

The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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March 24, 2020

The Honorable Thomas G. Saylor
Chief Justice
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, 8th Floor
Harrisburg, PA 17120

RE: Recent Reports of the Impact of the Presence of Federal Immigration and Customs Enforcement (“ICE”) Agents in Pennsylvania Courthouses on Court Users’ Constitutional Rights

Dear Chief Justice Saylor,

As a follow up to our first letter, dated February 1, 2018, the Commission would like to offer the following additional accounts we have received of the continuing interference of federal immigration enforcement agents in the administration of the Pennsylvania courts, and of the role that some court personnel have played in facilitating those efforts. While we are aware that the Court is examining its options for addressing these issues, we are offering more current information and a more extensive legal analysis for the Court’s consideration. Based upon this information, we continue to believe that additional measures by the Court are necessary to ensure that immigrants and other Pennsylvanians with limited English proficiency (“LEP”) have equal access to Pennsylvania courts and court programs.

As you know, in response to our first letter, the Court indicated that it had taken several actions to address these problems, including the issuance of an Advisory by the AOPC, warning judicial officers that inquiring into an individual’s federal immigration status “may be regarded as discrimination and possibly a violation of Title VI.” Since the Advisory’s issuance, the Commission has received additional reports of judicial officers continuing to improperly question immigrants about their immigration status. For instance, we received a report several months ago from one of our Commission members that a Chester County Common Pleas Court Judge asked a Philadelphia-based attorney to disclose his Hispanic client’s immigration status in open court. This occurred during a hearing in which the client’s immigration status was irrelevant. When the attorney refused to disclose this information, the Judge berated him in such a loud manner that he could

be heard clearly by attorneys, their clients and an interpreter who were standing in the hallway outside of the courtroom.

After receiving this report, members of our Commission asked several Magisterial District Judges, whom they knew, if they recalled receiving the Advisory after the AOPC emailed it to them. The Judges indicated that they could not recall receiving the Advisory, but that it was possible that it failed to register with them, due to the large number of emails they typically receive from the AOPC. Consequently, we would like to recommend that the Court or the AOPC re-send the Advisory to each judicial officer in the Commonwealth, by regular mail, accompanied by a letter emphasizing the critical importance of compliance with it.

Beyond the issue of judicial compliance with the AOPC Advisory, we also wish to bring to the Court's attention a marked increase in the number of reports we have received of court personnel working in tandem with ICE agents to facilitate the detention and arrest of immigrants in and around Pennsylvania courthouses.

I. Recent Reports of ICE Agents' Arrests of Immigrant or LEP Court Users within or in Close Proximity of Pennsylvania Courthouses

In the two years since we submitted our letter to the Court, the Commission's Interpreter Services Committee has received multiple reports, from attorneys and community-based organizations serving Pennsylvania immigrants and LEP individuals, of ICE agents continuing to arrest and detain court users. The detentions and arrests have occurred as the individuals traveled to state and local courthouses, and while they were inside of and exiting the courthouses. The reports also included information detailing the assistance that some court employees had provided to ICE agents in effectuating civil arrests of LEP court users, based on information the employees obtained while performing their official job duties. This conduct not only violates the United States and Pennsylvania Constitutions, but also poses serious federalism concerns about the independence of the state judiciary.

As these reports make clear, and as we stated in our previous letter, the presence of ICE agents within and around state and local courthouses adversely impacts not only immigrant and LEP criminal defendants, but also those who are civil litigants, witnesses to criminal offenses and victims of domestic abuse. These individuals are unwilling to report crimes or to appear in state courts for fear that they will be detained or arrested by ICE agents. Their reluctance to participate in the justice system has seriously hindered or prevented the prosecution of pending criminal cases, and the discovery and investigation of new crimes. This has resulted in an exacerbation of public safety concerns and has undermined the public's confidence in the judiciary.

The anecdotes set forth below shed light on recurring problems that both immigrant and LEP Pennsylvanians, and state prosecuting bodies, face in our state courts. While we have tried our best to track down the source of every one of the following instances, the names of individual attorneys or other witnesses to the incidents, where known, could not be included due to their requests for confidentiality. In a number of cases, however, the agencies or court offices where the individuals work are identified.

