

SECTION 2:

RESEARCHING LOCAL AND STATE LEGAL SOLUTIONS

Information collecting, case stories, surveys, and infographics

BACKGROUND

Identifying Key Decisionmakers.

As a first step, we researched which local and state actors have the legal authority to regulate behavior in state courts. In New York, we ultimately concluded that the state constitution and statutes most clearly vest the Chief Judge and legislature with the necessary authority to regulate the court system. Other actors we considered--which are options that may be available in certain states--are mid-level judges, particularly those who hold an administrative title; city legislative bodies; governors; mayors; and states attorneys general.

Our research and work with campaigns in other states has also shown that some of these actors are interconnected. For instance, a legislature might be empowered to enact legislation that delegates to the attorney general or to an agency the responsibility to enact policies that regulate courthouses, as is the case in California.

One additional issue you may encounter is that the court system and the physical courthouses themselves are distinct, and so you will need to consider who controls the buildings themselves, and who controls

the way in which the court system functions. For example, it could be the case that the state owns the physical property of the courthouse and leases it to a city; in such a circumstance, the terms of the lease could confer upon the city some authority to regulate the terms of entry into the courthouse, and what happens inside. If actors in your local government are supportive of campaigns to limit ICE enforcement in the courts, you may approach them for assistance in making your legal assessment of which policy routes are possible in your state or locality.

Producing a Foundational Legal Memorandum. In New York, having identified New York's Chief Judge and legislature as the actors best-situated to enact policy interventions, we researched what kinds of restrictions a state judiciary or legislature could impose to restore nondiscriminatory courthouse access. We produced a versatile legal memo--one to advise state and local campaigns around the country about potential state and local policy interventions in the courthouse arrest crisis, and to explain to New York policymakers why they can and should impose the kinds of regulations that we are recommending. In that memo, we laid out a factual account of the courthouse arrest crisis and its relationship to federal immigration enforcement practices under the Trump Administration, and included a set of rules to be promulgated by a state court system or legislature. Part of developing these rules included assessing compatibility with federal law through the lens of Trump DOJ anti-sanctuary efforts. We also took into consideration potential litigation against any state or local policy that might limit cooperation with ICE (see, e.g., *U.S. v. California*, No. 2:18-at-00264 (E.D. Cal. 2018, pending)).

We circulated our memo to a group of advocates and legal scholars working on courthouse arrest campaigns in New York and in other states, to help create a platform for people thinking about how to position the problem of courthouse arrests and how to think toward a solution. Since then, we have written various position papers on the

legal questions surrounding courthouse arrests and state and local policies, including judicial rules and legislation. For technical assistance on these issues in a state campaign, please reach out to IDP. Additional legal resources are included in this toolkit in Section 8.

RESOURCES

State and Local Judicial Rules and Legislation

Sample state and local judicial rules. This Section includes the proposed judicial rules the ICE Out of Courts Coalition has asked the Chief Judge of New York State to promulgate to restrict federal civil immigration arrests in courthouses. The New York rules prohibit the employees of the Office of Court Administration from expending resources that assist with federal immigration enforcement within state courthouses; from inquiring into immigration status, absent specific circumstances; and from sharing identifying information with federal immigration agents, absent specific circumstances. They also prohibit civil arrests inside courthouses absent a judicial warrant or order. This section also includes judicial rules implemented in New Mexico and in King County, Washington.

[Application for a Proposed Rule of Court Prohibiting Civil Arrests at California Courthouses](#) (submitted August 1, 2018). On August 1, 2018, stakeholders in California led by Legal Aid at Work—National Origin and Immigrants’ Rights

Program submitted an application to California's Judicial Council for the promulgation of judicial rules that would restrict federal civil immigration arrests in courthouses. That application incorporates legal theories and resources generated by advocates and academics across the country in response to the courthouse arrest crisis.

[Immigrant Defense Project, The New York State Protect Our Courts Act: Model Legislation to Regulate ICE Arrests at State Courts](#) (June 2018). In June 2018, IDP released the precursor to this toolkit (available [here](#)), which focuses on the campaign in New York to enact the Protect Our Courts Act (A.11013/S.08925), one of the most protective pieces of state or local legislation in the country to respond to and impose legal restrictions on federal civil immigration arrests of individuals who are attending court. The New York State legislature introduced this bill in both the Assembly and Senate in June 2018, drawing from IDP's legal research and analysis. Though this legislation was created to become law in New York, it can serve as a useful template for legislators and advocates in other jurisdictions to take similar action, using New York's bill for guidance. Some of the resources included are:

- Summary of the Protect Our Courts Act.
- Text of the Protect Our Courts Act.
- FAQ about the Protect Our Courts Act.
- List of Additional Resources.

