

**No. 19-1838**

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

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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; MATTEW 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.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

No. 19-cv-11003

The Hon. Indira Talwani

**BRIEF OF AMICI CURIAE  
28 DOMESTIC AND SEXUAL VIOLENCE ADVOCACY  
ORGANIZATIONS IN SUPPORT OF PETITION FOR  
PANEL REHEARING OR REHEARING EN BANC**

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## **FEDERAL RULE OF APPELLATE PROCEDURE 29 STATEMENTS**

Pursuant to Fed. R. App. P. 29(a)(4)(E) and 29(b)(4), undersigned counsel states that no counsel for the parties authored this brief in whole or in part, and no party, party's counsel, or person or entity other than amici and their counsel contributed money that was intended to fund the preparation or submission of this brief.

## **CORPORATE DISCLOSURE STATEMENT**

Undersigned counsel for amici curiae certifies pursuant to Fed. R. App. P. 29(a)(4)(A) and 29(b)(4) that all amici are non-profit organizations or government agencies that do not have any parent corporations or issue stock, so there is no publicly held corporation owning 10% or more of their stock, with the exception of the following:

- The Northeast Justice Center is a subsidiary of the non-profit organization Northeast Legal Aid; and
- The Justice Center of Southeast Massachusetts is a subsidiary of the non-profit organization South Coastal Counties Legal Services.

Dated: October 23, 2020

/s/ Lauren Godles Milgroom  
Lauren Godles Milgroom  
Attorney for Amici Curiae

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## INTERESTS OF AMICI CURIAE

The twenty-eight amici<sup>1</sup> are non-profit organizations, councils, and other entities that address the needs of immigrant survivors of domestic and sexual violence and human trafficking in Massachusetts. Many provide direct legal representation to immigrant survivors, helping them obtain abuse prevention orders or immigration benefits, including through the U-Visa and T-Visa processes for victims of crimes. Other amici conduct policy advocacy in the areas of immigration or domestic and sexual violence or support organizations providing direct services to immigrant survivors.

To do their work, amici must be able to reassure survivors that pursuing justice will not expose them to further harm or the risk of deportation. ICE's renewed presence in Massachusetts courthouses would frustrate amici's efforts to empower immigrant survivors to access the legal system and obtain protection from their abusers or secure immigration benefits through programs requiring cooperation with law enforcement.

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<sup>1</sup> The Motion for Leave to File Brief of Amici Curiae lists each amici on pages 1-3.

## ARGUMENT

The panel’s decision upends the “well settled” common-law privilege<sup>2</sup> and Massachusetts law<sup>3</sup> against civil courthouse arrests and, unless corrected, will have disastrous effects on people like amici’s clients.<sup>4</sup> Survivors need Massachusetts courts and law enforcement to protect them from their abusers. In turn, Massachusetts police, prosecutors, and courts need survivors to report abuse and testify against their abusers. The panel’s decision to vacate the district court’s injunction will threaten this cooperative relationship, endanger immigrant survivors, and make it harder for the Commonwealth to enforce state law. Indeed, as soon as the panel announced its decision, amici were flooded with calls from concerned clients reconsidering whether to testify against their abusers.

This brief highlights the harmful, personal consequences of the panel’s decision on immigrant victims and the urgent need for rehearing. First, it shows how ICE’s civil-arrest policy often led immigrant survivors of domestic and sexual violence to endure severe abuse rather than risk challenging their abusers in court. Next, it shows how the injunction empowered amici’s clients to go to court to seek protection—a right that will be undermined if the panel’s decision is not corrected.

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<sup>2</sup> *Stewart v. Ramsay*, 242 U.S. 128, 129-130 (1916).

<sup>3</sup> *Matter of C. Doe*, No. SJ-2018-119 (Mass. 2018), slip op. at 12.

<sup>4</sup> The term “client” is used broadly to refer to the survivors whom amici support, whether through direct services or policy advocacy.

Amici urge this Court to grant the Petition for Rehearing. Their clients' safety is on the line.