A. Reports of ICE Agents' Arrests and Detentions of Pennsylvania Court Users

- Just last month, ICE agents entered a courtroom in Northampton County and arrested a Guatemalan National before his hearing could begin on a DUI case. When challenged by the man's attorney to produce a warrant for his arrest, the ICE agent initially claimed it was in his car and then admitted that he did not have a warrant, but did not need one as it was a warrantless civil arrest. The incident, which received widespread media coverage, prompted the County Executive to issue a directive prohibiting the arrest of an individual in the county courthouse without a warrant signed by a judge.
- Another relatively recent incident occurred in Allegheny County in October 2019, when two ICE agents entered a Pittsburgh municipal courtroom to arrest an individual who had appeared for a hearing in a pending criminal matter. This individual, fearful that ICE would be present at this hearing, was accompanied by volunteers from a Pittsburgh-based community organization to safely escort him to and from court. Before the hearing commenced, sheriff's deputies assigned to the courtroom physically restrained several of the volunteers to allow the ICE agents to effectuate an arrest of the individual. Since the hearing had not begun, the presiding judge was not present and no one seemed to know what to do.
- In February 2019, ICE agents arrested two individuals who appeared in Philadelphia's Family Court on separate occasions. During the first instance, ICE agents arrested an individual with limited English proficiency outside of the Philadelphia Family Court building as he tried to enter it for a civil family court matter. During the second, ICE agents arrested a recent high school graduate who was a litigant in a family court case. This litigant was eventually deported.
- A Philadelphia attorney reported that, in January 2019, ICE agents targeted two Philadelphia court users, both of whom were scheduled to appear for criminal court proceedings. The first court user was leaving Philadelphia's Criminal Justice Center ("CJC") after attending a preliminary hearing when ICE agents detained him. The second court user was on his way to appear for his preliminary hearing when ICE agents arrested him.

- An attorney from the Philadelphia area reported that, in March 2019, an ICE agent entered a Philadelphia courtroom and proceeded to ask individuals in the courtroom to identify a person the agent was intending to detain. The person of interest was not present in the courtroom and did not appear for the relevant court proceeding scheduled for later that day.
- In July 2019, in southcentral Pennsylvania, it was reported that an immigrant, who was on his way to attend a state court proceeding, was stopped and pulled out of a vehicle by ICE agents, resulting in his failure to appear at the hearing and his detention in a federal facility.
- In September 2019, witnesses reported that ICE agents arrested and detained Philadelphia court users on three separate occasions. One court user appeared for his preliminary hearing and was detained by ICE agents at the CJC after his hearing concluded. Another court user was arrested by ICE before entering court. In the third instance, ICE agents waited in a van outside of a Philadelphia Municipal Court building and detained an individual who was entering the court building to appear for a proceeding.
- In October 2019, ICE agents detained a court user after a hearing concluded at the CJC. ICE agents also arrested another individual in Philadelphia before his pending criminal case concluded.
- In Montgomery County, ICE agents recently arrested another court user two blocks from the courthouse after the user attended a court proceeding.

B. Reports of the Adverse Impact of ICE Agents' Presence in and Around State Courthouses on the Prosecution of Crimes in Pennsylvania

- A District Attorney's office in southeastern Pennsylvania reported that it was unable to fully prosecute 13 cases because the relevant criminal defendant was deported before resolution of these cases.
- The same District Attorney's office also reported that in at least five instances, victims of pending criminal cases did not appear in court because they feared being deported.
- The District Attorney's office further reported that in dozens of other cases, witnesses have expressed reluctance to testify in court for fear they will be arrested and deported by ICE if they appear.
- In October 2019, ICE arrested two individuals who appeared for a preliminary hearing in Philadelphia. The victim/witness in this criminal case was very disturbed

by the prosecution's resulting inability to prosecute the offender due to ICE's actions. The interference of ICE also resulted in the victim's loss of restitution from the defendant for the offense.