Additional examples of state and local legislation. Here we

include sample legislation that has been introduced or enacted by state or local legislative bodies around the country. These examples show other theories that legislators and other policymakers can consider if trying to stage a meaningful policy intervention in the courthouse arrest crisis. It is IDP's assessment, though, that New York's Protect Our Courts Act is one of the most protective piece of model legislation that has been developed so far on this issue.



Proposed Judicial Rules

1) Expenditure of Resources to Assist with Immigration Law Enforcement Activities: Employees of the Unified Court System shall not:

- i) Expend resources to assist with federal immigration enforcement activities in the course of their employment, in any courthouse of the New York State Unified Court System except to the extent they are described in Section (2).
- ii) Inquire into the immigration status of any individual within any courthouse of the Unified Court System unless such information about a person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of services.
- iii) Provide any information to immigration enforcement officers regarding persons appearing before the court, except information regarding citizenship or immigration status, as required by 8 U.S.C. § 1373, and then only if known.

2) Civil arrests without judicial warrants: Civil arrests may only be executed within a courthouse of the Unified Court System when accompanied by a judicial warrant or judicial order authorizing them to take into custody the person who is the subject of such warrant. "Judicial warrant" is defined as a warrant issued by a magistrate sitting in the judicial branch of local, state, or federal government. "Judicial order" is defined as an order issued by a magistrate sitting in the judicial branch of local, state, or federal government.

Superior Court Policy on Immigration Enforcement in Courtrooms

The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public's safety is at immediate risk. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.



**NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court**

Reference Article III of the New Mexico Constitution

Reference NMSA 1978, § 34-6-28

Reference New Mexico Loss Control and Prevention Rule 1.6.4 NMAC

Reference Second Judicial District Court Loss Prevention and Control Plan

Bernalillo County Sheriff's Department Rules and Regulations, Sect. 239

Albuquerque Police Department Procedural Orders, SOP 2-8, Use of on-Body Recording
Devices

SJDC Policy No. 2017-SJDC-010

COURTHOUSE ACCESS POLICY

PURPOSE

The Second Judicial District Court is dedicated to serving the community by providing equal access to justice through the fair, timely and efficient resolution of all cases. This policy is to establish guidelines for Courthouse access, which respects the dignity of the courtroom and the proceedings occurring in the Courthouse. The Second Judicial District Court (SJDC) is committed to ensure that SJDC facilities remain open and accessible to individuals, families, and business entities to resolve disputes under the rule of law. To that end, SJDC must ensure that independent and internal operation of the Court is conducted safely, transparently, without undue interruption or interference, and with no impediment to open public access.

APPLICABILITY

This policy applies to the Bernalillo County Courthouse (BCC), the Juvenile Justice Center (JJC) and Pretrial Services located at the Bernalillo County Public Safety Building (BCPSB).

BERNALILLO COUNTY COURTHOUSE AFTER HOURS 6PM- 6AM

Authorized SJDC personnel may access SJDC facilities after business hours and over weekends and holidays. After business hours consists of after 6 P.M. through 6 A.M. Monday through Friday and during weekends and holidays. Each of the three Court locations has one or more established after-hours entrances with sign-in and out sheets. Court employees and officials are to use these sign-in and out sheets upon entrance and exit of the facilities.

BCC After-Hours Entrances:

There are three established after-hours entrance locations for the BCC, consisting of the main public entrance, the Purchasing Division entrance, and the underground parking entrance. At each of these locations is an after-hours sign-in sheet, which court employees and officials are to use to register their presence at the court outside of normal business hours. These registries are intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

JJC After-Hours Entrance:

There are two established after-hours entrance locations for the JJC, consisting of the main public entrance, and the secured judges entrances on the south side of the facility. At each of these locations is an after-hours sign-in sheet, which court employees and officials are to use to register their presence at JJC outside of normal business hours. These registries are intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

BCPSB After-Hours Entrance:

There is one established after-hours entrance location for the BCPSB, consisting of the main public entrance. At this location is an after-hours sign-in sheet, which court employees and officials are to use to register their presence within the facility outside of normal business hours. This registry is intended to assist emergency personnel and law enforcement in the event of an emergency arises after-hours or over weekends or holidays. Authorized employees and officials should use the same sign-in sheet and sign-out sheet, providing name, date, time, and other required information upon arrival and departure.

