

# THE RUTHERFORD INSTITUTE

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April 29, 2025

Charlottesville City Council  
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PO Box 911  
Charlottesville, VA 22902

Albemarle Board of Supervisors  
[bos@albemarle.org](mailto:bos@albemarle.org)  
401 McIntire Road  
Charlottesville, VA 22902

Re: Protecting Public Trust and Due Process

Dear Members of the City Council and Board of Supervisors:

As the home of Thomas Jefferson—author of the Declaration of Independence—Charlottesville holds a profound place in the history of American liberty, and stands as a symbol of our nation’s enduring commitment to freedom, due process, and the rule of law.

It is therefore troubling that on April 22, 2025, three plainclothes officials with U.S. Immigration and Customs Enforcement (ICE)—one wearing a balaclava mask—approached and detained two men on the grounds of the Albemarle County Courthouse,<sup>1</sup> possibly without initially identifying themselves to the men.

Witnesses report that the agents did not display badges or arrest warrants to at least one of the men they apprehended, although the Sheriff’s Office insists that the agents identified themselves to a bailiff.<sup>2</sup>

To onlookers, it looked much like a public abduction.

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<sup>1</sup> Hawes Spencer, “ICE detains 2 men in Charlottesville courthouse raid,” *The Daily Progress* (Apr. 22, 2025), [https://dailyprogress.com/news/local/crime-courts/article\\_9ce921d6-5f61-4546-b0c9-ea2287d8bf16.html](https://dailyprogress.com/news/local/crime-courts/article_9ce921d6-5f61-4546-b0c9-ea2287d8bf16.html).

<sup>2</sup> Meghin Moore and Hannah Davis-Reid, “2 men detained at Albemarle courthouse in alleged ICE raid,” *VPM* (Apr. 23, 2025), <https://www.vpm.org/news/2025-04-23/albemarle-courthouse-ice-raid-nicholas-reppucci-teodoro-dominguez-rodriguez>.

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Indeed, Albemarle County Commonwealth's Attorney Jim Hingeley likened the arrests to a kidnapping and denounced them as a risk to public safety.<sup>3</sup>

Given that the agents were not identifiable as law enforcement and acted in a thoroughly unprofessional manner—apparently inconsistent with typical operating procedures<sup>4</sup>—onlookers were understandably dismayed, and people of good conscience were concerned enough to intervene.

Yet adding further insult to this travesty, ICE has announced its intention to prosecute two bystanders who questioned the plainclothes individuals about their aggressive actions.

### Courthouse Detentions Raise Constitutional Concerns Re: Due Process and Access to the Courts

As you might imagine, this incident has raised significant concerns among community members, legal advocates, and residents about the safety, transparency, and constitutionality of federal immigration enforcement activity in our community.

As a civil liberties organization headquartered in Charlottesville, The Rutherford Institute<sup>5</sup> is especially concerned that the agents' actions raise serious constitutional red flags, particularly with regard to due process and the fundamental right of all individuals within the U.S. to access the courts without fear or intimidation.

Unfortunately, this is not an isolated incident.

Across the nation, people are increasingly being unexpectedly arrested by masked, plainclothes federal agents whose actions appear to fly in the face of constitutional safeguards for due process and transparency.

However, seeing such tactics employed in Charlottesville—a community so deeply tied to the founding principles of liberty—underscores the urgent need to protect our courthouses as sanctuaries of justice. Courthouses must remain places where justice is accessible and transparent, and where individuals are safe from unjustified intimidation by agents of the government.

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<sup>3</sup> Hawes Spencer, "ICE promises bystanders who challenged Charlottesville raid will be prosecuted," *The Daily Progress* (Apr. 27, 2025), [https://dailyprogress.com/news/local/crime-courts/article\\_e6ce6e4a-4161-476f-8d28-94150a891092.html](https://dailyprogress.com/news/local/crime-courts/article_e6ce6e4a-4161-476f-8d28-94150a891092.html)

<sup>4</sup> Id.

