



October 17, 2013

John Sandweg  
Acting Director, U.S. Immigration and Customs Enforcement  
500 12th Street SW  
Washington, D.C. 20536

**Re: ICE Courthouse Arrests in Kern County, California**

Dear Director Sandweg:

The ACLU of California and the ACLU Immigrants' Rights Project are deeply troubled that Immigration and Customs Enforcement ("ICE") has conducted enforcement actions on Kern County, California courthouse grounds on multiple occasions in the past year. In several separate instances, ICE agents have arrested individuals at Kern County courthouses who were attempting to pay fines, appear for court hearings or get married. These arrests have impeded residents from complying with the law and accessing essential court services, and deterred them from doing so in the future—undermining the public health and safety of the entire Kern County community.

We request that ICE investigate the actions of its Bakersfield office and take immediate steps to ensure that these types of abusive arrests—and, in some cases, apparently unlawful arrests—do not continue at courthouses in Kern County. We also urge ICE to amend its policies to make clear that courthouses are a "sensitive" location at which ICE agents are prohibited from conducting enforcement actions absent extraordinary circumstances. We have received reports that ICE has conducted arrests in courthouses outside of Kern County (including in Santa Clara, California), demonstrating the need for ICE to alter its policies and trainings nationwide.

**ICE Arrests in Bakersfield-Area Courthouses**

Bakersfield-area advocates, lawyers, consular officials, and community advocates have reported that in recent years ICE agents frequently make arrests of individuals inside Kern County courthouses. They report that individuals are arrested when they appear for court hearings, to pay tickets or citations, to get married, and even, in one case reported to the ACLU, to obtain a domestic violence restraining order. In this letter, we highlight four cases that reflect a troubling pattern of ICE enforcement abuses in Kern County courthouses.

***Hector Esquivel Chavez: Arrested while waiting to pay traffic ticket***

On the morning of September 24, 2013, Hector Esquivel Chavez arrived at a Bakersfield courthouse (Metropolitan Division) to pay a ticket for driving without a license. He arrived with his long-time partner and their two-year-old daughter. As Mr. Esquivel Chavez waited by the

courtroom, a court official stated that anyone who spoke Spanish and needed translation should come into the courtroom. Mr. Esquivel Chavez, along with several other people, entered the courtroom, where they were read their rights in Spanish.

Mr. Esquivel Chavez then exited the courtroom to wait until his case was called. He told his partner that he was going to use the restroom and would be right back. After he took several stops on his way to the restroom, he was approached by a man (who later identified himself as an ICE agent) who asked for his name and identification. When Mr. Esquivel Chavez presented a “matricula consular” from Mexico, the agent asked him several questions about his immigration status and then stated that he was going to arrest him. While his daughter watched, the agent placed Mr. Esquivel Chavez in handcuffs and told him to sit at a bench in the hall.

A bystander who watched the arrest went up to the agent and asked what was going on. He told the bystander that Mr. Esquivel Chavez had only been in the United States for seven or eight years and “that wasn’t long enough.” The bystander then asked the agent for his name and identification, but the agent refused and told him to go to the local ICE office if she had questions.

Mr. Esquivel Chavez was later taken to the ICE office and was pressured to sign certain papers, which he eventually did. He was not advised that he had a right to a hearing, or that he may qualify for immigration relief or defenses. He was deported to Mexico that same day.

Mr. Esquivel Chavez, who is 19 years old, had a settled life in the United States. He first came to the United States at approximately the age of 12 and has lived here continuously since that time. Over the past few years, Hector worked several jobs to support his family including his daughter, who is a United States citizen. He has no prior criminal history.

Mr. Esquivel Chavez has now been separated from his family for nearly a month and may never be able to reunite with them – all because he attempted to pay his ticket as the law demands.

### ***Sergio Villatoro: Arrested while waiting to pay traffic ticket***

On or around January 31, 2013, Sergio Villatoro arrived at the Kern County courthouse in Lamont, California to pay a traffic ticket for driving without a license. In the courtroom, there were approximately five other people also waiting to pay traffic tickets. They were all Latino. While they were waiting, ICE agents entered the building and blocked the exits of the courthouse so that no one could leave. Mr. Villatoro saw that the ICE agents had a photo and information about an individual who was appearing in court that day. He saw the agents arrest that individual. The agents then rounded up Mr. Villatoro and the other Latino individuals who were waiting to pay their traffic tickets and arrested them. They told Mr. Villatoro and the others that they were being arrested for “being in the country illegally.”