*A. ICE's Civil Courthouse Arrests Stopped Immigrant Victims of Domestic and Sexual Violence from Reporting Crimes and Participating in the Criminal Justice System*

As is true in other states, immigrants in Massachusetts are particularly vulnerable to domestic and sexual violence.<sup>5</sup> Recognizing this vulnerability, Congress created the U- and T-Visa programs, which provide pathways to legal status for victims of abuse and trafficking.<sup>6</sup> To obtain a U- or T-Visa, a victim must cooperate with law enforcement.<sup>7</sup> The panel's decision undermines these programs by allowing abusers to plausibly threaten victims that the cooperation that Congress sought to encourage could lead to detention and deportation.

Since 2017, ICE has increased its civil arrests in courthouses by as much as 1700%.<sup>8</sup> In 2018, "law enforcement officials [nationwide] reported that many crimes ha[d] become more difficult to investigate: **69 percent said domestic violence was**

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<sup>5</sup> See Decker, M., Raj, A. and Silverman, J., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 *Violence Against Women* 498, 506-07 (2007) ("[B]eing an immigrant confers significant additional vulnerability to recurring sexual assault.").

<sup>6</sup> See 8 U.S.C. § 1101(a)(15)(T)-(U).

<sup>7</sup> 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa); *id.* § 1101(a)(15)(U)(i)(III).

<sup>8</sup> See, e.g., *Denied, Disappeared, and Deported*, IMMIGR. DEF. PROJECT at 2 (Jan. 2020), <https://bit.ly/3doVPYD>.



**harder to investigate, 64 percent said this applied to human trafficking, and 59 percent said this was true about sexual assault.”**<sup>9</sup> These troubling national trends were also seen in Massachusetts, where ICE’s courthouse arrests have increased dramatically since 2017.<sup>10</sup>

*B. The Stories of Amici’s Clients Show the Dangerous Effects of ICE’s Civil Courthouse Arrests in Massachusetts*

After ICE began its courthouse raids in 2017, amici consistently heard from undocumented survivors who were too afraid to get help. Survivors who were afraid of ICE declined to pursue restraining orders, testify in criminal proceedings, apply to the federal programs described above, or even report incidents of domestic or sexual violence. In short, ICE put amici’s clients’ lives at risk by making them afraid to go to court. The Court should reconsider the panel’s decision, which increases that risk.

Indeed, shortly after the panel issued its decision, Myriam Bada,<sup>11</sup> a client at amicus HarborCOV, called her attorney, saying that she had heard about the panel’s decision and was very concerned about its implications. Myriam is a U-Visa applicant whose abuser strangled and sexually assaulted her. Myriam’s attorney

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<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> See Maria Cramer, *ICE courthouse arrests worry attorneys, prosecutors*, BOSTON GLOBE (June 16, 2017), <https://bit.ly/2SJSco6>.

<sup>11</sup> All survivor and abuser names are pseudonyms and identifying facts have been removed to protect survivors’ safety and privacy.

explained that the injunction remains in place for now, but that it may be vacated by the time of her abuser's trial. Myriam is no longer sure whether it will be safe for her to testify at the trial or in the parallel civil case against her abuser. Another HarborCOV client, who is a victim and a witness in a criminal case involving aggravated assault and battery, has similar doubts. She told her advocate that her abuser's family contacted her in the wake of the panel's decision to intimidate her and warn her that she will be to blame if her abuser is arrested at an upcoming court hearing.

Lucia Vasquez is a client of amicus DOVE. Before the injunction, Lucia endured five years of physical abuse, stalking, and isolation at the hands of Julio, with whom she had two young children. Julio constantly threatened Lucia—telling her if she went to court, he would obtain sole custody of the children because he was documented and she was not. Lucia's family encouraged her to seek custody and a restraining order, but Lucia had heard rumors that ICE was patrolling the courthouses. So, Lucia decided she would be safer *not* going to court. DOVE is still in touch with Lucia, who is now in a safer situation. She told her attorney, however, that if the injunction had been in place when she felt in fear of Julio, she “one-hundred percent” would have sought protection from the court. But for ICE's policy, Lucia could have assisted in Julio's prosecution and possibly qualified for a U-Visa.