EMERGENCY/NON-EMERGENCY CONTACTS

Contact information is attached hereto as **Addendum 1**, which will be updated as personal and contact information changes.

IN CASE OF AN EMERGENCY ALARM AFTER BUSINESS HOURS, OVER WEEKENDS OR ON HOLIDAYS

Court employees and officials should gather personal belongings and exit through the nearest emergency exit. Any such court employees or officials should remain within a safe distance of the court facility in order to advise emergency personnel of their individual knowledge of the situation. Court employees and officials should advise the Court Executive Officer, the Deputy Court Executive Officer responsible for court facilities, and the Support Services Manager at the

contact numbers provided in **Addendum 1**, when an emergency alarm activation occurs after business hours and on weekends.

MEDIA ACCESS POLICY

The SJDC has established Guidelines for Media Video & Photo, which are attached to this policy as **Addendum 2**. The guidelines were developed by the SJDC consistent with Supreme Court Rule 23-107, which governs broadcasting, televising, photographing and recording of proceedings. Pursuant to Rule 23-107(A)(1), all news media coverage is subject at all times to the authority of the Judge. Please comply with all directives issued by the Judge.

COURTHOUSE ACCESS BY LAW ENFORCEMENT OFFICERS

The SJDC affirms the principle that the courts should remain open and accessible to the public. Recognizing the important role the courts fulfill in our democracy, access to the courthouse should be free of restriction that hinders or impedes the proper administration of justice. To this end, the Court:

1. Seeks to maintain an open and safe environment in which parties, witnesses, jurors, staff and others (“participants”) in the justice system can exercise their role in a manner that is free of harassment or threats to their security or freedom, unless founded upon a lawful court order or arrest warrant;
2. Finds that allowing law enforcement officers, agents, or others to arrest, detain, interrogate, hold, or restrict the freedom of individuals in the courthouse without the protection of due process, based on any ground other than immediate public safety concerns, creates an environment of fear, confusion and mistrust among courthouse participants;
3. Finds that a reasonable courthouse access policy and rule is necessary and appropriate for the court’s proper functioning;
4. Finds that local, state or federal law enforcement officers should not hinder or impede individuals in the courthouse conducting court business unless founded upon a lawful arrest warrant;
5. For purposes of this rule, “hinder” or “impede” shall mean to stop, detain, hold, question, interrogate, arrest or delay individuals while in the courthouse conducting business.

Law Enforcement to Identify. All on-duty local, state and federal law enforcement agents/officers shall present and display appropriate badge/credentials or other identifying documents to BCSO deputies upon entering the courthouse.

Identification Rule. Law enforcement officers may not randomly interrogate individuals about their identity or their purpose for being in the courthouse unless necessary: (1) to protect the safety and security of Judges, Special Commissioners, Hearing Officers, other Court personnel, or the public; or (2) to enforce a lawful court order/warrant under these rules.

Courthouse Arrests.

- A. **Public Space.** Law enforcement officers, agents, or other persons shall not arrest any person, or otherwise take them into custody, in or around the courthouse unless:
 - 1. The arrest is performed by a BCSO deputy assigned to the courthouse security detail and engaged in the performance of the deputy's duties; or
 - 2. In the case of non-BCSO law enforcement officers or agents, they display a lawful warrant or lawful court order to BCSO deputies upon entering the courthouse; and
 - 3. If BCSO personnel is available, a deputy may accompany the outside law enforcement officer at the time of arrest to secure public safety.
- B. **Courtroom/Hearing Room.** With regard to an active trial/hearing, arrests shall generally occur outside the court/hearing room, unless the judicial officer presiding over the legal proceeding authorizes an arrest or immediate arrest is necessary to secure public safety.
- C. Nothing in this policy shall limit the authority of a law enforcement officer to make a lawful arrest for criminal conduct occurring in the courthouse or other grounds.