<sup>5</sup> The Rutherford Institute is a nonprofit civil liberties organization which seeks to protect individuals' constitutional rights and educate the public about threats to their freedoms.

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The U.S. Supreme Court has held that “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”<sup>6</sup> Thus, as Justice Murphy explained,

once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. Such rights include those protected by the First and the Fifth Amendments and by the due process clause of the Fourteenth Amendment. None of these provisions acknowledges any distinction between citizens and resident aliens. They extend their inalienable privileges to all ‘persons’ and guard against any encroachment on those rights by federal or state authority.<sup>7</sup>

Additionally, the Second Circuit Court of Appeals has noted that “[i]t is well established that all persons enjoy a constitutional right of access to the courts,” and “the source of this right has been variously located in the First Amendment right to petition for redress, the Privileges and Immunities Clause of Article IV, section 2, and the Due Process Clauses of the Fifth and Fourteenth Amendments.”<sup>8</sup> Thus, “hostile action toward a litigant could be so offensive as to effectively drive the litigant out of a courthouse and thereby become the functional equivalent of a denial of access.”<sup>9</sup>

The increasing use of face-coverings or masks by federal agents in plain clothes during civil enforcement operations at courthouses threatens this judicial sanctuary.

When plainclothes officers wear masks and fail to identify themselves—either verbally or with visible credentials—the effect is not only disorienting and intimidating, but it can also lead to profound misunderstandings, fear, and even physical danger. These tactics blur the lines between lawful authority and vigilante action, and raise legitimate fears about impersonation, abuse of power, and the erosion of public accountability.

Moreover, targeting individuals for enforcement actions *at courthouses* based on immigration status risks violating the Equal Protection Clause by selectively denying access to justice based on identity.

Such enforcement actions also threaten to infringe on the First Amendment right to petition the government for redress of grievances, as individuals may be deterred from participating in judicial proceedings out of fear of apprehension.

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<sup>6</sup> *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

<sup>7</sup> *Bridges v. Wixon*, 326 U.S. 135, 161 (1945) (Murphy, J., concurring).

<sup>8</sup> *Monsky v. Moraghan*, 127 F.3d 243, 246 (2nd Cir. 1997).

<sup>9</sup> *Id.* at 247.

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### Constitutional and Moral Implications of Eroding Due Process Protections

The erosion of due process—even when seemingly directed at those on society’s margins—sets a precedent that endangers everyone.

This is not merely a legal matter; it is a moral one.

When the public’s trust in its institutions falters, when individuals fear seeking justice or testifying in court, the very foundations of our democratic society begin to crack.

Other states, recognizing these dangers, have taken steps to protect their courthouses from becoming places of fear.

For example, during the first Trump Administration, ICE detentions at courthouses significantly increased in some areas like New York, where it was estimated that enforcement increased by 1,700% from late 2016 to 2019.<sup>10</sup> In response, the State of New York and one of its district attorneys filed a lawsuit against ICE,<sup>11</sup> asserting that ICE courthouse detentions “interfere with core sovereign functions in violation of the Tenth Amendment,” which “preserves the states’ historic, sovereign, and fundamental autonomy to control the operation of their judiciaries and to pursue criminal prosecutions.”<sup>12</sup>

The lawsuit also noted that ICE courthouse detentions created a “chilling effect that deters defendants, would-be litigants, claimants, and witnesses from bringing violations of state law to law enforcement authorities, and from participating in state court proceedings.”<sup>13</sup>

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<sup>10</sup> *Denied, Disappeared, and Deported: The Toll of ICE Operations at New York’s Courts in 2019*, IMMIGRANT DEFENSE PROJECT (Jan. 2020), <https://www.immigrantdefenseproject.org/wp-content/uploads/Denied-Disappeared-Deported-FINAL.pdf>.

<sup>11</sup> *See New York v. U.S. Immigration & Customs Enft*, 466 F.Supp.3d 439 (S.D. N.Y. 2020).

<sup>12</sup> *New York v. U.S. Immigration & Customs Enft*, S.D. N.Y. 1:19-cv-08876, Doc. 1 [Complaint] ¶¶ 135-42.