Before the injunction, even survivors who initially cooperated with law

enforcement might abruptly drop their cases out of fear. For example, Diana Martinez is a Colombian client of amicus De Novo whose abuser assaulted her, choked her, pointed a gun at her, and threatened to kill her. After landing in the hospital and eventually an emergency shelter, Diana met with the Suffolk County District Attorney's office and worked up the courage to testify against her abuser. Immediately after Diana testified, however, her abuser told her that if she came to court again, he would have ICE arrest her. She had not yet completed her role in cooperating with the prosecutor, but Diana was so afraid of returning to the courthouse that she stopped speaking with law enforcement entirely.

Some survivors who did seek legal protection before the injunction waited to do so until the abuse had escalated to near-fatal levels, because they were so afraid of encountering ICE in the courthouse. Ana Valdez, a client at HarborCOV, is an illustrative example. Ana and James moved to the United States about a decade ago. James then became sexually, physically, and emotionally abusive. One night, James raped Ana while their infant child slept next her. Distraught, Ana told James to leave—but James would not stay away for long. In the following years, James repeatedly called Ana, followed her, and waited outside her apartment. On several occasions, James threatened to kill Ana or one of the children if she did not take him back. But Ana was too terrified to seek a restraining order. Ana had heard that immigration officers often patrolled the courthouse, and she could not risk being

deported with her children to the violent community she had escaped years ago. Several years after they broke up, James attacked Ana in public because she was talking to another man. Still, Ana was too afraid to go to court. Months later, James forced his way inside her apartment and choked, punched, and threatened Ana. For weeks, Ana was still too afraid to go to court. Only after she realized that the next time James might kill her—which would leave her children without a safe guardian—did Ana finally seek and secure a restraining order against James. As a result, prosecutors charged James in a related criminal case. Had Ana felt safe to seek a restraining order in the first place, however, she could have avoided years of abuse, and James could have been prosecuted sooner.

ICE's escalation of civil arrests harmed not only amici's clients, but also amici themselves. Amici who provide direct services try to involve clients in their cases as much as possible and have clients handle the parts that do not require a lawyer. With ICE's increased presence in the courthouses, however, sending immigrant clients to court alone became excessively risky. For example, in July 2018, an attorney at amicus Catholic Charities of Boston sent one of her undocumented clients to pick up a docket sheet at court. When he did so, ICE confronted him in the courthouse and took him aside for questioning. After that incident, Catholic Charities had to stop sending undocumented clients to court alone. Similarly, amicus Greater Boston Legal Services ("GBLS") had to accompany all undocumented clients to court and

devote time and effort to creating safety plans with each client for what to do if ICE were to approach them. Amicus REACH Beyond Domestic Violence (“REACH”) often sent an advocate into court ahead of their clients to see if ICE was there before advising the clients to enter.

*C. The Preliminary Injunction Reopened the Courthouse Doors to Amici’s Clients and Increased Their Participation in the Justice System*

In June 2019, the district court restored the common law privilege and reopened the courthouse doors for immigrant survivors in Massachusetts. Amici attest that the preliminary injunction helped their clients trust that they could safely seek protection from their abusers. An advocate at amicus De Novo reported seeing a “noticeable increase” in the number of survivors willing to report domestic or sexual violence, as did other amici. Amici also reported that survivors were less likely to abandon their cases for fear of being deported. Many amici carried copies of the injunction with them when accompanying undocumented survivors to court—sometimes giving copies to clients as well. The following illustrative stories show the injunction’s powerful effects.