PROHIBITION OF WEAPONS

No firearms or other weapons shall be taken into the BCC, JJC, BCPSB, or in any other building, facility or space used, in whole or in part, for official Court business except by authorized BCSO deputies. The BCC and JJC have storage lockers for law enforcement weapons. With prior approval of the BCSO and in concurrence with the Court, law enforcement officers may be permitted to carry firearms when exigent circumstances warrant such action.

ELECTRONIC DEVICES

The Second Judicial District Court bans all persons from bringing electronic devices, including cellphones (excluding the Children's Court location), lap top computers, tablets, any device that is capable of recording audio or video or taking photos and other communication devices, into the Bernalillo County Courthouse and the Juvenile Justice Center unless specifically authorized below. The following persons shall have specific authorization to bring their electronic devices into the Bernalillo County Courthouse and the Juvenile Justice Center:

Second Judicial District Court Employees
Court Employees from other districts
District Attorney's Employees
Public Defender's Employees
Bernalillo County Youth Services Center Employees
Metropolitan Detention Center Employees
Law Enforcement Office Employees
i.e.: Sheriff's Officers, NM State Police, and Albuquerque Police Department Officers etc.

Attorneys and their Staff
Children Youth and Families Department Employees
Department of Corrections Employees
Bernalillo County Facility Staff
Mediation Contract Employees
Contract Interpreters
Vendors
US Postal Service
Jurors
Credentialed Members of the Media

These specifically authorized persons must be able to identify themselves and the entity they work for by carrying their employee-issued badge, bar card and/or business card or their juror "ticket" to gain entry with their electronic device.

USE OF ON-BODY RECORDING DEVICES

Active use of on-body recording devices is prohibited within court facilities except in exigent circumstances in which law enforcement officers other than BCSO are called upon to assist BCSO, court staff or officials in emergency situations.

SOLICITATIONS

- A. It is the policy of SJDC that solicitors are not permitted in either the BCC, JJC or BCPSB to solicit for business or personal reasons. Solicitation is not permitted by SJDC employees or officials while engaged in the assigned duties of their positions to include, but are not limited to, doorways, employee offices, conference rooms, and meeting rooms, except as permitted by federal or state law.
- B. Solicitors are permitted to conduct solicitations, so long as such solicitations are peaceable, lawful, and are not reasonably anticipated to pose a threat to the safety, health, and welfare of the citizens or employees of the SJDC only by obtaining approval in advance by SJDC Court Administration.
- C. Solicitors may be permitted to conduct solicitations within certain specifically identified areas of the Bernalillo County Courthouse, the Juvenile Justice Center or Pretrial Services only upon obtaining approval in advance from the Chief Judge, Presiding Judge at the Juvenile Justice Center or the Court Executive Officer. Such approval shall be limited, or confined, to specifically identified areas.

D. Approval Guidelines:


1. Any restrictions or limitations imposed on such approvals, shall be made with reasonable, and equally applied, standards of time, place and manner.
2. Under no circumstances, should approvals, restrictions, or limitations imposed on such approvals, be based on the content or subject matter of a solicitor's speech.

EXCLUSIONS TO SOLICITATION POLICY

All persons, companies, vendors, corporations, business entities, non-profit organizations or for profit organizations who currently conduct business or provide services in conjunction with the SJDC, provide commodities or services to the SJDC, or any such entity who has been invited to provide commodities or services to the SJDC are excluded from this policy when such entities are operating in the scope of the business relationship.

A copy of this policy will be distributed to all local, county state and federal law enforcement agencies who regularly appear in the Second Judicial District Court.

Effective Date: November 20, 2017



James A. Noel, Court Executive Officer
Second Judicial District Court

11.20.17
Date



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 1
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

LIFE THREATENING SITUATIONS.

Life threatening situations call 911.

NON-EMERGENCY PERSONAL SAFETY SITUATIONS

Call the Albuquerque Police Department at 505-242-2677 or Bernalillo County Sheriff Office Communication Center at 505-798-7000 to advise them of the situation. Be specific with what is occurring and the location of the occurrence.

NON-EMERGENCY BUILDING SITUATIONS

Call Bernalillo County Facility Management at 505-314-0110. Provide a detailed description of the non-emergence situation, including the location and time of the occurrence.