Mr. Villatoro’s arrest appears to have been made without any reason to believe that he was deportable, in violation of ICE agents’ warrantless arrest authority under 8 U.S.C. § 1357(a)(2). According to Mr. Villatoro, prior to his arrest, he had no prior contact with ICE, nor had he ever been arrested during the decade he has lived in the United States. During his arrest, the agents

did not ask him any questions, not even to establish his identity, let alone his citizenship or immigration status, prior to making the arrest. Mr. Villatoro instead believes he and the others were arrested simply because of their Latino appearance and that they were at the courthouse to pay fines for driving without a license (or, in the case of one arrested individual, to accompany a friend who was there to pay a ticket).

ICE subsequently placed Mr. Villatoro in removal proceedings. Mr. Villatoro is contesting his removal and was released from custody on bond. He believes the others who were arrested may have accepted voluntary departure or been deported.

Mr. Villatoro now faces removal and permanent separation from his two U.S. citizen children, who are under the age of ten, simply because he went to court to comply with his legal obligations. The arrest also prevented Mr. Villatoro from paying his traffic ticket.

### ***Gurvinder Singh: Arrested while trying to get married***

In early September 2012, Mr. Gurvinder Singh and Ms. Kuldeet Kaur, both nationals of India, went to the County courthouse (Metropolitan Division) in Bakersfield to get married. Ms. Kaur is a lawful permanent resident of the United States and Mr. Singh has had a pending asylum case before immigration court since 2010 and is represented by an attorney.

After registering with the court clerk, she informed the couple that she needed them to bring their Indian identification cards, even though they had presented other accepted identification documents. When the couple submitted their respective identification cards, the court clerk instructed them to return to the courthouse on September 12, 2012 and to bring witnesses.

On September 12, 2012, the couple arrived at the courthouse with their witnesses, prepared to get married. After checking in with the court clerk, she asked them to wait. Soon thereafter, ICE agents arrived and began interrogating Mr. Singh. The agents were unaware that Mr. Singh was already in proceedings and appeared to have no basis to suspect he was in the country unlawfully. The agents asked Mr. Singh how he came to the United States and, after Mr. Singh explained that he came through Mexico, the agents immediately arrested him.

Following his arrest, ICE officials discovered that Mr. Singh was already in proceedings and released him. However, ICE officials placed Mr. Singh on electronic monitoring and required that he report to ICE every 15 days, despite the fact that Mr. Singh had already been in removal proceedings for two years and had successfully appeared for all his court appearances without such onerous monitoring conditions.

ICE's arrest of Mr. Singh prevented the couple from obtaining the services of the court and get married that day. With the assistance of their lawyer, they were finally able to get married on November 14, 2012 at the same courthouse. Their first child was born in August 2013.

### ***Jogmohan Singh: Arrested after appearing in court on an infraction***

On February 10, 2013, Mr. Jogmohan Singh, an Indian national and Bakersfield resident, appeared in court in compliance with a citation he received a few weeks prior. According to Mr. Singh, while working at an AM/PM convenience store, he mistakenly sold alcohol to a minor who was working undercover for the Bakersfield Police Department, as part of a sting operation focused on AM/PM stores. The police officer issued him a citation to appear in court. Police officers issued the same tickets to employees at other area AM/PM stores around the same time.

During his court appearance, Mr. Singh pled guilty to the charge and the judge ordered him to take a class. Mr. Singh then went to the clerk's office at the courthouse to register for the class. As he stood by the clerk's desk, an individual in plainclothes approached and asked if his name was Jogmohan Singh. When Mr. Singh answered in the affirmative, the individual, who turned out to be an ICE agent, arrested him and took him into custody.

Mr. Singh applied for asylum in 1996, and was ordered removed *in absentia* when his immigration attorney at the time advised him of the incorrect date of his hearing. He subsequently was denied the opportunity to reopen his deportation case. Following Mr. Singh's arrest at the courthouse, ICE sought to reinstate his prior removal order, but subsequently agreed to stay his deportation for one year so that he can care for his wife, who suffers from severe diabetes and requires regular care. ICE detained Mr. Singh for four months in the California City detention center before he was released from custody.

