



Thomas D. Homan
Deputy Director and Senior Official Performing the Duties of the
Director for U.S. Immigration and Customs Enforcement
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

March 21, 2018

Dear Deputy Director Homan:

We write as two members of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to dissent from a letter sent by a majority of the members of the Commission. In that letter, members of the Commission misrepresent and exaggerate a directive recently issued by ICE regarding the apprehension of illegal aliens at courthouses.¹

The majority's complaint is that illegal aliens are not completely exempt from arrest at courthouses, even though the directive primarily contemplates enforcement actions in courthouses when ICE agents are attempting to apprehend "specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed".² The directive also provides that illegal aliens who are accompanying the targeted illegal immigrant to court will not be arrested absent special circumstances, and that "ICE officers and agents should generally avoid enforcement actions in courthouses, or areas within courthouses that are dedicated to non-criminal (e.g., family court, small claims court) proceedings."³ Although the directive limits the circumstances under which illegal aliens will be apprehended at courthouses, even that is not good enough for the Commission majority.

We confess ourselves puzzled that our colleagues decided to take a bold stand against the apprehension of gang members. However, even if ICE were only apprehending individuals whose sole offense was illegal presence, it is strange that the Commission majority thinks these individuals should be immune from apprehension within courthouses. Americans who have committed crimes are not immune from arrest simply because they happen to be at a courthouse. As we wrote last year when our colleagues first became exercised about this issue:

¹ Letter of Majority of U.S. Commission on Civil Rights to Deputy Director Homan.

² U.S. Immigration and Customs Enforcement, Directive Number 11072.1, "Civil Immigration Enforcement Actions Inside Courthouses," Jan. 10, 2018, <https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf>.

³ *Id.*



Rule Four of the Federal Rules of Criminal Procedure provides, “A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest. There is no exception for courthouses, or anywhere else. Anyone who has an outstanding warrant for anything – whether he is a U.S. citizen, legal resident, or illegal immigrant – can be arrested at a courthouse.⁴

As we also noted in our earlier statement, it is not uncommon for people to be arrested for non-immigration offenses at courthouses. Police officers even set up sting operations at courthouses.⁵ Yet the majority would have us carve out a special exemption for illegal aliens. Illegal aliens alone, out of all lawbreakers, are immune from arrest at courthouses. It bestows a privilege upon non-Americans – and non-Americans who are in the country illegally – that is not available to American citizens. This is absurd.

The directive’s limitations on arrests at courthouses are more than generous. Additional solicitude for the interest of illegal aliens in avoiding arrest at courthouses is unwarranted, and likely unwise.

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

A handwritten signature in black ink, appearing to read "Gail Heriot".

Gail Heriot
Commissioner

Cc: Chairman Charles Grassley

⁴ Statement of Commissioners Gail Heriot and Peter Kirsanow.

⁵ Nick Rahaim, *Two drivers cited in license sting at Santa Rosa courthouse*, The Press Democrat, September 27, 2017, <http://www.pressdemocrat.com/news/7466700-181/two-drivers-cited-in-license>; Martha Neil, *Sting in drug court parking lot leads to arrest of man charged in heroin-distribution case*, ABA Journal, January 22, 2016, http://www.abajournal.com/news/article/sting_in_drug_court_parking_lot_results_in_arrest_of_man_charged_in_heroi.