



# PROTECT OUR COURTS ACT FAQ

A.11013/S.08925

The Protect Our Courts Act ensures that ALL New Yorkers can access our courts without fear of being arrested by ICE.

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## WHAT DOES THE BILL DO?

Makes it unlawful for any law enforcement officer (including Immigration and Customs Enforcement) to arrest a person for a *civil* violation while that person is going to, attending, or leaving court *unless* a judicial warrant or court order authorizing the arrest is presented to court staff.

Prohibits law enforcement officers from outside of New York (including ICE) from entering a courthouse to enforce federal immigration law, unless they present a valid judicial warrant or court order authorizing the arrest.

## HOW WILL IT PROTECT PEOPLE FROM ICE?

ICE arrests people for *civil* violations of federal immigration law. By making *civil* arrests unlawful, this bill will effectively stop ICE from making arrests in our courts.

The only way ICE can make an arrest under this law is by presenting a valid judicial warrant or court order from a federal judge, a requirement that has effectively stopped ICE arrests in other contexts.

## WHO DOES THE BILL PROTECT?

The law will protect *any* person who is a party or potential witness in a court proceeding in New York state. This includes victims, witnesses, defendants, and anyone who is part of a non-criminal proceeding such as a family or housing court matter.

It will also protect any family or household members who are part of a court proceeding or potential witnesses.

## WHERE WILL PEOPLE BE PROTECTED FROM ARREST?

The bill protects people from arrest not only inside of a courthouse, but while they are going to the courthouse or leaving it. The exact boundaries of this protection are not spelled out in the legislation but would likely extend to the area within sight of the courthouse.

This concept of a zone of protection against civil arrest while attending court already exists in New York's civil rights law and has a long history in U.S. law. This concept was developed to prevent law enforcement agencies from using people's attendance in court as a way to arrest them on civil matters.

## HOW WILL IT BE ENFORCED?

The bill includes several enforcement measures. It empowers judges to hold any person who violates the law in contempt of court. It also instructs the New York Attorney General to pursue legal action on behalf of individuals who are arrested in violation of this law. In addition, the bill recognizes that individuals have a right to pursue legal claims when they are arrested.

## HOW WILL THE COURTS IMPLEMENT THIS?

The Office of Court Administration will designate attorneys to review any judicial warrants or court orders presented before allowing non-local law enforcement (including ICE) to enter a courthouse in order to make a *civil* arrest. The bill also requires that the court document any warrants or court orders presented to its staff.

The Office of Court Administration will also need to adopt rules explaining how it will implement this legislation.

## DO LAWMAKERS HAVE THE POWER TO DO THIS?

Yes. New York's Constitution grants the legislature the authority to regulate the court system to ensure that it operates effectively. The legislature also has an obligation to protect the constitutional rights of all New Yorkers to access the courts, receive due process, defend themselves in criminal proceedings, and petition the courts. When an outside entity threatens our judicial institutions and the constitutional rights of New Yorkers, the legislature has clear power to act.

# PROTECT OUR COURTS ACT

## TALKING POINTS

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### 1. **An unprecedented increase in ICE arrests makes it impossible for our courts to run the way they're supposed to.**

- The Immigrant Defense Project documented a 1200% increase in ICE courthouse operations from 2016 to 2017.
  - The surge in ICE arrests has made immigrants and their families fearful of going to court.
  - This means children aren't getting child support, domestic violence survivors aren't getting orders of protection, tenants aren't bringing complaints against abusive landlords, and people facing criminal charges are denied their fair day in court.
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### 2. **ICE's courthouse arrests undermine public safety for all New Yorkers.**

- Prosecutors and law enforcement have said that ICE arrests make it harder for them to convince victims and witnesses to come forward.
  - In a statewide survey by the Immigrant Defense Project, more than two-thirds of advocates who work with survivors of violence said they have clients who have delined to seek help from the courts due to fear of ICE.
  - More than half of housing rights advocates surveyed have clients who are too scared to file a housing court complaint because of ICE being in court.
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### 3. **This bill will help ensure access to courts for ALL New Yorkers regardless of immigration status.**

- Our constitution guarantees access to the courts to ALL New Yorkers, regardless of immigration status.
  - Equal access to our courts is vital to our democracy and central to everything that New York stands for.
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### 4. **This bill will help protect the fundamental constitutional right of all New Yorkers to have their fair day in court.**

- ICE snatches immigrants from court when they're in the middle of defending themselves against criminal charges.
  - Once ICE detains someone, they can refuse to send them back to state court, meaning that the person never gets their fair day in court.
  - This not only violates basic constitutional rights, it derails our state's criminal justice system.
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### 5. **The legislature has the power to protect the state's courts from ICE.**

- ICE is exploiting our courthouses by using them as a hunting ground for immigrants.
- When an outside agency interferes with our courts, we have a duty to protect them.
- The state constitution gives New York's legislature clear authority to regulate the court system to ensure that they operate effectively and serve EVERY New Yorker.