Mr. Singh has no prior criminal history. He is married to a U.S. citizen and has three U.S. citizen children under the ages of 10. His arrest and detention has caused significant financial and emotional strain on the family. Like Mr. Villatoro, Mr. Singh now faces removal and separation from his family simply because he was complying with the law and taking responsibility for his actions.

### **The Arrests Undermine Important Public Policies and Are Contrary to ICE Policies**

ICE's enforcement actions at courthouses are causing significant harm in the Kern County community. The arrests have prevented residents from complying with their obligations to pay citations and appear for court hearings, and from obtaining restraining orders, marriage licenses and other essential court services. Moreover, ICE's actions have created a culture of fear, deterring residents from exercising their constitutional right and civic duty to appear for court hearings or seek court services. As courts have recognized, the First and Fifth Amendments of the Constitution protect access to the courts. *See Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2494 (2011) (First Amendment "protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes"); *Christopher v. Harbury*, 536 U.S. 403, 413 (2002) (Due Process Clause of Fifth Amendment protects against "systemic official action [that] frustrates a plaintiff or plaintiff class in preparing and filing suits at the present time").

ICE's actions not only undermine these important public policies, but they also are contrary to ICE's own written policies. On October 24, 2011, John Morton, then director of ICE, issued a memorandum entitled "Enforcement Actions at or Focused on Sensitive Locations" ("the Sensitive Locations Memo"). The Memo instructed ICE agents to avoid conducting enforcement actions in areas deemed "sensitive locations" except in certain discrete and limited circumstances. The Memo lists as "sensitive locations" schools, hospitals, churches, synagogues, mosques, other institutions of worship, funeral sites, wedding sites, other public religious ceremonies, and sites of public demonstrations, and emphasizes that this "is not an exclusive list."

Like the other locations expressly listed in the Sensitive Locations Memo, courthouses should be considered a "sensitive location" where enforcement actions should be avoided absent exigent circumstances. It is clear that the Sensitive Locations Memo's purpose is to ensure that ICE enforcement actions do not impede residents from taking their children to school, practicing their religion, or exercising other constitutional rights. Attending court hearings is not only a constitutionally protected right, but it is vital to public safety that residents can appear in court, comply with law enforcement citations and court orders, and seek other court services without fear of reprisal from ICE.

Several of the arrests also are in tension with ICE's stated priorities for immigration enforcement. On June 17, 2011, Mr. Morton adopted a memo regarding the exercise of prosecutorial discretion in the "apprehension, detention, and removal of aliens." The memo outlines the factors to be considered in taking immigration enforcement actions, and prioritizes the arrest and removal of people with serious criminal histories, prior deportation orders and limited ties in the United States. In separate memo issued the same date, Mr. Morton addressed cases involving "the victims and witnesses of crime, including domestic violence," and civil rights complainants. In such cases, "[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime."

ICE's enforcement actions at Kern County courthouses not only has resulted in the arrest and deportation of people like Mr. Esquivel Chavez, Mr. Villatoro, Mr. Gurvinder Singh and Mr. Jogmohan Singh—who do not appear to meet ICE's priorities for immigration enforcement—but also crime victims and witnesses who have gone to court to seek protection, including through a restraining order. The arrests are contrary to ICE's stated policies, and undermine the important interests they are designed to protect.

### **Recommendations**

ICE's troubling practice of courthouse arrests does not appear to be limited to Kern County. We have received reports that ICE has conducted courthouse arrests in other locations, including in Santa Clara County, California. We therefore urge ICE to take immediate steps to put an end to its harmful practice of conducting enforcement actions at courthouses in Kern County or any other location.

First, ICE should investigate the courthouse arrest practices of its Bakersfield Field Office, including the nature of any tips it receives from county personnel and the apparent violations of agents' warrantless arrest authority under 8 U.S.C. § 1357. ICE should take steps to ensure that this office does not continue to take enforcement actions in courthouses and that its officers are properly trained on governing ICE enforcement policy and the statutory and constitutional limitations on its arrest authority.

Second, we urge ICE to revise its policies and trainings to ensure that courthouse arrests do not occur in Kern County or any other location. ICE should update its Sensitive Locations Memo to explicitly include courthouses as a "sensitive location" site, and ensure that its agents are properly trained not to conduct enforcement actions at courthouses absent extraordinary circumstances.

We appreciate your attention to this important matter and look forward to hearing what steps the agency will take to address these problems.

Regards,

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