



Biden administration limits immigration enforcement at courthouses

BY REBECCA BEITSCH



The Biden administration is directing its immigration enforcement agencies to largely steer clear of courthouses, part of an effort to combat a “chilling effect” that left migrants avoiding the legal system for fear of being deported.

A memo from Department of Homeland Security Secretary Alejandro Mayorkas directs both Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officials to avoid making civil immigration arrests near courthouses, hold for a few exceptions.

The memo reverses a 2018 Trump-era policy encouraging ICE officers to enter courthouses to find migrants who “for one matter are wanted for unrelated criminal or civil violations.”

The latest interim guidance from the Biden administration aims to “balance the importance of preserving access to courts.”

“Ensuring that individuals have access to the courts advances the fair administration of justice, promotes safety for crime victims, and helps to guarantee equal protection under the law,” Mayorkas said in a release.

“The expansion of civil immigration arrests at courthouses during the prior administration had a chilling effect on individuals’ willingness to come to court or work cooperatively with law enforcement. Today’s guidance is the latest step in our efforts to focus our civil immigration enforcement resources on threats to homeland security and public safety.”

The Trump administration had identified courthouses as an ideal setting to conduct immigration enforcement, with its 2018 memo noting that “individuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband.”

“Civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s), and ICE officers and agents,” then-ICE Director Tom Homan wrote in the memo.

But critics complained the policy discouraged victims of crimes, witnesses and others from participating in court proceedings for fear of being deported.

States like New York sued over the order, seeking to block ICE from doing enforcement at their courthouses.

“It’s not just the number of people arrested at courthouses, it’s number of people afraid to go to the courthouse or accompany a family member or friend to a courthouse,” said Naureen Shah with the American Civil Liberties Union.

“It was a practice designed to spread fear in immigrant communities,” she said, adding that a metric of success for the latest memo won’t just be a reduction in the number of courthouse arrests.

The Biden administration policy does allow ICE and CBP officers to pursue courthouse arrests if they involve a national security matter, there is an imminent risk of death or violence, the person poses a threat to public safety or if there is an imminent risk evidence needed for a criminal case may be destroyed.

But Shah said the lack of definitions of those phrases like national security and public safety threat could allow ICE and CBP agents to use the term broadly to justify courthouse arrests.

“When you use terms like national security threat and public safety threats they become proxies for the flaws of our legal system and lead to the disproportionate targeting of black and brown people,” she said.