <[REDACTED]@cbp.dhs.gov>; WATTS, THOMAS D <[REDACTED]@cbp.dhs.gov>
Subject: FW: Calendar for 3.01.2018 RM 301

Sorry, was gone the last few days on vacation. Sending you some dockets.

Chad A. Jenks
Deputy Prosecuting Attorney
District/Juvenile Division Supervisor
Grant County Prosecuting Attorney's Office

From: KOLER, LOUIS V <[REDACTED]@cbp.dhs.gov>
Sent: Wednesday, April 10, 2019 12:01 PM
To: Helen Kenyon <[REDACTED]@co.adams.wa.us>
Subject: Contacts

Helen,

These are the current email addresses that we would like the dockets sent to. There will be a name change or two every 3-6 months as Agents switch responsibilities.
Thank you, we appreciate your assistance.

[REDACTED]@cbp.dhs.gov
[REDACTED]@CBP.DHS.GOV
[REDACTED]@cbp.dhs.gov
[REDACTED]@cbp.dhs.gov
[REDACTED]@CBP.DHS.GOV
[REDACTED]@CBP.DHS.GOV

Louis Koler

U.S. Border Patrol Agent

Spokane Border Patrol Station
10710 Newport Hwy, Spokane, WA 99218
(509) [REDACTED]

Record 6: Email from Louis V. Koler (CBP) to Helen Kenyon (Adams County Prosecuting Attorney's Office), April 10, 2019

From: KOLER, LOUIS V <[REDACTED]@cbp.dhs.gov>
Sent: Wednesday, April 10, 2019 12:01 PM
To: Helen Kenyon <[REDACTED]@co.adams.wa.us>
Subject: Contacts

Helen,

These are the current email addresses that we would like the dockets sent to. There will be a name change or two every 3-6 months as Agents switch responsibilities.
Thank you, we appreciate your assistance.

[REDACTED]@cbp.dhs.gov
[REDACTED]@CBP.DHS.GOV
[REDACTED]@cbp.dhs.gov
[REDACTED]@cbp.dhs.gov
[REDACTED]@CBP.DHS.GOV
[REDACTED]@CBP.DHS.GOV

Louis Koler

U.S. Border Patrol Agent

Spokane Border Patrol Station
10710 Newport Hwy, Spokane, WA 99218
(509) [REDACTED]

Record 7: Email from Janet Millard (Grant County Prosecuting Attorney's Office) in reply to Jaimie A. Waite (Deportation Officer, ICE), June 18, 2018

From: Janet Millard <[REDACTED]@grantcountywa.gov>
Sent: Monday, June 18, 2018 4:22 PM
To: Waite, Jaimie A
Subject: RE: [REDACTED]

Arrestment 7/2/18

From: Waite, Jaimie A [mailto:[REDACTED]@ice.dhs.gov]
Sent: Monday, June 18, 2018 2:13 PM
To: Janet Millard <[REDACTED]@grantcountywa.gov>
Subject: [REDACTED]

Can you tell me this fellows case number and next court date?

Thanks.

(FBI# [REDACTED] / A# [REDACTED]).

Jaimie Waite
Deportation Officer
301 Yakima Street – G28
Wenatchee, WA 98801

Record 8: Email from Jaimie A. Waite (Deportation Officer, ICE) in reply to inquiry from Alan White (Grant County Chief Deputy Prosecutor), September 11, 2018

From: Waite, Jaimie A <[REDACTED]@ice.dhs.gov>
Sent: Tuesday, September 11, 2018 3:25 PM
To: Alan White
Subject: RE: [REDACTED]

He is a US Citizen. I don't pick on US Citizens.

Thank you.

From: Alan White [mailto:[REDACTED]@grantcountywa.gov]
Sent: Tuesday, September 11, 2018 2:03 PM
To: Waite, Jaimie A <[REDACTED]@ice.dhs.gov>
Subject: [REDACTED]

Are you working on this gentleman?
Would your agency be following this case?
DOB [REDACTED]

Has no FBI number, but a SSN.

He appeared to be employed, we do not have any prior record or DOL records on him

Alan White
Chief Deputy Prosecutor
Grant County Prosecutor Office

Record 9: Email from Sgt. Greg Knutson (Grant County Sheriff's Office) to Jaimie A. Waite (Deportation Officer, ICE), October 11, 2017

From: Greg Knutson <[REDACTED]@grantcountywa.gov>
Sent: Wednesday, October 11, 2017 5:37 PM
To: Waite, Jaimie A
Subject: have one

Yo Homie, call me tomorrow morning at 2487. Just booked a guy with a prior deportation for assault 4 dv. Should go to court around 1030. [REDACTED]. Using an alias of [REDACTED], DOB: [REDACTED]

FBI # [REDACTED], SID # [REDACTED]

Sgt. Greg Knutson, J9
Grant County Sheriff's Office
Gang Unit/Firearms Instr.
P.O. Box 37
Ephrata, Wa 98823
(509) [REDACTED]
[REDACTED]@grantcouthywa.gov