Alex Prado’s journey to safety offers perhaps the clearest proof that the injunction increased access to justice for immigrant survivors. Alex, a mother of three from Brazil, had been in a relationship with Carlos for fifteen years. For much of their relationship, Carlos controlled all aspects of Alex’s daily life, and she suffered extreme physical and verbal abuse. Eventually, the abuse escalated to an

almost-fatal climax. Carlos threw a pot of boiling water at Alex, intending to scald her. When the water missed Alex, Carlos grabbed a knife, held it to her throat, and threatened to kill her. Thankfully, Alex escaped and called the police to report the attack. Carlos was arrested and prosecuted. Although Alex wanted to testify in court against Carlos, she faced a heart-wrenching decision: (1) tell her story to ensure that Carlos never hurt her again but risk being detained by ICE and losing her children; or (2) hide from both Carlos and ICE, and hope Carlos never tried to kill her again. Alex could not decide which was worse.

Alex's situation vastly improved when the district court granted the preliminary injunction a few days before Carlos' next court date. After Alex's attorney at amicus DOVE explained the scope of the preliminary injunction, Alex's decision became easier. Carrying a copy of the preliminary injunction, Alex attended the hearing and gave in-person testimony about the years of abuse she had suffered. The preliminary injunction allowed Alex to take her life back into her own hands.

Shortly after the injunction took effect, amicus GBLS represented Ashley Salas, a 20-year-old woman from South America, who was seeking a restraining order against her abuser. Ashley had heard that ICE targeted courthouses as a place to trap immigrants and was terrified that even a brief hearing would expose her to ICE. Ashley's attorney explained the preliminary injunction and advised Ashley that ICE was prohibited from arresting her at the courthouse. Largely because of her

attorney's reassurances, Ashley decided to proceed. On the day of the hearing, however, Ashley almost changed her mind. Ashley's attorney met her in the courthouse parking lot, took out a copy of the preliminary injunction, and went over it in detail with Ashley—reassuring Ashley that ICE would not arrest her in court. With her attorney holding a copy of the injunction, Ashley finally stepped through the courthouse doors and pursued her restraining order. The judge granted it.

Stephanie Vela, a client of amici Boston Area Rape Crisis Center, sought a restraining order in late summer 2019. Earlier, Stephanie had contacted the District Attorney's Office and reported that her young teenage daughter, Laura, had been sexually assaulted. The victim witness advocate at the D.A.'s office advised her to seek a restraining order on Laura's behalf, but Stephanie did not think it was safe for her family to go to court. She was terrified that they would be detained, separated, and deported. Stephanie's attorney assuaged Stephanie's fears by reviewing the preliminary injunction with her and Laura. After multiple discussions, Stephanie decided to pursue the restraining order and ultimately prevailed in court.

After the injunction was entered, law enforcement made tremendous strides in overcoming barriers to reporting. In the fall of 2019, Massachusetts officials, prosecutors, and law enforcement began organizing community meetings with immigrant survivors to inform them about the preliminary injunction and their rights as crime victims. In conjunction with REACH, GBLS, and the Latinas Know Your

Rights program, word of these community meetings spread informally from advocates and attorneys to current and former clients. Dozens of community members attended each meeting. The meetings were hugely successful in fostering cooperation between crime victims and law enforcement and helping to restore victims' trust in the Massachusetts courts. Survivors felt comforted to hear law enforcement officials describe efforts to promote their safety. But trust between immigrant survivors and state law enforcement remains fragile. The panel's decision threatens to undo the efforts of amici, government officials, prosecutors and police to encourage survivors to seek help.

## **CONCLUSION**

Preserving the common law privilege against civil courthouse arrests protects the integrity of the judicial system and encourages vulnerable immigrant survivors to participate in the system without fear of being detained by ICE. The Court should grant the petition for rehearing to protect amici's clients and ensure that the courthouse doors remain open to all.



Date: October 23, 2020

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## 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) and 29(b)(4), because this brief contains 2542 words, 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 for Mac in Times New Roman 14-point font.

Dated: October 23, 2020

Respectfully submitted,

/s/ Lauren Godles Milgroom  
Lauren Godles Milgroom  
Counsel for Amici Curiae

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2020, I, Lauren Godles Milgroom, electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the First Circuit using the CM/ECF system. Counsel in the case are registered CM/ECF users and such services will be accomplished by the CM/ECF system.

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