
No. 19-1838

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

MARIAN RYAN, in her official capacity as Middlesex County District Attorney; RACHAEL ROLLINS, in her official capacity as Suffolk County District Attorney; COMMITTEE FOR PUBLIC COUNSEL SERVICES; CHELSEA COLLABORATIVE, INC.,
Plaintiffs-Appellees,

v.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MATTHEW T. ALBENCE, in his official capacity as Acting Deputy Director of U.S. Immigration and Customs Enforcement and Senior Official Performing the Duties of the Director; TODD M. LYONS, in his official capacity as Acting Field Office Director of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; U.S. DEPARTMENT OF HOMELAND SECURITY; CHAD WOLF, in his official capacity as Acting Secretary of United States Department of Homeland Security,
Defendants-Appellants.

On Appeal from the United States District Court for the District of
Massachusetts

Case No. 19-cv-11003; The Hon. Indira Talwani

**BRIEF OF *AMICI CURIAE* 12 FORMER MASSACHUSETTS JUDGES
IN SUPPORT OF PLAINTIFFS-APPELLEES' PETITION FOR PANEL
REHEARING OR REHEARING *EN BANC***

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Lawyers’ Committee for Civil Rights and Economic Justice, *Immigration Enforcement At Massachusetts Courthouses: A Fact Sheet* (2017)3

Letter from Former Judges to Ronald D. Vitiello, Acting Director, U.S. Immigration & Customs Enforcement, Dec. 12, 20183

INTERESTS OF AMICI¹

We are 12 former state judges and justices from Massachusetts, with more than 250 years of combined experience on the state's trial and appellate courts. We have served on the Massachusetts Supreme Judicial Court, the Appeals Court, Superior Court, District Court, Juvenile Court, and Boston Municipal Court. In these roles we have seen and taken on the judicial branch's challenging task of administering the state's justice system daily, and we have sought to foster and expand access to justice in carrying out those responsibilities. Some of us have also served on the Massachusetts Access to Justice Commission, a body tasked with understanding and reducing the barriers faced by members of Massachusetts' communities in accessing justice in our courts. A full list of amici is provided in the Appendix.

As former judges and justices, we know first-hand how the presence and actions of Immigration and Customs Enforcement (ICE) are likely to affect Massachusetts' judges and the day-to-day operations of its courthouses. Based on

¹ Pursuant to Fed. R. App. P. 29(a)(4), counsel for amici certify that amici and their counsel authored this brief in its entirety and that no party or its counsel, nor any other person or entity other than amici or their counsel, made a monetary contribution to this brief's preparation or submission. All parties consented to the filing of this brief. This brief does not purport to convey the position of NYU School of Law.

our experience, informed by how courthouse enforcement has manifest across the country, we write to detail how courthouse arrests by ICE are incompatible with the judiciary's responsibility to ensure courthouse access, maintain orderly and efficient dockets and courthouses, and safeguard the public's trust in its courts.

ARGUMENT

For courts to fully serve their communities, broad access to justice is vital. One essential element of access is that anyone who walks through the courthouse doors to seek relief, protection, or to defend themselves will feel safe doing so. Beginning in 2017, however, there has been a substantial increase in ICE officers making civil immigration arrests of persons appearing in state courts. Reports suggest that there has been a more than ten-fold increase in the frequency of these arrests in some jurisdictions.² In 2017 alone, federal immigration officers conducted immigration enforcement in or near at least 24 state courthouses in

² Immigrant Defense Project, *Denied, Disappeared, and Deported: The Toll of ICE Operations at New York's Courts in 2019*, at 6 (2020), <https://www.immigrantdefenseproject.org/wp-content/uploads/Denied-Disappeared-Deported-FINAL.pdf>.

Massachusetts.³ Nationally, ICE officers have made civil immigration arrests at courts in more than twenty states.⁴

The panel decision in this case warrants panel rehearing or *en banc* review and/or certification of an important question of Massachusetts law to the Massachusetts Supreme Judicial Court (SJC). First, there is no question that this case involves a question of “exceptional importance” warranting *en banc* review – the security of and access to the courts. *See F.R.A.P.* 35.

Second, the question underlying the panel’s decision – whether Massachusetts law has some sort of exception to its long tradition prohibiting civil process and arrest on court property for civil arrests “initiated by the sovereign” – is exactly the sort of question that ought to be decided by the SJC. The Rules of the SJC invite a federal court to certify a question to the SJC “if there are involved in any proceeding before it questions of law of this State which may be determinative of the cause then pending in the certifying court and as to which it

³ Lawyers’ Committee for Civil Rights and Economic Justice, *Immigration Enforcement At Massachusetts Courthouses: A Fact Sheet* 3 (2017), <http://lawyersforcivilrights.org/wp-content/uploads/2017/11/Immigration-Enforcement-at-Massachusetts-Courthouses-FINAL-FOR-PUBLIC-RELEASE.pdf>.

⁴ Letter from Former Judges to Ronald D. Vitiello, Acting Director, U.S. Immigration & Customs Enforcement, Dec. 12, 2018, at 1, [https://www.scribd.com/document/395488473/Letter-From-Former-Judges-Courthouse-Immigration-Arrests \(“Former Judges’ Letter”\)](https://www.scribd.com/document/395488473/Letter-From-Former-Judges-Courthouse-Immigration-Arrests-(Former-Judges-Letter)).

appears to the certifying court there is no controlling precedent in the decisions of this court.” Mass. S.J.C.R. 1:03. In deciding whether a question meets this standard, the First Circuit considers “the likely effects of a decision on future cases, and federalism issues.” *Easthampton Sav. Bank v. City of Springfield*, 736 F.3d 46, 52 (First Cir. 2013). This court has considered certification “particularly appropriate” where “the answers to these questions may hinge on policy judgments best left to the Massachusetts court and will certainly have implications beyond these parties.” *In re Engage, Inc.*, 544 F.3d 50 (First Cir. 2008) (citing *Bos. Gas Co. v. Century Indem. Co.*, 529 F.3d 8, 14 (First. Cir. 2008)).

