



Immigrant Community Trust Policies: Why Protections for Schools, Hospitals and Courthouses are Essential (March 19, 2017)

Schools:

Immigration enforcement is not appropriate in schools and policies are needed to shield students and their families from the threat of immigration enforcement in the school environment. This position is backed by well-established legal doctrine. In *Plyler v. Doe*, 457 U.S. 202 (1975), the Supreme Court held that the Equal Protection clause of the Fourteenth Amendment protects the rights undocumented immigrants equal access to public education.¹ The *Plyler* doctrine is based on the long-standing rule that provisions of the Bill of Rights of the U.S. Constitution providing for equal protection and due process of law apply to *all persons* who happen to be in the territory of a state. It is also based on the principles and rules against discrimination in education set forth in *Brown v. Board of Education*.

- The *Plyler* Court held that status-based discrimination against undocumented immigrants in public education creates lifetime damages and is unconstitutional.
- Moreover, after *Alabama* enacted policies requiring public schools to collect immigration status information from school children and their parents, to be provided for immigration enforcement purposes, in 2012, the Eleventh Circuit found that it was another form of unconstitutional status-based discrimination (and the Supreme Court declined to review the decision).²
 - **The Alabama case also demonstrates the extremely detrimental impact of such policies on Latino children who were fearful for themselves and their parents, and caused Latino enrollment to drop.** Under current conditions, such an impact is expected in any immigrant community if status information collected by schools can be used for federal immigration enforcement.³
- **Based on this line of cases, it is clear that public schools must not disclose any information about the immigration status of children and their families for purposes of immigration enforcement.**
- Public schools should also enact policies against inquiring about immigration status (unless needed to assist students, and then kept confidential), against permitting federal immigration officials from being on school premises or otherwise using school resources to contact students and their families.
- **Because the majority of hate speech since the November election has occurred in K-12 schools, followed by stores and restaurants, and thirdly, in colleges, policies protecting students and prohibiting harassment based on immigration and other statuses are also needed.**⁴

Hospitals:

Policies are needed to shield persons seeking health care from ICE. President Trump's [Executive Order on Interior Enforcement](#) provides authority for ICE to deport all 11 million undocumented persons and even persons with legal status. His Executive Orders were followed by [harshly-worded Department of Homeland Security memos effectively confirming the targeting of 11 million immigrants](#), and immediate implementation through [terrifying ICE raids targeting hundreds of non-criminal immigrants, including in Maryland](#)—and [even deporting a woman from Texas who was about to go into emergency surgery to remove a brain tumor](#).

- **Access to health care and in particular, hospitals, is needed for humanitarian reasons, for every person who needs it, and for the health of the communities they live in.**
- Hospitals and health clinics were considered “sensitive locations” where ICE would not conduct immigration enforcement except under highly exceptional circumstances, but the current administration does not seem to be honoring this long-standing policy.
- According to the National Immigration Law Center, under federal law:
 - Any information provided in the process of applying for Medicaid, CHIP, or a federal health insurance Marketplace plan may be used only to determine the individual’s eligibility for the program—not for immigration enforcement purposes, and anyone assisting in the process is required by law to keep information private and secure.
 - Hospitals with emergency rooms must screen and treat people who need emergency medical services regardless of their immigration status. Anyone can seek primary and preventive health care at community health centers.
 - Medical providers may ask about immigration status to determine eligibility for public health insurance, “but they should not deny medical treatment based solely on your immigration status—or based on assumptions about your immigration status they make because of the language you speak, your accent, what you look like, or whether you have an SSN. In fact, doing so may violate federal civil rights laws.”⁵
- **State and local institutions that receive federal funding must abide by these same federal privacy rules—but the uncertain status of immigrant protections under the current federal administration require that state and local hospitals must review and update their own rules and policies.**

Courthouses:

Very strong public safety reasons argue for policies prohibiting civil immigration enforcement in state and local courthouses. In particular, since January 20, ICE has been increasing their presence in courthouses, where vulnerable immigrant victims and witnesses, as well as persons *charged with* civil or criminal offenses have the right to a fair trial.