A mother showed up to My Sister's Place, a Rockland County legal services organization, with her head bandaged. When the attorney asked what happened, the woman said that the father of her children had raped her in a parking lot and severely beat her on the head with "metal things." The woman suffered neurological damage and permanent vision loss as a result.

When asked why she did not report it to the police and seek a restraining order in Family Court, she told the attorney that she was too afraid of being picked up by ICE.

*- As reported by Andrea Panjwani, Esq., Former Managing Attorney, My Sister's Place*

## AFRAID TO GET A RESTRAINING ORDER

## A BRONX MAN WHO CAME TO THE U.S. AT AGE 3

A young man who came to the U.S. at the age of 3 was ambushed by a team of 8-10 ICE officers outside of a Bronx courthouse. Originally from the Ivory Coast, the Bronx man had big plans for building a life with his U.S. citizen wife. He was working as a barrista, had recently applied to college, and was in the process of applying for a green card. On the day that ICE grabbed him, he was in court on a misdemeanor case and had no prior criminal record.

When news of his arrest spread, close to a hundred public defenders walked out of the courthouse in protest.

*- As reported by Casey Dalporto, Esq., The Legal Aid Society*

When a 29 year-old Chinese woman showed up to the Queens Human Trafficking Intervention Court last June, she stepped into a courtroom designed to be a safe space for victims of human trafficking. She, like most of the women appearing that day, was charged with a prostitution related offense. Instead of a fine and jail time, she was expected to get help.

But that day, two plainclothes ICE officers watched her and other women appearing in the courtroom. Thanks to quick thinking by her attorneys, the young woman was not taken away by ICE. But later that day, the ICE agents arrested another woman just minutes after she left the human trafficking court.

*- As reported by WNYC and The New York Times*

## VICTIMS OF HUMAN TRAFFICKING

When ICE agents showed up in Judge Wait's courtroom in Saratoga City Court to arrest a young man from Mexico, he asked his bailiff to escort them out. But the ICE agents refused to leave the courthouse and lurked in the hallway. After reducing the young man's charge to a traffic violation, the judge allowed the young man a moment to call his family. Then, the young man had no choice but to step into the hallway where ICE arrested him.

His attorney said he had to change his advice for undocumented clients: "I'm going to have to tell them if you go to court for a minor charge, you might walk out in shackles ... It's going to scare the bejesus out of people."

*- As reported by the Times Union*

## A JUDGE TELLS ICE TO BACK OFF

## A HISTORY OF SUICIDE ATTEMPTS; ICE SHRUGS

Her client trembled when she broke the news. Katherine, a mental health specialist from New York County Defender Services, had just told her that ICE agents were there to arrest her.

Katherine had pleaded with the plainclothes agents not to take her client away. She had had a string of arrests but was finally getting treatment for her underlying mental health issues. She had already made several suicide attempts and Katherine feared that if she was locked up in ICE custody, her client might have a psychotic break.

She told all this to the ICE agents. They just shrugged. When she asked to see the warrant for her client's arrest, they refused to produce anything.

*- As reported by Katherine LeGeros Bajuk, Esq., New York County Defender Service*

Soon after the first reports of arrests in New York State Courts, a housing rights advocate had a concerning interaction with a long-term client. The client, a green card holder, was a long-time member of a tenant association in Cypress Hills, Brooklyn, and was married to an undocumented man. The attorney had been working with her to enforce her succession rights and had been preparing for trial.

Suddenly, the client informed the attorney that her husband—a key witness in the case—wouldn't feel comfortable going to court. The attorney was unable to continue the case.

*- As reported by Alexandra Drimal, Esq., Brooklyn Legal Services Corp. A*

## A WITNESS GOES SILENT IN HOUSING COURT