The examples outlined in our previous amicus brief at Docket Entry No. 6340479, drawn from within Massachusetts and across the country, are incorporated by reference herein and are illustrative of the intolerable harm courthouse immigration arrests pose to the Massachusetts justice system. The manner in which ICE officers have conducted courthouse arrests has at times created an atmosphere of chaos and confusion in courthouses. By removing individuals immediately prior to, or in the middle of, proceedings, and engaging in physical altercations while court is in session, ICE officers have disrupted the order and compromised the safety essential to effectively and efficiently conduct the business of state courts.

First, courthouse immigration enforcement has made courthouses places to fear for many members of immigrant communities, leading many individuals to avoid courthouses altogether or limit their interaction with courts. This chilling effect harms both the individuals who have lost opportunities to seek justice and protection in the courts, as well as the justice system as a whole, which faces the challenge of delivering justice and ensuring public safety without the full participation of the communities it serves.

Moreover, ICE's use of state judicial branch resources to further federal immigration enforcement undermines the public's trust in the judicial branch. The judiciary depends on this trust to encourage public participation in the justice system as victims, defendants, witnesses, and jurors. This trust is essential to encouraging participation in programs designed to expand access to, and improve the quality of, the justice the judicial branch delivers.

Appellees' claims are grounded in longstanding legal principles ensuring courthouse access so that the public may have "an opportunity to seek justice," so that courts may "function properly," and so that states may administer their own judicial systems. *See New York v. U.S. Immigration and Customs Enforcement*, No.

19-cv-8876, 2019 WL 6906274, at *10, *12 (S.D.N.Y. Dec. 19, 2019).⁵ For the above reasons, civil immigration arrests of persons appearing in court violate these principles, and this Court should grant Appellees’ petition for panel rehearing or rehearing *en banc* to uphold the preliminary injunction granted by the United States District Court or, in the alternative, certify to the SJC the question of whether Massachusetts law prohibits courthouse arrests in sovereign-initiated civil immigration arrests.

CONCLUSION

For the foregoing reasons, and in view of the arguments detailed in our previous amicus brief at Docket Entry No. 6340479 and incorporated by reference in this brief, Amici join in asking this Court to grant panel rehearing or rehearing *en banc* seeking to affirm the district court’s grant of a preliminary injunction or in

⁵ See also *Christopher v. Harbury*, 536 U.S. 403, 412-15 (2002) (discussing the several constitutional provisions on which courthouse access claims rest, and concluding that courts have viewed the right to courthouse access as a necessary corollary of the underlying right plaintiffs seek to enforce); *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932) (“The general rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service of process in another, is founded, not upon the convenience of the individuals, but of the court itself.... it proceeds upon the ground that the due administration of justice requires that a court shall not permit interference with the progress of a cause pending before it,...which would prevent, or the fear of which might tend to discourage, the voluntary attendance of those whose presence is necessary or convenient to the judicial administration in the pending litigation.”) (internal citations omitted).

the alternative, that the Court certify to the SJC the question of whether
Massachusetts law prohibits courthouse arrests in sovereign-initiated civil suits.

Dated: October 26, 2020

Respectfully submitted,

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APPENDIX: LIST OF AMICI

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Hon. Margot G. Botsford: Former Associate Justice, Massachusetts Supreme Judicial Court; former Associate Justice, Massachusetts Superior Court

Hon. Fernande R.V. Duffly: Former Associate Justice, Massachusetts Supreme Judicial Court; former Associate Justice, Massachusetts Appeals Court; former Associate Justice, Massachusetts Probate and Family Court

Hon. Geraldine S. Hines: Former Associate Justice, Massachusetts Supreme Judicial Court; former Associate Justice, Massachusetts Appeals Court; former Associate Justice, Massachusetts Superior Court

Hon. Suzanne V. DeVecchio: Former Chief Justice, Massachusetts Superior Court

Hon. Carol S. Ball: Former Associate Justice, Massachusetts Superior Court

Hon. Leslie E. Harris: Former Associate Justice, Suffolk Juvenile Court

Hon. Bertha D. Josephson: Former Associate Justice, Massachusetts Superior Court; former Judge, Chicopee District Court

Hon. Christopher J. Muse: Former Associate Justice, Massachusetts Superior Court

Hon. Ernest L. Sarason, Jr.: Former Associate Justice, Massachusetts District Court; former Associate Justice, Boston Municipal Court

Hon. Charles T. Spurlock: Former Associate Justice, Massachusetts Superior Court; former Associate Justice, Massachusetts District Court

Hon. Paul E. Troy: Former Associate Justice, Massachusetts Superior Court

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies compliance of the foregoing amicus brief with the following requirements of the Federal Rules of Appellate Procedure and the Local Rules of this Court.

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), because this brief contains 1,342 words, including footnotes and appendix, but excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2020, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the First Circuit by using the CM/ECF system. Counsel in the case are registered CM/ECF users and such service will be accomplished by the CM/ECF system.

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