II. Other Instances of ICE Agents' Interference in State Court Processes and Court Personnel Aiding ICE Agents

In addition to the reports Commission members have received of ICE agents arresting court users inside and around the environs of state courthouses, recent publications have highlighted other instances in which federal immigration agents have targeted Pennsylvania court users, sometimes with the help of court personnel. For example, the 2019 report, published by the Stephen and Sandra Sheller Center for Social Justice at Temple University Beasley School of Law, disclosed the following accounts of immigrant court users' brushes with federal immigration enforcement at state courthouses.

- Recent email exchanges between a Beaver County probation officer and an ICE agent were uncovered, wherein the probation officer told the agent that he could trick an individual, who was under supervision via the county's ARD program, into appearing at the county probation office. The probation officer told the ICE agent that, although the individual was only required to check in telephonically, the officer could have the individual appear at the probation office to allow the ICE agent to arrest him at the office. The probation officer also provided the ICE agent with the individual's home address.¹

¹ Patrick Gordon, Kelley Grady & Shaqueil Stephenson, *Obstructing Justice: The Chilling Effect of ICE's Arrests of Immigrants at Pennsylvania Courthouses*, STEPHEN AND SANDRA SHELLER CTR. FOR SOC. JUST. TEMP. U. BEASLEY SCHOOL OF LAW 8 (2019), <https://www2.law.temple.edu/cs/cms/wp-content/uploads/2019/02/Obstructing-Justice-rev.pdf>. The text of the email exchange is as follows:

Probation (3:11 pm): He has been processed and placed in the ARD program with me. He is required to report once per month by phone. I have not heard from him yet. I can attempt to get him to report in person if he needs to be taken into custody. The address we have on file is [REDACTED]. Let me know how I can assist you further.

ICE (3:17 pm): Sounds good. I'll touch base with the case officer and see how he wants to handle it. Appreciate your willingness to assist. I believe that this is the address he has as well so if he isn't picked up I will let you know and we'll see if we can get something worked out. Thank you[.]

Probation (3:24 pm): He was just sentenced only a week ago, so chances are good that I can get him in here without suspicion. I can tell him he has to sign supervision papers, etc. Just let me know...

- A community-based organization reported that, recently, a Mexican national appeared at a Magisterial District Court in Bucks County to pay a ticket for a traffic infraction. As the individual entered the courthouse and before he could pay for his ticket, ICE agents detained him.²
- A community advocate in Montgomery County reported that she witnessed ICE agents arrest the immigrant she was assisting outside of the courthouse, even though the photograph of the person ICE was pursuing was not the immigrant ICE arrested.³
- In Northampton County, a person who works with the court system reported that ICE takes immigrants into custody at the local courthouse, with district attorneys and sheriff's deputies assisting ICE by delaying individuals until an ICE agent appears.⁴
- In Philadelphia, a victim/witness advocate witnessed a parole officer ask a victim if "they were in the country legally" and warn the victim that "if [the client] tried any funny business" the officer would call ICE.⁵
- In Allegheny and Chester Counties, community advocates and attorneys report that immigrants and LEP individuals are regularly arrested at probation appointments.⁶
- In Bucks County, the county probation office contacts ICE upon the sentencing of defendants.⁷
- A criminal defense attorney reported that, in Montgomery County, a sheriff's deputy in the courthouse helped ICE agents detain a court user appearing for a DUI proceeding.⁸

These reports, coupled with the accounts the Commission received, demonstrate that federal immigration enforcement inside and around the environs of state courthouses is pervasive in Pennsylvania. The accounts further illustrate that federal immigration enforcement at state courthouses restricts immigrant and LEP court users' ability to meaningfully participate in the state justice system. Immigrant and LEP court users, who

² *Id.* at 6.

³ *Id.*

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 9.

already face cultural and linguistic barriers when they try to participate in the justice system, now must make a Hobson's choice: either appear for court proceedings and face deportation, or refuse to appear, effectively permitting criminal and civil wrongs to remain adjudicated or causing defendants to default on bond conditions. Forcing individuals to make such a choice infringes upon their constitutional Equal Protection and Due Process rights.

Additionally, the reports highlight how federal immigration enforcement at Pennsylvania courthouses frustrates essential court processes, sometimes causing cases to be withdrawn or remain unresolved. Failure to efficiently resolve pending cases undermines public confidence in the judiciary's ability to administer justice.

