



<b>ICE Courthouse Arrests in California:</b>	<b>Explainer and Legal Strategies Tool For Legal Services Providers and Defenders</b>
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<b>What are ICE courthouse arrests?</b>	<b>Is this happening in California?</b>
ICE tracks court appearance dates for its arrest targets, comes to court on appearance dates, and arrests people who are on their way to court, inside court, or leaving court (sometimes blocks away).	Yes, though unevenly across the state. Legal services providers, social scientists, and the news media have reported courthouse arrests in counties across California, and in/around both criminal and family courts. Arrests have been particularly common in Fresno County and the San Joaquin Valley.

<b>There are robust constitutional rights to attend court. These rights apply equally to noncitizens. See <i>Wong Wing v. United States</i>, 163 U.S. 228 (1896); <i>Padilla v. Kentucky</i>, 559 U.S. 356 (2010).</b>
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<b>First Amendment</b> Right to petition court. <i>Borough of Duryea, Pa. v. Guarnieri</i> , 564 U.S. 379, 387 (2011) (“This Court’s precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.”)	<b>Fifth Amendment</b> Right to due process. <i>Boddie v. Connecticut</i> , 401 U.S. 371, 376 (1971) (“[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.”)	<b>Sixth Amendment</b> <ul style="list-style-type: none"> <li>• Right to confront witnesses. <i>Faretta v. California</i>, 422 U.S. 806, 819-20 n. 15 (1975).</li> <li>• Right to present a defense. <i>Chambers v. Mississippi</i>, 410 U.S. 284, 302 (1973) (“Few rights are more fundamental than that of an accused to present witnesses in his own defense.”)</li> </ul>	<b>Tenth Amendment</b> Right to a federalist system. <i>Murphy v. Nat’l Collegiate Athletic Ass’n</i> , 138 S. Ct. 1461, 1475 (2018) (“When the original States declared their independence, they claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority to do all ... Acts and Things which Independent States may of right do.’ ¶ 32.”)
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<b>California recently enacted two predominant statutes to protect the right to attend court. They build on existing authority.</b>
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<b>AB 668: (2019)</b>	<ul style="list-style-type: none"> <li>• Prohibits civil arrests in courthouses, absent a judicial warrant. <i>See</i> Cal. Civ. Code § 43.54.</li> <li>• Reaffirms authority of judges to issue orders to facilitating right to participate in court proceedings. <i>See</i> Cal. Code of Civ. Proc. § 177(a)-(e).</li> </ul>
<b>SB 54: (2017)</b>	<ul style="list-style-type: none"> <li>• Requires California Attorney General to promulgate model courthouse policy on ICE civil arrests of people attending court, and requires each superior court in California to adopt the Attorney General’s model policy or an equivalent policy. <i>See</i> Cal. Govt. Code § 7284.8(a).</li> </ul>

<b>Pursuant to statute, California’s Attorney General promulgated model policies to protect the right to attend court. Each superior court must adopt them or their equivalent.</b>
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Pursuant to SB54, the AG promulgated *Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues* (Oct. 2018). Each superior court is required to have adopted these policies or their equivalents. *See* Cal. Govt. Code § 7284.8(a).



**Practical guidance for protecting your client’s constitutional and statutory rights to attend court. Invoke Cal. Civ. Code § 177 in support of any of these requests; § 177 (codified by AB 668, *see above*), affirms the authority of California judges to protect the right to participate in court proceedings.**

• **Move to waive client’s in-person appearance at a civil or criminal hearing.**

See P.C. § 977(a)(1)-(3) (misdemeanor charges); P.C. § 977 (b)(1) (felony charges); Cal. Rule of Court 3.670 (civil cases).

• **Move to allow client to participate through use of a pseudonym.**

See Cal. Att’y Gen. *Guidance and Model Policies*, footnotes 26-27 (collecting cases).

• **Petition the judge/court for a writ of protection against civil arrest for client while coming to, attending, and returning from court.**

See, e.g., *Christian v. Williams*, 35 Mo. App. 297, 303 (1889) (“Every superior court of record has power, at common law, to protect witnesses and parties from arrest on civil process during their attendance upon the court and for a reasonable time in going and returning.”).

• See also, e.g., *Stewart v. Ramsay*, 242 U.S. 128, 129 (1916) (describing the privilege from civil arrest while attending court as “well settled,” and explaining that a litigant “should be permitted to approach [the courts], not only without subjecting himself to evil, but even free from the fear of molestation or hindrance. He should also be enabled to procure, without difficulty, the attendance of all such persons as are necessary to manifest his rights”); *Long v. Ansell*, 293 U.S. 76, 83 (1934) (Brandeis, J.) (describing “the common-law rule that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit, are immune from service in another”).

**For additional, client and situation-specific strategies for upholding and guarding the rights of noncitizens to attend and participate in court without threats to immigration status or threat of unlawful civil arrest, see *Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California’s Superior Courts in Responding to Immigration Issues* (Oct. 2018), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/court.pdf>.**

- Prohibitions on California court personnel and law enforcement agencies using resources for immigration enforcement, including the gathering and sharing of immigration information.
- Additional record and document confidentiality provisions for victims and juveniles.
- Additional authority of state court judges to regulate conduct within their courtrooms.
- Evidentiary restrictions on disclosing immigration status in open court.

**Share ICE-specific “Know Your Rights” (KYR) information with your clients, in case they interact with ICE.**

- Materials from ILRC and allies can help your office to understand your client’s constitutional rights with respect to ICE: <https://www.ilrc.org/prepare-your-community-assert-their-rights-against-possible-ice-arrests>.

**Distribute and explain “Red Cards” to your clients, in case they interact with ICE.**

- Red Cards are a useful and concrete tool impacted individuals can use to invoke their rights if interacting with ICE: <https://www.ilrc.org/red-cards>.

**Considerations if your client is arrested by ICE at court or traveling to or from court:**

- **Document and report** the incident at <https://tinyurl.com/w432cqv> (this link goes to ILRC and a staff member will follow up with you to discuss your case).
- Consider arguments to stay a bench warrant, and to prevent other adverse orders or default judgments caused by your client’s inability to appear in court due to arrest.
- For criminal defense lawyers, consider strategies for negotiating for dismissal of charges either on the prosecutor’s motion or, eventually, on speedy trial grounds.