COURT CONTACTS

Lt. Van Eldredge, BCSO.....505-263-1285
Sgt. Edward Vigil, BCSO Security, BCC.....505-980-2489
Sgt. Charles Holmes, BCSO Security, JJC.....505-269-6803
James A Noel, Court Executive Officer.....505-239-1184
Arthur Gallegos, Deputy Court Executive Officer.....505-249-4574
Danny Smith, Support Services Manager.....505-301-4177



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 2
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

GUIDELINES FOR MEDIA VIDEO & PHOTO

- **Do not** film or take photos of jurors or prospective jurors at any time or in any area of the Courthouse.
- **Do not** film or take photos of faces of juvenile defendants in Children's Court.
- **Do not** record audio of bench conferences. Any microphones that are positioned beyond the rail must be turned off during bench conferences.
- **Do not** set up or take down equipment until a recess.
- **Do not** go in front of or take your equipment in front of the rail.
- **Do** follow all rules set forth by the judge in the courtroom, including any rules prohibiting filming or photographing certain witnesses.
- **Do** set up all equipment 15 minutes before the start of a proceeding.
- **Do** tape wires or cables securely to the floor.
- **Do** be aware of images that are being captured. For example, a tight shot of a defendant may show graphic images of evidence on a nearby computer monitor in the background.
- **Do** dress appropriately for a courthouse setting:
 - No shorts, T-shirts, sweatshirts, hats, sunglasses or flip-flops.
- **Do** use only natural light for video and still photography.
- **Do** coordinate with the Court administration and the Judge's bailiff on permissible locations for a TV camera and any microphones, the use of social media (Twitter, etc.), the use of laptops or texting during proceedings and any live coverage including an internet stream.
- **Do** limit movement in the Courtroom. Still photographers must remain seated in the same location but may relocate during a recess.
- **Do** minimize distractions and wait for a recess before switching out tapes, connecting cables, unpacking or storing gear or performing other noisy activities.
- **Do** use a noise-reduction device, if possible.
- Only one TV camera and two still cameras are permitted in a courtroom. Although the Court administration may facilitate, journalists are ultimately responsible for organizing and complying with pool agreements.

Note: These guidelines were developed by the Second Judicial District Court consistent with Supreme Court Rule 23-107, which governs broadcasting, televising, photographing and recording of proceedings. Pursuant to Rule 23-107(A)(1), all news media coverage is subject at all times to the authority of the Judge. Please comply with all directives issued by the Judge.



NEW MEXICO JUDICIAL BRANCH
Second Judicial District Court
Addendum 3
COURTHOUSE ACCESS POLICY
SJDC Policy No. 2017-SJDC-010

**QUESTION AND ANSWER SHEET
AFTER BUSINESS HOURS AND WEEKENDS POLICY**

What if I see smoke in the building or have a medical emergency? Call 911.

What do I do if I notice a water leak or another similar building issue?

Call Bernalillo County Facility Management at the number identified in **Addendum 1** to this policy.

What do I do when I need to take a break outside the building?

Exit using only the designated doors. At the BCC, if you use the main public entrance, only use the accessibility front door as use of the other front doors will sound the alarms and activate an emergency response.

What do I do if I see someone I am unfamiliar with or do not know?

Politely ask who they are. If they are not an employee of the Court, an employee of the County, or an authorized individual, contractor or delivery personnel/vendor, call the Albuquerque Police Department or Bernalillo County Sheriff Office Communications at the numbers identified in **Addendum 1**. If the person is a direct personal safety threat, call 911.

How do 911 personnel get into the building and how do they find me?

Emergency personnel have a designated access card to enter into the building and will find you by the instructions given to the 911 operator and/or the sign/in out sheet located at the entrances to the BCC, JJC or BCPSB.

What if the elevator breaks down and I am in it?

Pick up the phone in the elevator and the elevator company will dispatch someone to the building.

What do I do if there is a power outage? Will I be able to get out of the building?

Yes, the emergency generator will kick on allowing you to exit. Please call Bernalillo County Facility Management, the Court's CEO, DCEO and SSM at the numbers identified in **Addendum 1**.

STATE AND FEDERAL LEGISLATION

In addition to the New York Protect Our Courts Act, there are currently multiple legislative proposals at the state and federal level that would limit ICE enforcement action in courthouses.