<sup>13</sup> *Id.* Because the district court ruled in favor of New York by finding “that the INA [Immigration and Nationality Act] incorporates the state common-law privilege against civil immigration arrest for those present in New York state courthouses, or on courthouse grounds, or necessarily traveling to or from court proceedings,” *New York*, 466 F.Supp.3d at 447, the court did not rule on New York’s Tenth Amendment claim, *id.* at 444 n.12. Although the district court’s decision was appealed by ICE, it was then voluntarily dismissed without prejudice by New York as “moot and/or waived” after the Biden Administration changed course from the Trump Administration and limited ICE detentions at courthouses. *See* U.S. Dept. of Homeland Security Memorandum, April 27, 2021, <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

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New York also passed the Protect Our Courts Act to ensure that individuals attending court are free from civil arrests without a judicial warrant or order.<sup>14</sup> The law prohibits ICE detentions at courthouses based solely on administrative warrants or probable cause,<sup>15</sup> and establishes procedures for civil arrests at courthouses, such as requiring agents to identify themselves and provide a copy of a warrant to court personnel.<sup>16</sup> Other states have passed similar laws, including Colorado,<sup>17</sup> Vermont,<sup>18</sup> and Washington.<sup>19</sup>

Such measures reaffirm a community's commitment to justice and equal protection under the law, recognizing that courthouses are intended to be safe spaces where justice is pursued—not staging grounds for federal enforcement actions that bypass basic procedural safeguards.

### Obligation to Safeguard Constitutional Rights in the Charlottesville and Albemarle Community

We urge you to consider similar ways to protect the integrity of our public spaces and to affirm that everyone—regardless of citizenship status—has the right to access the courts without fear of intimidation or apprehension, including those serving as witnesses, defendants in civil matters, or parties to family or housing proceedings.

We further encourage the City Council and Board of Supervisors to take proactive steps to educate all members of our community about their constitutional rights during encounters with immigration officials.

Empowering individuals with knowledge is one of the most powerful ways to strengthen public trust, reduce fear, and uphold our highest civic ideals.

At a time when the country is increasingly polarized and fearful, Charlottesville and Albemarle County have an opportunity—and indeed a duty—to model a better way forward: one rooted in law, fairness, and the dignity of every human being.

On behalf of The Rutherford Institute, I respectfully urge you to affirm these values publicly, to conduct a review of this incident, and to explore ways—whether through resolutions,

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<sup>14</sup> NY Senate Bill 425A of the 2019-2020 Legislative Session, <https://www.nysenate.gov/legislation/bills/2019/S425>; text at <https://legislation.nysenate.gov/pdf/bills/2019/S425A>; codified at N.Y. Civ. Rights Law § 28 and N.Y. Jud. Law §§ 4-A and 212.

<sup>15</sup> N.Y. Civ. Rights Law § 28(1).

<sup>16</sup> N.Y. Jud. Law § 212(2)(aa)(i).

<sup>17</sup> C.R.S. § 13-1-403.

<sup>18</sup> 12 V.S.A. § 3577.

<sup>19</sup> RCW 2.28.330.

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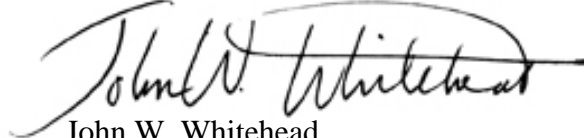
public statements, or community engagement—to protect the rights of all who live in and pass through our community.

In doing so, you will help ensure that Charlottesville and Albemarle remain true to the principles of justice, freedom, and human dignity that define our highest aspirations.

Should the City Council and Board of Supervisors seek to draw on our experience in constitutional advocacy in crafting any guidelines, resolutions, or public policies aimed at ensuring that courthouse spaces remain safe, accessible, and free from unlawful intimidation, we are available to provide further support.

We look forward to your leadership at this pivotal moment and to a prompt response that prioritizes safety, transparency, and justice for all.

For freedom,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead  
President

The Rutherford Institute