

Officers

Mark D. Smith
President
Jonathan M. Albano
President-Elect
Christine M. Netski
Vice President
Martin F. Murphy
Treasurer
Chinh H. Pham
Secretary

Members of the Council

Thomas O. Bean
Russell Beck
Margaret A. Brown
Peter G. Coulombe
Prasant D. Desai
June D. Duchesne
Jennifer Sevigney Durand
Michael C. Fee
Mark C. Fleming
Martha J. Nahill Frahm
Anthony A. Froio
Megan N. Gates
Douglas R. Gooding
Rachel E. Hershfang
Peggy L. Ho
Hannah L. Kilson
Sarah G. Kim
Matthew V.P. McTygue
Ian Roffman
Vincent D. Rougeau
Anthony A. Scibelli
Paige Scott Reed
Carol A. Starkey
Mary B. Strother
E. Abim Thomas
Lisa M. Titemore
Patrick S. Tracey
Patricia A. Washienko
Raquel J. Webster

Past Presidents

Lisa G. Arrowood
Edward J. Barshak
Joseph W. Bartlett
Jack Cinquegrana
Paul T. Dacier
Gene D. Dahmen
Anthony M. Doniger
Thomas E. Dwyer, Jr.
Donald R. Frederico
Lisa C. Goodheart
Julia Huston
Hugh R. Jones, Jr.
Michael B. Keating
Renée M. Landers
Hon. Edward P. Leibensperger
Joan A. Lukey
Hon. Sandra L. Lynch
Hon. Margaret H. Marshall (Ret.)
Edward I. Masterman
John A. Perkins
Rudolph F. Pierce
Joel M. Reck
John J. Regan
Richard W. Renehan
Lauren Stiller Rikleen
Mary K. Ryan
James D. Smeallie
Richard A. Soden
Carol A. Starkey
Kathy B. Weinman
Raymond A. Young

March 30, 2018

The Honorable Elspeth B. Cypher
Associate Justice of the Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108-1707

Re: SJ-2018-0119, Petition for Writ of Protection Pursuant to G.L. c. 211, § 3

Dear Justice Cypher:

The Boston Bar Association writes in support of the request that this Court reserve and report to the full bench the Petition for Writ of Protection Pursuant to G.L. c. 211§ 3 filed in In the Matter of C. Doe, D. Doe, F. Doe, K. Doe, O Doe, T. Doe, Y. Doe and J. Doe. Central to the BBA's mission are the core values of facilitating access to justice, ensuring the proper administration of justice and serving our community at large. For decades the BBA has advocated fiercely for these principles by, among other things, producing reports that make the case for expanding access to attorneys to those who cannot afford it, and by calling for an adequately funded judiciary in the state budget—all because we recognize that fair and equal access to the courts is a core requirement of a well-functioning democracy.

For the past year, the BBA has been monitoring, with increasing concern, reports that the U.S. Department of Homeland Security (“DHS”), acting through U.S. Immigration and Customs Enforcement (“ICE”), is using courthouses in the Commonwealth to effect civil immigration arrests. ICE's policy and intent to target courthouses for this purpose were expressly stated in its recent directive, “Civil Immigration Enforcement Actions Inside Courthouses.”¹ Such actions by ICE may significantly impair the ability of the Commonwealth to ensure access to our courts and fair administration of justice for all our residents.

The potential adverse consequences of ICE's policy of making arrests in and around courthouses have been voiced by many members of the legal community in the Commonwealth and across the country. As expressed by

¹ ICE Directive 11072.1, “Civil Immigration Enforcement Actions Inside Courthouses,” Jan. 10, 2018, Petitioner's Record Appendix (R.A. 52 – 54).

Chief Justice of the Massachusetts Trial Court Paula M. Carey in a letter to an ICE Special Agent,

“It is essential that these individuals (victims and litigants) be free to seek relief from the Court without fear that their presence in Court will be the cause of an immigration enforcement action. If not, the unfortunate result will be that public safety will decrease, communities will become less safe and perpetrators of domestic violence will feel empowered to abuse their victims with impunity. Further, individuals who currently come to our Courts to help themselves or a loved one in obtaining a civil commitment for detox or treatment will be reluctant to come forward if they fear immigration consequences.”

