

ICE in the New Jersey Courts

The Impact of Immigration Enforcement on Access to Justice in the Garden State

Results from a Legal and Social Service Providers Survey

December 2017

This survey, report and recommendations were produced by a coalition of New Jersey based legal service providers and advocacy organizations, including the American Civil Liberties Union of New Jersey, American Friends Service Committee, Make the Road New Jersey, and the New Jersey Alliance for Immigrant Justice.

Since President Trump took office, Immigration and Customs Enforcement (ICE) has substantially increased immigration enforcement actions across the country and here in New Jersey. One significant departure from the Obama administration's policies has been an increase in enforcement actions in and around state and municipal courts. As a result, many advocates report that immigrants they serve express a deep fear of going to court.

In order to begin to gauge the full impact of these enforcement actions, in July 2017 we surveyed 59 legal and social service providers that provide services to immigrants that interact with the courts in 14 counties: Atlantic, Bergen, Camden, Cumberland, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union.¹

Survey participants represent attorneys, advocates, and providers across the state who specialize in a wide range of legal and social services and who employ various organizational models. The practitioners surveyed provide legal services in the areas of immigration, criminal defense, family court, municipal court and bankruptcy in both the private and not-for-profit sectors. Participants also provide non-legal services for survivors of domestic violence, assistance with mental health, education, child advocacy, social services and public benefits. Participants were asked to respond to questions on their clients' experiences with the justice system since President Trump took office in January 2017.

¹ See Appendix.

Key Findings

Since President Trump took office in January 2017, in New Jersey:

- **78%** of survey respondents said their clients were **scared to attend criminal court** due to fear of ICE presence in the courts.
- **72%** have worked with immigrant clients who fear attending court because **abusive partners have threatened that ICE** will be there.
- **62%** have immigrant clients who have **withdrawn or failed to pursue orders of protection** due to fear of ICE.
- **56%** said clients **declined to attend municipal court** due to fear of ICE.

Changes in Immigrants Seeking Legal and Support Services

- Nearly **4 out of 5 (78.9%)** of providers of services to survivors of domestic violence surveyed reported a decrease in immigrants who sought help.
- **85%** of mental health providers surveyed reported an increase in immigrants who sought mental health services.
- **3 out of 5** family court practitioners surveyed reported a decrease in immigrants who sought help.
- **76.9%** of immigration service providers surveyed reported an increase in clients who sought immigration help.

Immigrants Afraid to Access Justice System

- **71.7%** of respondents report clients expressed **fear of interacting with the courts** due to recent ICE presence.
- **63%** report clients who are **afraid to file restraining orders** due to fear of ICE.
- **55%** report clients who **failed to file petitions or complaints** due to fear of ICE.
- **33%** report clients who have **withdrawn petitions or complaints** in courts due to fear of ICE.
- **56%** report clients who are **afraid to serve as witnesses** in criminal court due to fear of ICE. This number is 65% for municipal court.

- Roughly **55%** report clients who **failed to appear** in municipal and criminal court due to fear of ICE.
- **73.3%** report clients who are **afraid to contact the police** due to fear of ICE.

Additionally, multiple respondents reported immigrant clients are afraid to answer their doors, go to school, file taxes, seek special education services, apply for childcare subsidies and apply for benefits for their children due to fear of ICE.

ICE in the Courts

- **1 in 5** providers surveyed report clients who were **arrested** by ICE in or around the New Jersey courts.
- **15%** of providers surveyed have observed ICE agents or ICE vehicles in and around New Jersey courts.*

*This number may not reflect the actual number of ICE agents in the courts, as agents often arrive in plainclothes and unmarked cars.

