



September 6, 2018

Sheila Woods-Skipper
President Judge
First Judicial District

Dear Judge Woods-Skipper:

Thank you for the ongoing meetings between the First Judicial District (FJD) and our coalition of legal and community-based advocates regarding our grave concerns with federal immigration enforcement in our judicial system and its impact on local access to justice and public safety. Recently, other court systems have taken steps to address this issue, and national groups such as the National Center for State Courts have recommended that courts implement appropriate policy changes. Accordingly, we are attaching relevant information for the FJD to review and consider. We believe the adoption of the attached recommended policies with regard to the courts and the Probation Department (APPD) would benefit the integrity of the courts, the equal administration of justice for all, and the independence of the judiciary from federal interference.

As we have demonstrated through evidence that we have shared over the course of our ongoing meetings with the FJD, when courts and probation permit or facilitate civil immigration enforcement actions, the impact is felt not only by noncitizen criminal defendants, but also by the wider community of court users. Because U.S. Immigration and Customs Enforcement (ICE) has refused to protect any classes of immigrants from its policy of courthouse arrests, all immigrants who have any business at state or local courthouses, whether as witnesses, defendants, victims, supportive family members, or simply members of the public, are now fearful of coming to court. Without necessary parties present, courts are unable to effectively administer justice, and the safety of the whole community suffers as a result. Moreover, the current lack of policies regarding civil ICE enforcement and cooperation means that advocates cannot give litigants or witnesses any assurances whatsoever regarding the immigration risks of appearing in or around state and local courthouses.

When ICE arrests noncitizens in or around state or local courthouses without a judicial warrant, it compromises cherished guarantees under both the federal and state constitutions. Such arrests tread on the federalist system of governance protected by the Tenth Amendment of the U.S. Constitution, as well as individual rights of access to courts protected by the First, Fifth, and Sixth Amendments. Article 1, Section 11 of the Pennsylvania Constitution provides in part that “[a]ll courts shall be open; and every man



for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.” Pa. Const. Art. 1, § 11. This section has been interpreted as a source for due process guarantees beyond those guaranteed under the U.S. Constitution. Furthermore, Title VI of the Civil Rights Act of 1964 requires that no person shall be denied participation in, or benefit of, a service or program based upon his/her national origin, and clearly the status quo of permitting civil ICE enforcement actions unsupported by judicial warrants disproportionately impacts noncitizens and their families from seeking access to the judiciary and the various programs it administers. In June, 2018, the Administrative Office of Pennsylvania Courts issued an Advisory, attached hereto, warning that inquiries into immigration status may constitute discrimination and violate Title VI.

In addition, there is a long-standing common law principle that provides the FJD with another basis for implementation of the proposed policies (attached): the common law privilege against civil arrest in or around courthouses without a judicial warrant. The practice of warrantless civil arrests, and thereby warrantless civil arrests in or around courthouses, had long faded from the American legal landscape until it was recently resurrected by ICE. As deportation proceedings are civil actions, ICE’s courthouse arrests of noncitizens, for the purpose of commencing deportation proceedings, are civil arrests. INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) (“A deportation proceeding is a purely civil action to determine eligibility to remain in this country”). And ICE undertakes this arrests predominantly, if not exclusively, on the basis of administrative warrants—not judicial warrants. Enforcing the common law privilege from warrantless civil arrest in courthouses would guarantee litigants and the public that they can access the courts in safety and security. For more information on the privilege, we recommend Christopher N. Lasch, A Common-Law Privilege to Protect State and Local Courts During the Crimmigration Crisis, 127 Yale L.J. F. 410, 424 (2017) (Publically available on the Yale law review website at <http://www.yalelawjournal.org/forum/a-common-law-privilege-to-protect-state-and-local-courts-during-the-crimmigration-crisis>)

In regards to our proposed policy for the APPD, we believe it fully aligns with the purpose and goals of probation. According to the FJD website, APPD “provid[es] opportunities to offenders to improve their lives,” seeks to foster positive change in their supervisees’ decision-making and behavior, and endeavors to expand opportunities for them to move out of the criminal justice system through education, employment, health services, family engagement, and other measures. Supervision and guidance of probationers is not only APPD’s explicitly stated mission but also its legal duty. 42 Pa.C.S.A. 9912(a) states that “Officers are in a supervisory relationship with their offenders. The purpose of this supervision is to assist the offenders in their rehabilitation and reassimilation into the



community and to protect the public. The Pennsylvania Supreme Court has stated, “Probation is a rehabilitative device to be used to assist the offender in his adjustment to life within society.” Commonwealth v. Cottle, 426 A.2d 598, 602 (Pa. 1982). See also Commonwealth v. Carver, 923 A.2d 495, 497 (Pa. Super. 2007) (“probation is designed to rehabilitate a defendant so that he can become a productive member of society”).

APPD’s current practice of permitting individual officers to inquire about citizenship and immigration status and divulge non-public information about its noncitizen probationers to ICE undermines these goals. APPD cannot realistically foster positive change in the lives of its supervisees without engendering the trust of these individuals. If a probationer fears that his probation officer will inquire about his citizenship or immigration status or notify ICE of his reporting schedule, or work or home address, he will likely fail to report, and may even fail to attend treatment sessions, employment trainings, educational classes, or other rehabilitative services facilitated and monitored by APPD. To the extent that APPD facilitates ICE arrests, by alerting ICE to the whereabouts of probationers (and particularly by enabling ICE to arrest probationers within the offices of APPD), APPD frustrates not only the efforts by individual supervisees to improve their lives, but also its own underlying mission of rehabilitation and assimilation. Rather than helping probationers successfully integrate into society, APPD’s practice of contacting and sharing information with ICE drives non-citizen probationers into the shadows.

We believe the proposed policies that we have attached are a crucial step toward restoring confidence that the FJD will ensure access to justice for all. Adoption of these policies would also align the FJD with the City of Philadelphia’s policies in this regard, which have withstood legal scrutiny. Thank you for your consideration of these important issues and we hope to continue meeting with you so that we can discuss any concerns you may have.

Respectfully,

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On behalf of ICE Out of Courts Coalition (Members: Community Legal Services, Defender Association of Philadelphia, Hebrew Immigrant Aid Society of PA, Juntos, Nationalities Service Center, Victim Witness Services of South Philadelphia)

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