

Can ICE Legally Force Immigrants to Cheer for Donald Trump?

[Nick Pinto](#)

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Do the First Amendment's protections prevent the government from targeting its most vocal critics for deportation? That's the central question that three judges for the 2nd Circuit Court of Appeals will be considering Monday, when lawyers for Ravi Ragbir, a New York City immigration activist, will argue for a preliminary injunction to stop Immigration and Customs Enforcement officials from deporting him before he can press his First Amendment claim in court.

In the case, which comes before judges Christopher Droney, Pierre Leval, and John Walker Jr., the government contends that Ragbir's situation is straightforward: He was issued a final order of removal in 2007 and a [federal law](#) passed to prevent protracted legal challenges to deportations all but shuts off any judicial review of immigration authorities' deportation decisions. "An alien like Ragbir has no constitutional right to assert selective enforcement to prevent his removal from the United States in accordance with a valid order," [the government argues in its brief](#). The authorities cited a 1999 Supreme Court [ruling](#), which held that the First Amendment claims of people facing deportation for allegedly providing material aid to a foreign terrorist organization didn't outweigh the government's national security interests.

18-1597

United States Court of Appeals For the Second Circuit

RAVIDATH LAWRENCE RAGBIR, NEW SANCTUARY COALITION OF NEW
YORK CITY, CASA DE MARYLAND, INC., DETENTION WATCH
NETWORK, NATIONAL IMMIGRATION PROJECT OF THE NATIONAL
LAWYERS GUILD, NEW YORK IMMIGRATION COALITION,

Plaintiffs-Appellants,

v.

THOMAS D. HOMAN, in his official capacity as Deputy Director and
Senior Official Performing the Duties of the Director of U.S.
Immigration and Customs Enforcement, *et al.*
(additional Defendants listed on inside cover)

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York
Case No. 18-CV-1159 (Hon. P. Kevin Castel)

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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Ragbir's lawyers note that he isn't accused of contributing to foreign terrorist groups. His work over the past decade — most prominently as the director of the New Sanctuary Coalition of New York — has been limited to organizing immigrants and advocating against the increasing violence of ICE and the deportation policies it

carries out. Ragbir may have a final order of removal, they argue, but so do an estimated 900,000 other people living in the United States. And in the 11 years Ragbir has been under a final order for removal, ICE didn't try to deport him until this past year — after his organizing garnered headlines and attracted public attention critical of ICE.

“If this Court were to adopt that view, nothing would prevent ICE from telling noncitizens that it will deport them if they criticize any ICE official, deportation policy, or immigration law in any way.”

The government's argument that there is no constitutional bar to prevent ICE from selectively deporting people based on their speech has extreme and troubling implications, Ragbir's lawyers argue in their briefs. “If this Court were to adopt that view, nothing would prevent ICE from telling noncitizens that it will deport them if they criticize any ICE official, deportation policy, or immigration law in any way,” [says a brief filed by Ragbir's attorneys](#). “ICE could even command noncitizens with final removal orders to publicly voice support for ICE, or for pending legislation, or for a particular political candidate. There would be no holds barred.”

The government dismisses these suggestions as “outlandish hypotheticals” and counters that if political speech is enough to argue unconstitutional political targeting, anyone facing deportation could criticize ICE and claim First Amendment protections to stay in the country. And just because ICE didn't exercise its right to deport him for more than a decade doesn't mean it doesn't still have that right, whatever its reasoning, the government claims.



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Yet Ragbir isn't just asserting that ICE is retaliating against him without evidence. In March 2017, Ragbir was going for a check-in with ICE and was [accompanied by a](#)

[host of local politicians and activists](#); the event turned into a public spectacle. Scott Mechkowski, the deputy director of ICE's New York Field Office and one of the defendants in the suit, told Ragbir's lawyers in January that he felt "resentment" about the circus of the political protest. ICE "didn't want the display of wailing kids and wailing clergy," Mechkowski separately told a group of clergy that visited his office. "That can't happen this time around." Ragbir's brief alleges that an ICE official warned his associates, "You don't want to make matters worse by saying things."

In addition to the attempted deportation of Ragbir, the successful deportation of fellow New Sanctuary activist Jean Montrevil, and the [surveillance](#) of their organization, Ragbir's lawyers point to an [emerging pattern around the country](#), citing more than a dozen instances in which ICE targeted outspoken immigration activists for deportation, including cases in Colorado, Mississippi, Ohio, Tennessee, Vermont, Virginia, and Washington.

Last week, NWDC Resistance, an immigrant rights group in Washington state, filed its own [lawsuit](#) against ICE and the Department of Homeland Security in federal court in Seattle, alleging that ICE has a practice "to systematically surveil, detain, and deport immigrant activists who speak out about immigration policies and practices."

A different panel of 2nd Circuit judges got a taste of these arguments in August, when Ragbir's lawyers sought a stay to keep ICE from deporting him until the court could rule on the appeal now before the court. That panel was clearly troubled by government lawyers' [flat refusal](#) to promise that they wouldn't deport Ragbir before he could have his day in court, but the judges declined to issue a stay.

With the question of the First Amendment rights of people facing deportation now squarely before the court, human rights lawyers, unions, religious organizations, civil liberties groups, and elected officials are rallying to support Ragbir's claim. Amicus briefs from more than 100 such groups and individuals have been filed in the case, all warning that an interpretation allowing the government to target any critic with a final order of removal will have dangerous consequences for free speech.

As Ragbir told an audience at a teach-in on Thursday, "Once we curtail free speech for me, we curtail the free speech of all."

Top photo: Immigrant rights activist Ravi Ragbir attends a rally a day after he was granted temporary stay of deportation in Foley Square, N.Y., on Feb. 10, 2018.