Service provider stories:

- “A parent was present for a hearing regarding return of custody of their children from foster care and while in the courtroom was arrested by ICE officers. The waiting area emptied of several adults waiting the same family hearings.”
~ *Child advocate, Passaic*
- “ICE agents in plain clothes (Khakis, polo shirts, flannel cover), . . . waited and watched the proceedings. They then proceeded outside the building without any contact with my client or myself. Once we were outside the building the client was apprehended on the street by three ICE officers. No warrant was presented.”
~ *Attorney, Dunellen*
- “One woman . . . was apprehended leaving Passaic Municipal Court for a domestic violence incident [in July 2017]. The ICE agents were in an unmarked car and in plain clothes. One was armed. The client remembers seeing [one of] the ICE agents sitting in court during the proceedings. [She and her husband] were then stopped while walking on their way home, a few steps from their house.”
~ *Paralegal, Passaic*
- “[I have] at least 5 clients who, after being convicted of a DWI in municipal court, were arrested by ICE as they left the municipal courtroom.”
~ *Attorney, Freehold*

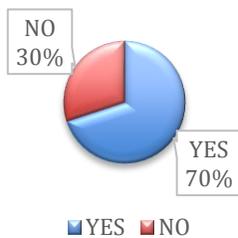
Chilling Effect♦

Family and Domestic Violence Matters

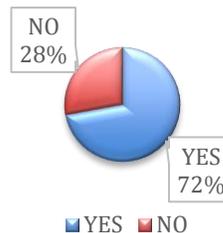
Providers reported working with immigrant clients **who have withdrawn or failed to pursue various types of family court claims** due to fear of ICE presence in the courts:

- **44%** of survey respondents who are family court providers reported immigrant clients withdrew or failed to pursue custody claims
- **28%** for visitation claims
- **46%** for child support claims
- **26%** for divorce claims

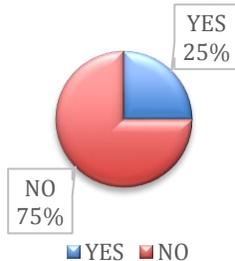
Providers who have worked with immigrants who are afraid to participate in custody proceedings due to fear of ICE



Providers who have worked with immigrants who are afraid to go to court because abusive partners have threatened that ICE will be there.



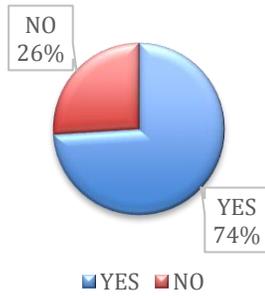
Providers who have worked with immigrants who have withdrawn a custody petition due to fear of ICE.



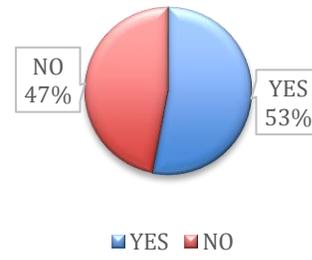
♦ Report percentages are based on the number of service providers who reported that they provide the particular service in question.

Municipal Court

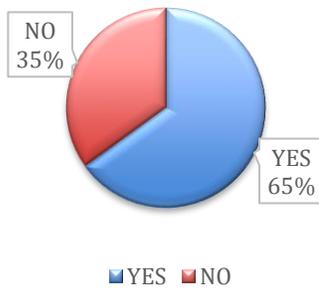
Providers who have worked with immigrants who are afraid to file complaints in municipal court due to fear of ICE.



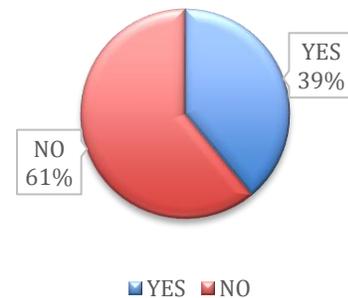
Providers who have worked with immigrants who have declined to file municipal court complaints due to fear of ICE.



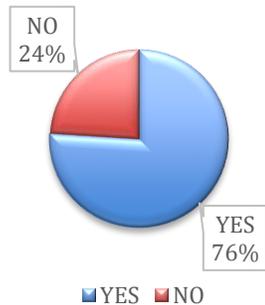
Providers who have worked with immigrants who are afraid to serve as witnesses in municipal court due to fear of ICE.



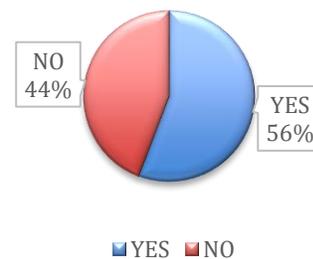
Providers who have worked with immigrants who have declined to serve as witnesses in municipal court due to fear of ICE.



Providers who have worked with immigrants who are afraid to appear for municipal court proceedings due to fear of ICE.