III. Legal Concerns

ICE agents effectuate arrests of immigrants pursuant to authority conferred upon them by civil immigration laws.⁹ Consequently, ICE agents only possess the power to effectuate civil arrests, not criminal arrests. When ICE agents exercise their authority at state courthouses, and interfere with the adjudication of pending state civil and criminal matters, certain constitutional and federalism issues arise.

A. Constitutional Deprivations

As the above reports make clear, ICE's presence in and around state and local courthouses impedes the courts' ability to ensure the fair administration of justice. By allowing federal immigration enforcement agents to arrest and detain court users while they are seeking redress from courts, state courts cannot ensure that immigrant or LEP court users have equal access to the courts. Inability to ensure such access contravenes constitutional guarantees present in the First, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as the Remedies Clause of the Pennsylvania Constitution.

The First Amendment provides that all people have the right "to petition the Government for a redress of grievances."¹⁰ Immigrants cannot exercise this right if ICE agents are permitted to effectuate civil arrests on them at state courthouses, as they are filing petitions and attending hearings to redress grievances set forth in the petitions. The Fifth and Fourteenth Amendments confer upon individuals the right and opportunity to be heard by the courts.¹¹ The Sixth Amendment similarly ensures that all criminal

⁹ See 8 C.F.R. § 287.5(c)(1).

¹⁰ U.S. Const., Amend. I.

¹¹ U.S. Const., Amend. V and XIV.

defendants, even immigrants, have the right to “be confronted with the witnesses against him.”¹² These rights are infringed upon when ICE agents appear in state courthouses to arrest immigrants, particularly when the arrest occurs before the state court hearing even begins. The Fourteenth Amendment, through the Equal Protection Clause, further guarantees that no person may be discriminated against on the basis of his/her national origin. Clearly, this occurs when ICE agents forcibly remove immigrants from courthouses, blocking their ability to exercise their rights.

Finally, the Pennsylvania Constitution’s Remedies Clause specifically provides 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.**”¹³ In interpreting this clause, your Honorable Court has stated that access to Pennsylvania courts and having justice administered without “denial or delay” is “the constitutional right of every person[,]” including immigrants and LEP court users.¹⁴ By arresting and detaining LEP and immigrant individuals at Pennsylvania courthouses before the individual’s cases have been adjudicated, ICE agents violate this constitutional right.

B. Title VI Violations

Title VI of the Civil Rights Act of 1964 prohibits Pennsylvania courts from discriminating against individuals based, *inter alia*, on national origin.¹⁵ Violations of this statute occur when state court personnel, such as sheriff’s deputies or probation officers, use state resources to assist ICE in effectuating arrests of court users, based on the users’ perceived or actual national origin. Title VI violations are particularly flagrant when court personnel learn of a court user’s immigration status during the course and performance of their job duties, and share this information with ICE. This, in turn, causes court users to be arrested or detained before they can participate in court hearings or in court-mandated programs, such as ARD or other alternative disposition programs.

¹² U.S. Const., Amend. VI.

¹³ Pa. Const., Art. I, § 11 (emphasis added).

¹⁴ *Masloff v. Port Authority of Allegheny Cty.*, 531 Pa. 416, 424 (1992) (quoting *Commonwealth ex. rel. Duff v. Keenan*, 347 Pa. 574 (1943)) (internal quotation marks omitted).

¹⁵ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, reads as follows: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Because the Pennsylvania state judiciary receives Federal funding, it is precluded by this statute from discriminating against court users on the basis of race, color, or national origin.

C. Federalism Concerns

Federal immigration enforcement at and around state courthouses also raises Tenth Amendment concerns. The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹⁶ Stated differently, the Amendment guarantees that states are conferred with the power to perform duties traditionally delegated to state governments, including the power to establish and enforce laws protecting the welfare, safety, and health of the public, without federal interference. When federal immigration enforcement agents use state public forums such as courthouses, and other state judicial resources including tips and assistance from state court personnel, to carry out their federal functions, they interfere with the state’s ability to enforce its own laws. State sovereignty and the exercise of the state’s police power are undermined as a result.