As of July 2018, California is the only state that has passed legislation directly related to ICE arrests in courts. The [California Trust Act](#) requires the courts to adopt “model policies limiting assistance with immigrant enforcement to the fullest extent possible consistent with federal and state law.” The Trust Act tasks the state’s Attorney General with creating those model policies, something he has until October of 2018 to do.¹

Seven other state legislatures have introduced legislation that aims to curb ICE enforcement in courts. California also has additional legislation pending on this issue. The proposed bills are available here: California [SB 183](#), Maryland [HB 1362/SB 835](#), Minnesota [HF1576 / SF 1110](#), New Jersey [AB 4611](#), Oregon [HB 3464](#), Rhode Island [HB 6021](#), Texas [SB 997](#), and Washington [HB 1985/SB 5689](#).

Most of the state bills focus on two provisions: 1) prohibiting court employees from providing assistance to ICE; and 2) requiring courts to adopt model policies for courts that would limit ICE enforcement activity (this is modeled on the California Trust Act). Two of the bills would require ICE to show a valid judicial warrant before they can execute an arrest in a courthouse. See [California SB 183](#) and [Rhode Island H 2061](#).

Federal legislation which aims to stop ICE courthouse arrests has also been introduced in the House and Senate. See [HR1815/S.845](#). The "Protecting Sensitive Locations Act" instructs ICE to designate Federal, State, and local courthouses as “sensitive locations,” which currently does not include courthouses. The proposals would prohibit “enforcement actions” at courthouses and the prohibition would extend to the area 1,000 feet from the courthouse. **Note that the [ABA](#) and [NYSBA](#) have both passed resolutions endorsing the sensitive locations designation for courthouses.**

¹ It should be noted that in May of 2018, California also signed into law [SB 785](#), which prohibits parties from asking an individual about their immigration status in court. Although this has been touted in the [press](#) as a bill about courthouse arrests, this legislation is not squarely on point since ICE does not typically rely on the disclosure of status in court to target people for arrests. Instead, ICE is believed to use public and private databases that allow them to easily track individuals to our court appearances who are fingerprinted in connection with arrests. For more on ICE’s use of databases, see the National Immigrant Law Center’s report “[Untangling the Immigration Enforcement Web](#).”

The Undersigned Organizations Comprise the ICE Out of Courts Coalition and Support the Protect Our Courts Act

As members of the ICE Out of Courts Coalition, we write today in support of the Protect Our Courts Act ([A.11013/S.08925](#)), a bill that will ensure access to state court proceedings for all regardless of immigration status. For the past year, we have seen an unprecedented escalation in Immigration and Customs Enforcement (ICE) using the New York State courts to effectuate civil immigration arrests. Squads of federal immigration officers have preyed on our clients, members, and community as they attend state court proceedings, undermining the effective functioning and constitutional underpinnings of the courts, and threatening public health and safety of all New Yorkers. We applaud the Assembly and Senate for taking this first step towards ending this unlawful practice and restoring nondiscriminatory access to legal proceedings.

Our coalition is comprised of more than 100 organizations and entities from across New York State. We are community-based organizations, unions, civil legal services providers, public defenders, family defenders, victim rights advocates, law schools, and civil rights and liberties groups. Together, the legal service providers in the coalition provide the bulk of indigent legal representation and advocacy in New York State. We practice in criminal, family, civil, and administrative courts. Our clients include adults, children, and families; citizens and noncitizens; workers; survivors of violent crime; people accused of crime; and people experiencing discrimination. Our clients are citizens, noncitizens, and mixed-status families and communities. Many of us represent immigrants in federal immigration proceedings relating to deportation, detention, and applications for immigration benefits.

Since January 2017, we have watched federal immigration officers stalk our immigrant clients to their state court dates, where they arrest them, and then either place them in civil immigration detention and civil deportation proceedings, or immediately deport them. These arrests mark the resurgence of a long-defunct practice of civil arrests in courthouses—a practice legislatures and courts have regulated for more than a century. The recent spate of civil arrests started immediately after President Trump’s inauguration and has escalated dramatically over the past 18 months. It is now a daily phenomenon in New York State courts that groups of plainclothes ICE agents roam courthouses looking for immigrants to arrest. Members of our coalition documented a 1200% increase in courthouse arrests from 2016 to 2017; in 2018, the pace of arrest is already higher than in 2017.