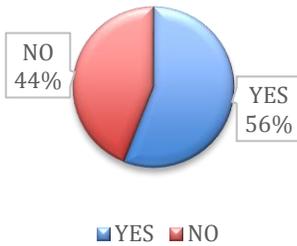


Providers who have worked with immigrants who have declined to appear in municipal court for fear of ICE.

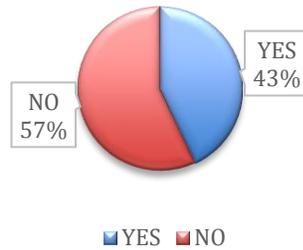


Criminal Court

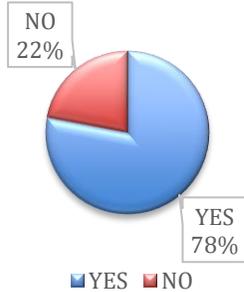
Providers who have worked with immigrants who are afraid to serve as witnesses in criminal court due to fear of ICE.



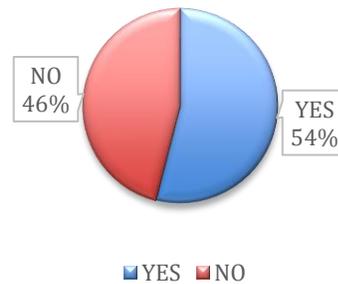
Providers who have worked with immigrants who declined to serve as witnesses in criminal court due to fear of ICE.



Providers who have worked with immigrants who are afraid to appear in criminal court proceedings due to fear of ICE.

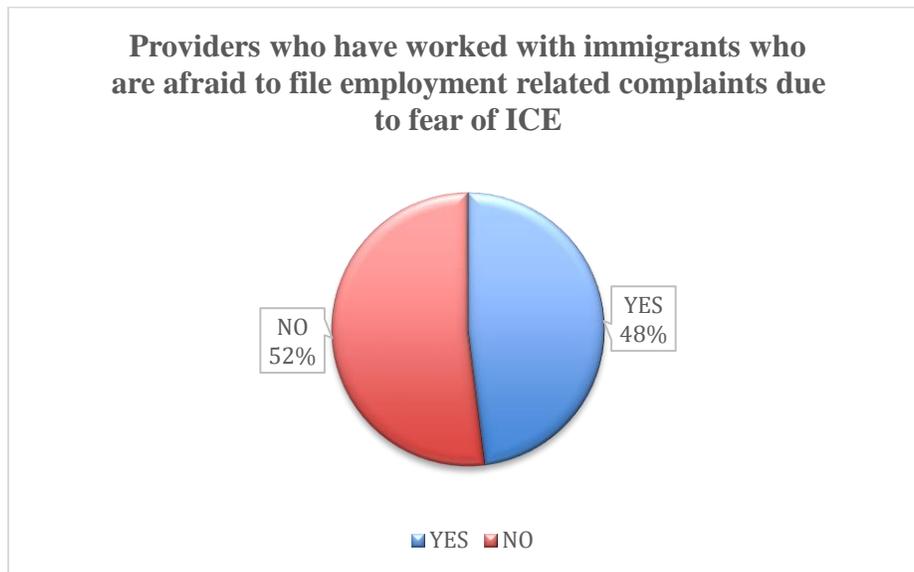
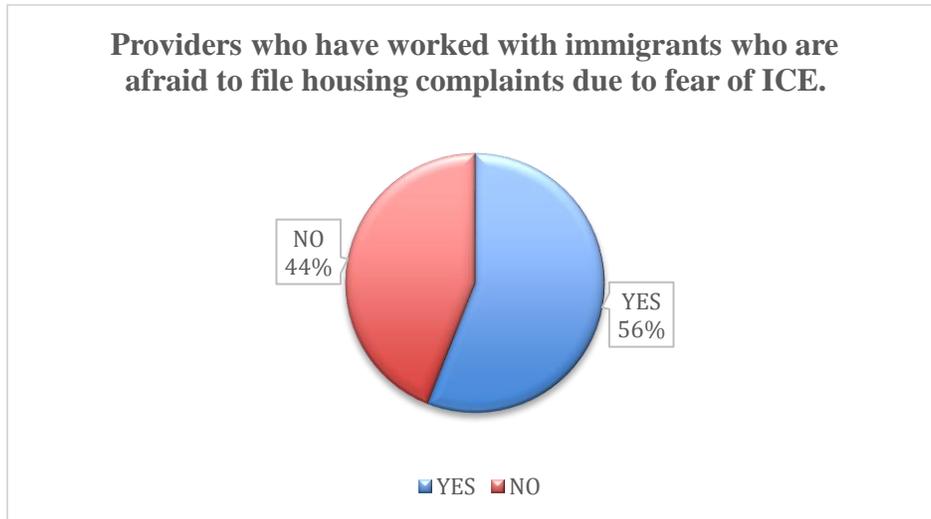