IV. Legal Authority to Act

According to 42 Pa.C.S.A. § 323, the Court possesses the authority “to make such rules and orders of court as the interest and justice or the business of the court may require.”¹⁷ Consequently, the Court, through this grant of authority, may promulgate rules of court, which restrict ICE agents’ presence in and around the environs of state courthouses. The interest of justice unquestionably would be served through such rules, in that they would enable immigrant and LEP Pennsylvanians to have meaningful access to state courts. Promulgating these rules would also promote the business of the courts, as it would allow state courts to adjudicate cases and vindicate the legal rights of parties, without federal interference.

V. Recommendations

The research cited above demonstrates the complexity of legal issues which abound in the area of state and federal court jurisdiction, particularly pertaining to immigration. We suspect that this has led to widespread confusion among judges and court personnel about the nature of their responsibilities under the state and federal law with regard to immigrant court users. These issues become particularly complicated when federal immigration officers forcibly remove immigrant court users from state courtrooms and courthouses, without even a civil warrant in some cases. Consequently, we respectfully recommend that the Court consider the following actions to address the problems identified in this letter:

¹⁶ U.S. Const., Amend. X.

¹⁷ 42 Pa.C.S.A. § 323.

1. In accordance with the rule-making authority conferred upon it by 42 Pa.C.S.A. § 323, promulgate and adopt rules of court that prohibit, or at a minimum, restrict federal immigration enforcement officers from entering state courthouses or court-related offices, such as adult or juvenile probation offices, for the purposes of detaining or arresting state court users for immigration violations. For guidance on promulgating these rules, see, for example, the State of Oregon's Chief Justice Order No. 19-095 and accompanying Rule 3.190 and the State of New York's Directive Re: Protocol Governing Activities in Courthouses by Law Enforcement Agencies, both of which are attached.
2. Adopt the Pennsylvania Bar Association's recommendation "to establish statewide guidelines for the Pennsylvania United Justice System, including the following:"
 - A. monitoring the presence of [] ICE agents in courthouse facilities and probation office[s];
 - B. unless subject to a subpoena or judicial order, prohibiting all court personnel from inquiring into the immigration status and from divulging sensitive and private information to ICE about non-citizen defendants/probationers/parties/witnesses, including home and work addresses; and
 - C. prohibiting probation officers and other court personnel from detaining individuals on behalf of ICE unless a judicial warrant exists.

(We have not attached the PBA's recommendation and accompanying report for the Court's review, since we understand that the Court already has received copies of both documents.)

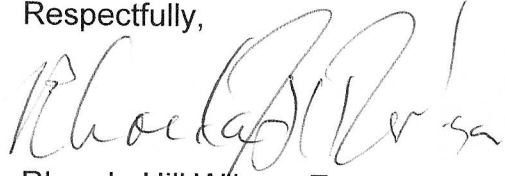
3. Require that the topics of state court jurisdictional limits regarding immigration issues and the prohibition of court personnel from assisting federal immigration enforcement officers in the arrest and/or detention of court users be included in every court-sponsored training session for personnel, as well as in one Mandatory Continuing Judicial Education course, for every judicial officer in Pennsylvania. While the Pennsylvania courts regularly conduct training programs for judges, court personnel and attorneys on immigrants' language interpretation needs, we want to emphasize that language interpretation training is different from the type of specialized training we are recommending to guide interactions of the judiciary and court personnel with ICE agents in our courts.

The reports described above illustrate how ICE's presence and actions at and around state and local courthouses infringes upon the exercise of the public's constitutional rights and threatens the integrity of the state judiciary. The chilling impact of ICE's presence can be seen in criminal and civil courts throughout the Commonwealth. It is critical that

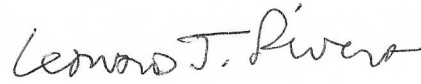
Pennsylvania's state courts remain accessible to all potential users, regardless of their immigration status.

Thank you for your time and consideration.