“Any increased immigration enforcement in these civil matters would mean fewer applications, more withdrawn cases, and more defaults, resulting inevitably in violence, injustice, and threats to public safety. In my view, it would ultimately affect the Court’s ability to carry out its mission to provide the protections guaranteed by the laws of this Commonwealth.”²

Similarly, Washington Chief Justice Mary Fairhurst wrote in a letter to DHS that “when people are afraid to appear for court hearings, out of fear of apprehension by immigration officials, their ability to access justice is compromised. Their absence curtails the capacity of our judges, the clerks and court personnel to function effectively.”³ This chilling effect was also highlighted by New Jersey Chief Justice Stuart Rabner, who wrote to Secretary of Homeland Security John Kelly that “witnesses to violent crimes may decide to stay away from court and remain silent. Victims of domestic violence and other offenses may choose not to testify against their attackers. Children and families in need of court assistance may likewise avoid the courthouse. And defendants in state criminal matters may simply not appear.”⁴ Prosecutors across the country have likewise raised grave concerns, with some even noting the need to dismiss a number of domestic violence prosecutions after witnesses became too afraid to testify due to fear of deportation.⁵

These same concerns have caused many practitioners from a range of organizations, including legal aid agencies and bar associations, to call for bans on ICE enforcement actions in courthouses. A contingent of more than 80 legal services organizations, politicians, and community groups wrote a letter to Chief Judge Janet DiFiore of the New York State Court of Appeals, stating that “[t]he mere threat of ICE agents in the courthouses discourages our clients from coming to court, and prevents us from acting in our clients’ best interests...”⁶ Similar

² Letter from Hon. Paula M. Carey, Chief Justice of the Mass. Trial Court, to Matthew Etre, ICE Special Agent in Charge (Feb. 23, 2017), Petitioners’ Record Appendix (R.A. 61).

³ Letter from Hon. Mary E. Fairhurst, Chief Justice, Supreme Court of Wash., to John F. Kelly, Sec’y of DHS (Mar. 22, 2017), Petitioners’ Record Appendix (R.A. 64 – 65).

⁴ Letter from Hon. Stuart Rabner, Chief Justice, Supreme Court of N.J., to John F. Kelly, Sec’y of DSH (Apr. 19, 2017), Petitioner’s Record Appendix R.A. 69 – 70).

⁵ Devlin Barrett, DHS: Immigration agents may arrest crime victims, witnesses, at courthouses. WASH. POST., Apr. 4, 2017, http://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crimevictims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.976562fa9d9b.

⁶ Letter from Association of Legal Aid Attorneys (ALAA), UAW Local 2325, et. al., to Hon. Janet DiFiore, Chief Judge of the N.Y. State Court of Appeals (Dec. 19, 2017), <http://www.alaa.org/index.php/2017/12/20/dozens-of>

sentiments have been expressed by the New York State Bar,⁷ the Washington State Bar,⁸ and the American Bar Association.⁹ In passing Resolution 10C, which urges for the inclusion of courthouses in the “sensitive locations” designation of DHS, the ABA provided that “[t]hese practices impact some of our most vulnerable populations and interfere with the proper administration of justice.”¹⁰

Given the significant implications of this case on crucial matters of access to justice and the administration of justice and the need for a speedy and comprehensive ruling by this Court, the BBA urges that the Petition be reserved and reported to the full bench. Thank you for your careful consideration.

Very Truly Yours,



Mark Smith
President

cc. Maura S. Doyle, Clerk
Supreme Judicial Court for Suffolk County
John Adams Courthouse
One Pemberton Square, Suite 1300
Boston, MA 02108 - 1707

unions-community-groups-elected-officials-and-defender-organizations-sign-on-to-letter-calling-on-chief-judge-difiore-to-ban-ice-from-ny-courthouses/.

⁷ New York State Bar Association Resolution (Jan. 26, 2018), <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=80429>.

⁸ Robin L. Haynes, Immigration Enforcement Must Not Restrict Victims’ Rights, Due Process, NWSIDEBAR, June 16, 2017, <https://nwsidebar.wsba.org/2017/06/16/immigration-enforcement-must-not-restrict-victims-rights-due-process/>.

⁹ American Bar Association Resolution 2017A10C (ABA Resolution) (Aug. 15, 2017), Petitioners’ Record Appendix (R.A. 80 – 94).

¹⁰ *Id.*