Providers who have worked with immigrants who have not appeared for criminal court proceedings due to fear of ICE.



Housing and Employment

Providers reported working with immigrant clients, **who have expressed fear of seeking other judicial protections** due to fear of ICE presence in the courts:



Recommendations

The foregoing survey results make clear the devastating impact of ICE enforcement actions in New Jersey: ICE's presence in and around the courts has had a significant chilling impact on immigrants' access to the justice system and inhibits the administration of justice statewide. To maintain access to the courts, a crucial component to life in New Jersey, the judiciary should implement policies that restrict federal immigration enforcement inside the courts and protect the integrity of the justice system.

We respectfully submit the following recommendations to the Chief Justice of the Supreme Court of New Jersey and the Administrative Office of the Courts of the State of New Jersey:

1) Collaboration with Federal Immigration Enforcement –

- a. Adopt a clear policy that would prohibit employees of the New Jersey Judiciary Court System from assisting, participating in, or using judiciary resources on civil immigration enforcement, except as required by 8 U.S.C. § 1373.
- b. Adopt a clear policy that would prohibit civil arrests (not related to a proceeding in the New Jersey Judiciary Court System) within a New Jersey state or municipal courthouse except when accompanied by a judicial warrant that authorizes the arrest.
- c. Develop a protocol to notify court officials, the affected party, and his or her attorney when ICE officers are present in the court room.

2) Data Collection & Privacy Protection

- a. Adopt a clear policy that prohibits court employees [or the Judiciary] from collecting information about the citizenship or immigration status of any litigant, defendant witness.... or individual within the courthouse, except to the extent such information is required by state, county, or local law.

3) Record-Keeping and Transparency

- a. Develop a system to track and publish data on ICE interactions in the courthouse as well as data on the impact of ICE's presence. Such data could include:
 - The number of individuals who fail to appear in court because they are detained in ICE custody, and whether or not bench warrants are issued for their failure to appear.
 - The number of times ICE/CBP/USCIS or any successor agency officials request access to New Jersey Judiciary Court facilities, including the location, nature and characteristics of such request.
 - The number of ICE arrests that happen in and around the courthouses, including the location, nature and characteristics of the arrest, and anonymous demographic information about the person detained.

- The number of individuals who fail to appear as witnesses, respondents, defendants or otherwise in court due to fear of ICE (when known).

4) Accommodations for Immigrants in Court

- a. Encourage judicial officers of the New Jersey Judiciary Court System to rely on and expand upon existing court rules to waive a party's appearance or to allow plea-by-mail when a party is subject to immigration detention or risk of immigration detention.

Appendix

Although the survey respondents were not a randomized sample, the data provides important preliminary insights into the experiences of service providers and their clients, which may be explored further in future studies. Service providers included both non-profit providers and private attorneys and mental health providers, and served at least 14 counties across New Jersey.

The respondents self-identified as providing the following services (with several respondents providing more than one type of service):

Legal Services:

Family Court representation – 41%

Immigration legal services – 24%

Municipal Court representation – 22%

Criminal defense – 10%

Housing legal services – 7%

Employment legal services – 7%

General civil legal services – 5%

Bankruptcy legal services – 3%

Juvenile advocacy, domestic violence legal services, legal services for survivors of trafficking, and real estate – 2% each

Non-Legal Services:

Education – 29%

Mental health services – 20%

Domestic violence services – 41%

Sexual violence services – 8%

Public benefits – 5%

Child advocacy – 3%

Social services – 3%

Childcare & early childhood education – 3%

Community support, empowerment, vocational school, health & safety education, alternatives to violence, support for survivors of trafficking, food access, and general health access – 2% each