Respectfully,



Rhonda Hill Wilson, Esq.
Commission Co-Chair



Leonard J. Rivera, Esq.
Commission Co-Chair



Lisette M. McCormick, Esq.
Executive Director

cc: Justices of the Supreme Court of Pennsylvania
H. Geoffrey Moulton, Jr., AOPC Administrator
Oswaldo Aviles, Office of Interpreter Services
Mary Vilter, AOPC, Office of Interpreter Services
Interbranch Commission and Interpreter Service Committee Members

In the Matter of Out-of-Cycle Adoption
of New Uniform Trial Court Rule 3.190

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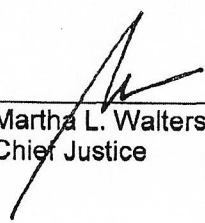
CHIEF JUSTICE ORDER
No. 19-095

ORDER APPROVING OUT-OF-CYCLE
ADOPTION OF NEW UNIFORM TRIAL
COURT RULE 3.190

I HEREBY ORDER, pursuant to ORS 1.002 and UTCR 1.020, that:

1. Good cause has been shown and the time limits established by UTCR 1.020(2), (3), and (4) are waived for adoption of new UTCR 3.190.
2. New UTCR 3.190, as shown in Attachment A to this order, is adopted effective November 14, 2019.
3. Pursuant to UTCR 1.020(5), the UTCR Reporter shall take the steps necessary to post this rule for public comment as soon as practicable and place it on the agenda of the next UTCR Committee meeting.

Dated this 14th day of November, 2019.

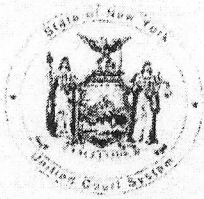


Martha L. Walters
Chief Justice

**ATTACHMENT A
TO CJO NO. 19-095**

3.190 CIVIL ARRESTS

- (1) No person may subject an individual to civil arrest without a judicial warrant or judicial order when the individual is in a courthouse or within the environs of a courthouse.
- (2) "Courthouse" means any building or space used by a circuit court of this state.
- (3) "Environs of a courthouse" means the vicinity around a courthouse, including all public entryways, driveways, sidewalks, and parking areas intended to serve a courthouse.




State of New York
Unified Court System
Office of the Chief Administrative Judge

DIRECTIVE

To: All Uniformed Personnel	Number: 1-2019 (Rev. from Memo issued 04/03/2019)
Subject: Protocol Governing Activities in Courthouses by Law Enforcement Agencies	Effective Date: April 17, 2019

1. It continues to be the policy of the Unified Court System (UCS) to permit law enforcement agencies to act in the pursuit of their official legal duties in New York State courthouses, provided that the conduct in no way disrupts or delays court operations or compromises public safety or court decorum.
2. The following protocol shall apply to representatives of law enforcement agencies who, while acting in their official capacity, enter a New York State courthouse to observe an individual or take an individual into custody but do not have a warrant issued by a judge of the Unified Court System authorizing them to do so:
 - Upon entry to a courthouse, law enforcement officials covered by this protocol shall identify themselves to uniformed UCS uniformed personnel and state their specific law enforcement purpose and the proposed enforcement action to be taken. Uniformed UCS personnel shall immediately transmit this information to an appropriate supervisor.
 - The uniformed supervisor shall inform the judge if a law enforcement agent covered by this protocol is present in the courthouse with the intent of arresting or otherwise taking into custody a party or other participant in a case before the judge. Email notification to the Department of Public Safety should be made as soon as possible.
 - Arrests by agents of U.S. Immigration and Customs Enforcement may be executed inside a New York State courthouse only pursuant to a judicial warrant or judicial order authorizing the arrest. A "judicial warrant" or "judicial order" is a warrant or order issued by a federal judge or federal magistrate judge. A UCS judge or court attorney shall review the warrant or order to confirm compliance with this requirement prior to any such arrest.
 - Absent leave of the court under extraordinary circumstances (e.g., extradition orders), no law enforcement action may be taken by a law enforcement agency in a courtroom.
 - UCS court security personnel shall file an Unusual Occurrence Report for each law enforcement action taken in a New York State courthouse by a law enforcement agency covered by this protocol. For purposes of this protocol, "law enforcement action" shall include observation of court proceedings by law enforcement agents acting in their official capacity.
 - UCS court security personnel remain responsible for ensuring public safety and decorum in the courthouse at all times. This policy and protocol is subject to modification based on changed circumstances.


Michael Magliano, Chief of Department
Revised 04/17/2019