There are no boundaries or limits to the categories of immigrants ICE will target for arrest at a state court appearance. Our clients disappeared from court have been survivors of violence, youth, people who are mentally ill or homeless, guardians to U.S. citizen children,

people who are LGBT, victims of human trafficking, and asylum seekers. We have stood in hallways as ICE agents have physically separated us from our clients, thrown our clients to the ground, ignored our requests to invoke our clients' rights, ignored our requests for voluntary surrender, and refused to show us warrants or share information about where they are taking our clients. We have watched ICE agents pressure courthouse staff to supply them with information, to give them access to nonpublic areas of courthouses, and to adjust court schedules to facilitate their arrests. For the community-based and membership organizations that are part of our coalition, we have seen the devastating impact on valued members of our community resulting from these courthouse raids.

ICE's courthouse arrest practice is not only an affront to fundamental constitutional rights to due process and to petition the courts, but these raids also have a chilling effect on people's sense of safety in accessing courts. We surveyed 225 legal services providers across New York State to understand and document the extent of the impact of ICE practices on courthouse access. We found a widespread chilling effect due to fear of ICE at the courts: 75% of legal service providers reported that clients have expressed fear of going to court, 48% of providers reported clients have expressed fear of calling the police, and 29% of providers have worked with immigrants who have failed to appear in court due to fear of ICE. For those who work with survivors of violence, fear of ICE has resulted in 67% of their clients deciding not to seek help from the courts and 46% of clients now have a fear of serving as a complaining witness. Those who work with tenants in housing court reported that 56% of clients fear filing a housing court complaint because of ICE presence in the courts.

The Protect Our Courts Act (A.11013) is a crucial step toward restoring courthouse access for noncitizen and mixed-status communities and families across New York State. The bill modernizes New York's Civil Rights Law and Judiciary Law to clarify that warrantless civil arrests of individuals attending state court proceedings as a party or a potential witness, or as a family or household member of a party or potential witness, are unlawful and creates legal mechanisms for enforcing the law if it is violated. This bill will ensure that if federal immigration agents appear at a courthouse to make an arrest for a civil immigration violation that would result in civil detention and deportation proceedings, they will have presented sufficient evidence to a federal judge to authorize such an arrest. The bill also requires New York's Office of Court Administration to put in place procedures for reviewing any judicial warrants and court orders required under the bill. This process would bring civil arrests in and around state courthouses into sync with law enforcement norms that are constitutionally mandated and complied with by criminal law enforcement agencies such as local police and the FBI. Finally, this bill will communicate to immigrant and mixed-status families and communities that the New York State courts are not a part of the federal immigration enforcement regime.

The Protect Our Courts Act (A.11013/S.08925) is a substantial step toward restoring confidence that New York will ensure that access to the courts and justice is available to all.

For more information on the Protect Our Courts Act, please visit

<https://www.immigrantdefenseproject.org/ice-courts/>

Respectfully signed,

Asian American Legal Defense and Education Fund (National)

LatinoJustice PRLDEF (National; Statewide)

Safe Horizon Immigration Law Project (National; Statewide)

Kathryn O. Greenberg Immigration Justice Clinic (National; Statewide)

Immigrant Defense Project (National; Statewide)

New York State Coalition Against Domestic Violence (Statewide)

New York Immigration Coalition (Statewide)

Empire Justice Center (Statewide)

32BJ SEIU (Statewide)

Anti-Defamation League New York (Statewide)

Association of Legal Aid Attorneys – UAW Local 2325 (Statewide)

Prisoners' Legal Services of New York (Statewide)

Rural and Migrant Ministry (Statewide)

New York Coalition Against Sexual Assault (Statewide)

Legal Aid Society of Rochester (multiple counties Statewide)

Mobilization for Justice, Inc. (multiple counties Statewide)

Sylvia Rivera Law Project (multiple counties Statewide)

Central American Legal Assistance (multiple counties Statewide)

Make the Road New York (multiple counties Statewide)

The Door Legal Services (multiple counties Statewide)

CDWBA Legal Project (Capital Region)

Hofstra Law Clinic (Queens, Nassau, Suffolk Counties)

The Legal Aid Society (New York City—all five counties)

New York Lawyers for the Public Interest (New York City—all five counties)

Her Justice (New York City—all five counties)

Sanctuary for Families (New York City—all five counties)

Legal Services Staff Association, NOLSW/UAW 2320 (New York City—all five counties)

