

Memorandum in Support

NYSBA #38

June 5, 2018

S. 8925

By: Senator Alcantara

A. 11013-A

By: M. of A. Solages

Senate Committee: Rules

Assembly Committee: Codes

Effective Date: Immediately

This bill would, inter alia, protect individuals from civil arrests in New York courthouses, unless a specific judicial warrant or judicial order authorizing such arrest has been issued, and allow courts to issue orders designed to protect the prohibition on such civil arrests.

The New York State Bar Association (NYSBA) has long supported and encouraged equal access to justice and to our courts of law for all, including immigrants residing in New York State. NYSBA has actively promoted and participated in efforts to provide immigrants in New York with access to justice by promoting access to legal representation through the establishment of a committee specifically for that purpose.

Since the beginning of 2017 advocates have noticed an increase in the presence of U.S. Immigration and Customs Enforcement (ICE) agents in New York's courthouses, with a study by the Immigrant Defense Project (IDP) showing a significant increase in arrests of immigrants on civil immigration charges within our State's courthouses.

ICE is the agency within the U.S. Department of Homeland Security (DHS) charged with internal enforcement immigration laws and other laws relating to national security. ICE is divided into multiple sub-agencies. Those relevant to this report are Enforcement and Removal Operations (ERO), which is tasked with administrative enforcement of the Immigration and Nationality Act (INA), and Homeland Security Investigations (HSI), which handles criminal investigations of crimes threatening national security, including related immigration enforcement actions that have a criminal component.

The provisions of the INA that ICE enforces are civil in nature. These include: being present in the United States without lawful status, violating the conditions attached to immigration status, or being removable from the United States based on a criminal conviction.

The incidents highlighted by this memorandum relate to civil arrests either by ERO, or by HSI using their administrative authority to enforce civil immigration laws. The INA mandates that, absent exigent circumstances, ICE civil arrests be made pursuant to administrative warrants signed by the arresting agent's supervisor.

These warrants are not reviewed or issued by a judge or other neutral party to determine whether probable cause or reasonable suspicion has been objectively established, or to review the accuracy of the charges contained within.

According to the Sponsor's Memorandum in Support of this legislation, "the Immigrant Defense Project, from 2016 to 2017, arrests by federal Immigration and Customs Enforcement ("ICE") agents at courthouses in New York State increased by 1200%. Fear of being targeted, either due to a lack of legal immigration status or concern about the uncertain status of a family member, have dissuaded many individuals from contacting law enforcement or following through with court proceedings."

ICE's presence in New York State's courthouses has created a devastating and chilling impact on immigrant New Yorkers' ability to access the judicial system to defend themselves against criminal charges, participate in the prosecution of crimes, and obtain remedies, including sometimes life-saving protections, from our courts. These actions seriously and significantly undermine access to justice in New York's courts, something that is antithetical to the Association's mission and the commitment we have made to our immigrant communities.

Enactment of this legislation would help restore access to justice for members of the immigrant community.

For the foregoing reasons, the New York State Bar Association **SUPPORTS** this legislation.