

October 22, 2019

Joint Committee on the Judiciary  
Sen. James Eldridge & Rep. Claire Cronin

**SUPPORT H.3274/S.902**  
**AN ACT RELATIVE TO ACCESS TO JUSTICE**

Chairwoman Cronin, Chairman Eldridge, and members of the Joint Committee on the Judiciary:

The ACLU of Massachusetts strongly supports H.3274/S.902. This tailored legislation addresses the negative impact that increased federal immigration enforcement is having on our courts and justice system. Federal Immigration and Customs Enforcement (ICE) increasingly relies on state courts, state prosecutors, and state and local law enforcement, to help it find individuals to deport. Unfortunately, the Commonwealth's existing laws allow local actors to be used by the federal government to aid its deportation efforts, chilling access to state courts and justice. The proposal before you will help protect against that chilling effect.

This legislation has four key elements. First, it clarifies what information court personnel can and cannot share with federal agencies. ICE arrests at courthouses have become one of the most harmful tactics employed by the Trump administration. Yet, we know that some court officers proactively alert ICE that a person is in court on a given day, and that others provide ICE with sensitive information that helps them make those arrests. H.3274/S.902 would ensure that ICE has the same access to court information as the general public, and nothing more.

Next, it protects the rights of victims and witnesses of crime by ensuring that prosecutors and court personnel do not seek information about their immigration status. We hear from the immigrant community that state and local police routinely inquire about immigration status: when they stop a car, when they respond to a disturbance, or otherwise come in contact with the community. The fear of being questioned about immigration status stops many people from calling the police when they need help. This legislation amends the victims' rights statute to include the right not be asked about immigration status, ensuring that witnesses and family members can have a meaningful role in the criminal justice system.<sup>1</sup>

Third, the legislation contains a know-your-rights provision to make sure that people held in state or county facilities are informed of their rights not to speak to ICE agents who wish to question them, or to obtain legal counsel before doing so.

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<sup>11</sup> The legislation, as currently drafted, only protects witnesses and victims from questions about their immigration status. If the Committee is inclined to amend the legislation, we would support expanding this protection to include defendants as well.

A final provision ensures that people held in state or county facilities on behalf of ICE be transported to state court hearings when necessary.<sup>2</sup> Often, a person who is facing state criminal charges will be placed into federal immigration detention while state charges are pending. They will be held at a local county jail, but housed with federal ICE detainees. When they have a hearing for their state court case, the court will issue a writ of habeas corpus for the sheriff to transport the detained person to court. But because the person is technically a federal detainee, the sheriff will not transport the person to court. They then miss their hearing and bear the consequences for not appearing, despite having no control over the situation. This legislation clarifies that sheriffs must honor the state court writs to transport people to state court hearings when necessary to adjudicate matters before the Massachusetts judiciary, in order to make sure people can take care of outstanding legal matters and preserve the smooth functioning of the judiciary.

Massachusetts courts must be places of redress and justice – and must be accessible to all. For our legal system to function properly, victims, witnesses, defendants, and people with civil matters before the courts must all be able to show up in safety. They must be able to address matters within state court jurisdiction without otherwise jeopardizing their rights and liberties. The straightforward and commonsense provisions of H.3274/S.902 will mitigate the impact that federal policies are having on our justice system, and go a long way to ensuring that our courts are open to all.

We urge you to give this proposal a favorable report. Thank you.

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<sup>2</sup> This provision codifies the current transportation procedure, which the ACLU negotiated after meeting with all state stakeholders in the wake of the ACLU's representation of Jose Ramirez in *Ramirez v. Tompkins* (<https://www.aclum.org/en/cases/ramirez-v-tompkins>).