New York Legal Assistance Group (New York City—all five counties)

Emerald Isle Immigration Center (New York City—all five counties)

Peter Cicchino Youth Project at the Urban Justice Center (New York City—all five counties)

Youth Represent (New York City—all five counties)

Appellate Advocates (New York City—Kings, Queens, Richmond Counties)

Center for Appellate Litigation (New York City—Bronx and New York Counties)

UnLocal, Inc. (New York, Kings, Bronx, Queens Counties)

The Bronx Defenders (Bronx County)

Neighborhood Defender Service (New York County)

New York County Defender Services (New York County)

Worker Justice Center of New York, Inc. (New York County)

Nassau Legal Aid Society (Nassau County)

Rockland Immigration Coalition (Rockland County)

Brooklyn Defender Services (Kings County)

Wayne County Public Defender (Wayne County)

Safe Against Violence (Delaware County)

Safe Homes of Orange County (Orange and Sullivan Counties)

Columbia County Sanctuary Movement (Columbia and Greene Counties)

Statement of Anti-Violence Organizations in Support of the Protect Our Courts Act

The Undersigned Anti-Violence Organizations Support the Protect Our Courts Act

As advocates of survivors of domestic violence, we write today in support of the Protect Our Courts Act ([A.11013/S.08925](#)), a bill that will ensure access to state court proceedings for all regardless of immigration status. As a matter of public policy, New York State has historically engaged in various reforms to make the courts increasingly accessible to survivors, with the understanding that the relief available there, such as civil orders of protection, custody, and child and spousal support, are crucial to ensuring survivors' safety and security.

Given nearly 22% of our population who are foreign born¹, any efforts to ensure survivor safety by maintaining accessibility to the courts for survivors of domestic violence must take into account the overwhelming anxiety of potential interaction with immigration authorities. These efforts are all the more urgent as it is those immigrant women, men, and children, who are at greatest risk, and who are most likely to be harmed or killed by their partners and abusive family members.² Survivors of domestic violence may seek out civil relief as an alternative to the police or criminal courts believing that civil courts are safer alternative.³ However, the lack of current clear limitations on ICE means we cannot comfortably advise immigrant survivors of violence to seek any court remedy. We have also observed a chilling effect with respect to immigrant parents and family members seeking custody or guardianship for their children or immigrant survivors of domestic violence seeking orders of protection specifically because of fear of ICE enforcement.

The Protect Our Courts Act (A.11013) is the next step New York can take to provide meaningful support and access for immigrant survivors of domestic violence and their families to our courts.

For more information on the Protect Our Courts Act, please visit

<https://www.immigrantdefenseproject.org/ice-courts/>

¹ Out of an estimated 19.65 million New York State residents, approximately 4.4 million are immigrants, and 775,000-850,000 lack immigration status. See DiNapoli, T. (2016). *A Portrait of Immigrants in New York*. P. 1. Retrieved from the Office of the New York State Comptroller website at https://www.osc.state.ny.us/reports/immigration/immigration_2016.pdf. See also Pew Research Center (2017). Overall Number of U.S. Unauthorized Immigrants Holds Steady Since 2009. Retrieved from the Pew Research Center website at: <http://www.pewhispanic.org/2016/09/20/overall-number-of-u-s-unauthorized-immigrants-holds-steady-since-2009/>.

² New York City Domestic Violence Fatality Review Committee: 2016 Annual Report, available at <http://www1.nyc.gov/assets/ocdv/downloads/pdf/2016-frc-report.pdf>.

³ Engelbrecht, C. (June 4, 2018) *Fewer Immigrants Are Reporting Domestic Violence. Police Blame Fear of Deportation* available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>

Respectfully signed,

Asylum Seeker Advocacy Project at the Urban Justice Center (New York City—all five counties)

Carter Burden Network (New York County)

Children's Aid (New York City—all five counties)

CONNECT (New York City—all five counties)

Her Justice (New York City—all five counties)

Law Offices of Katie E. Kehrig (New York City)

New York City Anti-Violence Project (New York City—all five counties)

New York State Youth Leadership Council (New York State)

Northern Manhattan Improvement Corporation (Bronx, Kings, New York and Queens Counties)

STEPS to End Family Violence (New York City—all five counties)

Violence Intervention Program (Bronx, New York and Queens Counties)

YWCA Brooklyn (Statewide)

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.