Why a new Oregon court rule caught the attention of the Trump administration

By Jake Thomas
Oregon Capital Bureau

Oregon's new court rule intended to curb immigration arrests in state courthouses has drawn the attention of two of President Donald Trump's Cabinet officials and set up a potential legal conflict.

As part of the Trump administration's hardline immigration approach, U.S. Immigration and Customs Enforcement agents have targeted state courthouses to make arrests individuals suspected to be in the country illegally. Immigrant and civil rights advocates and attorneys have complained that the arrests have been disruptive and discouraged immigrants from serving as witnesses, paying fines or participating in other court functions.

Sharing their concerns, Oregon Supreme Court Justice Martha Walters enacted a rule earlier this month that prohibits ICE and other agencies from making arrests in courthouses without a warrant approved by a judge. ICE relies on civil warrants, which are issued by the agency.

But in a Nov. 21 letter, U.S. Attorney General William Barr and Chad Wolf, acting secretary of the U.S. Department of Homeland Security, asked Walters to reconsider what they called a "dangerous and unlawful course of action."

"Cooperation among local, state, and federal law enforcement officers is in the public interest and promotes safe communities," they wrote. "The federal government needs cooperation from state and local law enforcement to identify, temporarily hold, and ultimately deport criminal aliens who present dangers to communities."

Oregon's rule has broad support from advocacy groups, law enforcement, judges, legislators and Attorney General Ellen Rosenblum. The letter comes as a handful of states have sought to curb ICE courthouse arrests and raises questions about whether Oregon and federal agents are on a path for a courthouse standoff.

In a statement, ICE indicated it would "consider carefully whether to refer those who obstruct our lawful enforcement efforts for criminal prosecution." ICE declined to comment on whether the agency would seek to prosecute judges or other courthouse officials who seek to enforce the Oregon rule.

Barr and Wolf said that the rule "cannot and will not govern the conduct of federal officers acting pursuant to duly enacted laws passed by Congress." They cited the Supremacy Clause of the U.S. Constitution, which gives federal laws supremacy over conflicting state laws.

Todd Sprague, spokesman for the Oregon Judicial Department, declined to comment on the letter but noted in an email that other states have similar restrictions on courthouse arrests.

"As we understand it, ICE has abided by those judicial actions," he wrote.

So far, the most direct challenge to ICE's authority to make the arrests came in a federal lawsuit filed earlier this year by a group Massachusetts prosecutors and defense attorneys. In June, U.S. District Court Judge Indira Talwani issued an order prohibiting immigration agents from making civil arrests in or near state courthouses in Massachusetts.

"Criminal defendants will be unable to vindicate their rights if they are taken into ICE custody prior to appearing in court or if witnesses in their defense are too fearful to visit a courthouse," wrote Talwani.

ICE has appealed the ruling.

Shortly after taking office, Trump issued executive orders intended to more aggressively enforce the country's immigration laws. ICE began conducting arrests at courthouses.

In response to reports of ICE arrests at Oregon courthouses, the ACLU filed Freedom of Information Act in fall of 2017 to find out how agents were operating. According to the ACLU, the documents didn't detail how frequently the arrests happen.

But the documents revealed that agency has planned or executed arrests at over a dozen courthouses that together serve over 71 percent of the state's population.

Leland Baxter-Neal, staff attorney with the ACLU of Oregon, said that ICE has to operate within the limits of the constitution and state laws.

"Obviously, the federal government is not all-powerful and ICE is not all-powerful," he said.

Baxter-Neal said that federal and state courts have recognized the common law privilege prohibiting civil arrests of people attending court proceedings. He pointed out Talwani cited this privilege in her ruling.

He said that federal law gives ICE agents the ability to make arrests "under mostly general circumstances." He said there is no federal law that explicitly gives them the authority to make arrests in state courthouses.

Tung Yin, a professor of law at Lewis & Clark Law School, said that state courts have broad discretion to enact court rules.

"But whether they can enforce them against a federal agent acting in the course of lawful duty is a different question," he said.

He said it's unlikely that ICE would file a lawsuit to challenge Oregon's rule. Instead, he described what he considered to be a more likely scenario where an ICE agent attempts to carry out a warrant in an Oregon courthouse, and a judge challenges the agent and calls for a bailiff. He said there might be a standoff or the judge might order the bailiff to arrest the agent for contempt.

From there, the case would go to trial and he said ICE would likely prevail under the Supremacy Clause of the constitution. Yin cited previous Supreme Court decisions that favored federal law enforcement agents who were charged under state statutes while doing their job.

"Whether it's prudent to do this is a different question," said Yin.

Taking this route would require ICE to directly challenge Oregon's legal establishment. Yin also noted that jury pools would likely be drawn from areas of the state unsympathetic to ICE.

House impeachment report coming ahead of hearing

The Associated Press

WASHINGTON — The House impeachment report on President Donald Trump will be unveiled Monday behind closed doors for key lawmakers as Democrats push ahead with the inquiry despite the White House's declaration it will not participate in the first Judiciary Committee hearing.

The Democratic majority on the House Intelligence Committee says the report, compiled after weeks of testimony, will speak for itself in laying out what Chairman Adam Schiff, D-Calif., called the evidence of "wrongdoing and misconduct" by the Republican president over his actions toward Ukraine. It was being made available for committee members to review ahead of a vote Tuesday to send it to the Judiciary Committee for Wednesday's landmark hearing.

Late Sunday, White House counsel Pat Cipollone denounced the "baseless and highly partisan inquiry." In a letter to Judiciary Committee Chairman Jerrold Nadler, D-N.Y., he also declined the invitation for the president's counsel to appear before his panel Wednesday.

Cipollone, in continuing the West Wing's attack on the House process, said the proceeding "violates all past historical precedent, basic due process rights, and fundamental fairness." Trump himself was scheduled to attend a summit with NATO allies outside London on Wednesday.

Secretary of State Mike Pompeo said Monday it's "very unfortunate" the Judiciary Committee is holding its hearing at the same time that Trump is representing the U.S. at the NATO summit.

"I regret that they've chosen to hold these hearings at the same time that the president and our entire national security team will be traveling to Europe, to London, to work on these important matters," Pompeo said.

As the impeachment inquiry intensifies, Wednesday's hearing will be a milestone. It is expected to convene legal experts whose testimony, alongside the report from the Intelligence Committee, could lay the groundwork for possible articles of impeachment, which the panel is expected to soon draw up.

Democrats are focused on whether Trump abused his office by withholding military aid approved by Congress and a White House meeting as he pressed Ukrainian President Volodymyr Zelenskiy to launch investigations into Trump's political rivals. The report also is expected to include evidence of possible obstruction of Congress by Trump's instructions that officials in his administration defy subpoenas for documents or testimony.

Trump maintains he did nothing wrong, and as the House presses forward on an ambitious schedule toward an impeachment vote, the president and his Republican allies are aligned against the process.

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