- **A representative from the Maryland Office of Public Defender testified that civil immigration enforcement in courthouses, or through parole, probation, prosecution, defense, or courthouse records or venues, would significantly reduce participation of undocumented immigrants.**
- **In a letter to Attorney General Sessions and DHS Secretary Kelly, the Chief Justice of California asks that ICE stop “stalking” immigrants in courthouses. This is because:**

“Our courthouses serve as a vital forum for ensuring access to justice and protecting public safety. Courthouses should not be used as bait in the necessary enforcement of our country’s immigration laws... Our courts are the main point of contact for millions of the most vulnerable Californians in times of anxiety, stress, and crises in their lives. Crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families all come to our courts seeking justice and due process of law. As finders of fact, trial courts strive to mitigate fear to ensure fairness and protect legal rights. Our work is critical for ensuring public safety and the efficient administration of justice....

“The federal and state governments share power in countless ways, and our roles and responsibilities are balanced for the public good... But enforcement policies that include stalking courthouses and

arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair. They not only compromise our core value of fairness but they undermine the judiciary's ability to provide equal access to justice. I respectfully request that you refrain from this sort of enforcement in California's courthouses.”⁶

Summary of the Situation in Maryland:

Maryland Attorney General Brian Frosh sent a letter to the DHS asking the federal government to make courthouses, schools and hospital “safe harbors” from immigration enforcement, for similar public policy reasons, and emphasizing that new federal policies sow fear in immigrant communities and compromise public safety.⁷

His letter is only a request, and there is no guarantee that ICE would refrain from immigration enforcement in Maryland’s schools, hospitals and courthouses—and the facts show they are not.

- Therefore, the Maryland legislature should affirmatively shield immigration status information and prohibit immigration enforcement in schools, hospitals and courthouses.
- Indeed, the U.S. Constitution and federal law may require such policies in schools and hospitals, and there are strong legal arguments that courthouses should be kept safe and welcoming for the business of providing access to justice and protecting local community safety.
- The Maryland Trust Act provides that the Attorney General would promulgate model policies, which state and local agencies would then implement to protect all residents.

¹ KATHERINE CULLITON-GONZALEZ & JOANNA E. CUEVAS INGRAM, SANCTUARY, SAFETY AND COMMUNITY – TOOLS FOR WELCOMING AND PROTECTING IMMIGRANTS THROUGH LOCAL DEMOCRACY, DEMOS & LATINO JUSTICE (JAN. 13, 2017), http://www.demos.org/sites/default/files/publications/Sanctuary%20Cities%20English_0.pdf (citations supporting all the assertions in this section can be found at pp. 18-22 of the report).

² *Hispanic Interest Coalition of Alabama (HICA) v. Governor of Alabama*, 691 F.3d 1236, 1245 (11th Cir. 2012), *cert denied*, 133 S. Ct. 2022 (2013);

³ “[A]t one elementary school where enrollment was 20% Latino, teachers ‘went into crisis management mode ... to help children who were crying and afraid ... A teacher in Birmingham described how she struggled to reassure one little girl, who wanted to go home immediately and check on her parents, despite the fact that her parents are legal permanent residents.’ Similar stories are already being heard in the wake of the election of a president threatening mass deportations. With current threats, there are especially strong reasons justifying state and local educational policies that protect against disclosure of immigration status, and any form of immigration enforcement, at school.” Sanctuary, Safety and Community at p. 20 (citing sources).

⁴ *Id.* at 21.

⁵ *Id.* at 11-12.

⁶ California Chief Justice Tani G. Cantil-Sakauye, *Letter to Attorney General Sessions and DHS Secretary Kelly* (Mar. 16 2017), <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

⁷ Maryland Attorney General Brian Frosh, *Letter to DHS Secretary Kelly, et.al.* (Mar. 2, 2017), http://www.marylandattorneygeneral.gov/News%20Documents/Homeland%20Security_Ltr_030117.pdf.