



**BROOKLYN
DEFENDER
SERVICES**

MEMORANDUM OF SUPPORT

Protect Our Courts Act

A.11013A (Solages)/S.8925 (Alcantara)

June 14, 2018

Brooklyn Defender Services (BDS) strongly supports A.11013/S.8925, a bill to protect people from warrantless civil arrest in courthouses. BDS provides multi-disciplinary and client-centered criminal defense, family defense, immigration and other civil legal services, social work support and tools for self-advocacy to more than 30,000 indigent Brooklyn residents every year. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients.

Since the beginning of this year, Brooklyn Defender Services has had approximately 30 of our criminal defense clients arrested by ICE in or outside the courthouse or in the community. Our immigrant clients are rightly terrified to appear in court, whether as defendants, witnesses or as friends or family members accompanying loved ones.

Our clients are not the only immigrants targeted for arrest by ICE in our courthouses. From 2016 to 2017, Immigration and Customs Enforcement (ICE) arrests in and around New York State courthouses increased 1200%. Twenty-eight percent of the undocumented immigrants targeted had no prior criminal history. The majority were reporting to court on low-level offenses, many for traffic violations.¹ The legislature must

¹ Immigrant Defense Project, *Press Release: IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017* (Dec. 31, 2017), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

act to protect immigrant New Yorkers from unlawful arrests and targeting by ICE in and around our courts.

I. CURRENT LAW

Article Three of the Civil Rights Law, "Privilege from Arrest," dates back to the early part of the twentieth century. Most of these provisions of the Civil Rights Law were enacted in 1909 (e.g., § 22 ("Privileges of officers and prisoners from arrest while passing through another county"); § 23 ("No person to be arrested in civil proceedings without a statutory provision"); § 25 ("Witness exempt from arrest")). While such provisions have been effective to protect the integrity and needs of the court system in certain circumstances, the current law is no longer sufficient to protect immigrant New Yorkers from warrantless arrests by ICE agents.

The Office of Court Administration has publicly stated that they "cannot and will not" bar federal law enforcement from arresting people without a judicial warrant in our state's courthouses under the current law.² Fortunately, the legislature has the power to amend state law to ensure that immigrant New Yorkers feel safe to access our courts.

II. PROPOSED LEGISLATION

A.11013/S.8925 would amend Article 3 of the Civil Rights Law to prohibit civil arrests within or around a state courthouse, or in transit thereto, without a judicial warrant. The privilege extends to people who are parties to the court proceeding, witnesses, and family or household member of a party or witness.

If a person is unlawfully civilly arrested without a judicial warrant pursuant to this statute, the bill authorizes the person to bring a civil action against the person who arrested them, along with anyone who willfully assists or facilitates the unlawful arrest, for contempt of the court and false imprisonment. The bill also authorizes the attorney general to bring a civil action on behalf of the people of the state of New York to obtain appropriate equitable and declaratory relief.

The bill also amends the judiciary law to grant judges the power to issue judicial orders to protect people from civil arrests and to direct court personnel that non-local law enforcement may not enter courthouses without a judicial warrant, to be verified by designated counsel for the court system.

Finally, the bill requires the court system to compile statistics disaggregated by county about each judicial warrant that is submitted to and verified by the designated counsel and to prepare and distribute an annual report about this issue.

² Claudia Irizarry Aponte, *NY Court Officials Say They 'Cannot and Will Not' Ban ICE From Courtrooms*, LATINO USA, Feb. 26, 2018, available at <http://latinousa.org/2018/02/26/ny-court-officials-say-cannot-will-not-ban-ice-courtrooms/>.

III. JUSTIFICATION

Immigrant New Yorkers are under siege by federal immigration authorities. Even legal permanent residents and U.S. citizens are frequently caught up in the anti-immigrant dragnet.³ New York can take a stand against the Trump Administration deportation machine. The Protect Our Courts Act is a critical and reasonable step towards ensuring the integrity of our courts for all New Yorkers.

In 2017, the Immigrant Defense Project reported that 144 New Yorkers were reported seized by ICE in or around courthouses.⁴ ICE formalized a policy in January of this year to send agents to federal, state and local courthouses to make arrests.⁵ Unless the legislature acts, immigrant New Yorkers will continue to be targeted in and around our state courthouses.

This bill protects immigrant New Yorkers from unlawful seizure and arrest in our courthouses. The bill requires that ICE officers obtain a judicial warrant, and that the warrant be inspected by court staff before ICE officers are allowed to enter the courthouse. A judicial warrant is an official court document signed by a judge. The agency seeking the warrant must demonstrate probable cause to the judge in order to pass constitutional muster. In contrast, an ICE administrative warrant is simply a document signed by an ICE agent stating that a person is designated for possible arrest and deportation. It is not signed by a judge and an ICE agent does not have to prove that he or she has probable cause for the arrest. Current ICE policy is to rely on administrative warrants not signed by a judge to effectuate arrests.

According to the American Immigration Council, federal agents do not have carte blanche to make arrests however they wish. Instead, they must heed limits on their authority imposed by the Constitution, statutes, and regulations. Courts have recognized two constitutional provisions that may serve as the basis for a motion to suppress: (1) the Fourth Amendment and (2) the Due Process Clause of the Fifth Amendment. Both limit the authority granted to immigration officers under the

³ See Matt Katz, *ICE Operation 'Targeting Criminal Aliens' in NJ Netted Permanent Residents*, WNYC, June 12, 2018, available at <https://www.wnyc.org/story/ice-operation-targeting-criminal-aliens-nj-also-netted-permanent-residents/>; Paige St. John & Joel Rubin, *ICE held an American man in custody for 1,273 days. He's not the only one who had to prove his citizenship*, LA TIMES, April 27, 2018, available at <http://www.latimes.com/local/lanow/la-me-citizens-ice-20180427-htlstory.html>.

⁴ Immigrant Defense Project, *Press Release: IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017* (Dec. 31, 2017), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

⁵ Elliot Spagat, *ICE formalizes plans for courthouse arrests*, CHICAGO TRIBUNE, Jan. 31, 2018, available at <http://www.chicagotribune.com/news/nationworld/politics/ct-ice-plans-courthouse-arrests-20180131-story.html>.

Immigration and Nationality Act (INA) to investigate and arrest noncitizens for purposes of initiating removal proceedings.⁶

This bill simply makes clear to the federal government that New York State requires federal agents who wish to enact a civil arrest in a state courthouse that they must comply with federal constitutional requirements by seeking a judicial warrant. Any person who infringes of the right of people to be free from warrantless civil arrests in and around our courthouses would be liable for civil penalties.

The Protect Our Courts Act is a reasonable, commonsense approach to ensure that our courts uphold basic constitutional principles. We can make our courts safer for immigrants, but the legislature must act now. Our communities cannot wait another year for this legislation to pass.

We strongly urge the legislature to pass and the Governor to sign this legislation into law this session.

Questions? Contact Andrea Nieves, Senior Policy Attorney, at anieves@bds.org or 718-254-0700 ext. 387.

⁶ American Immigration Council, *Practice Advisory: Motions to Suppress in Removal Proceedings: A General Overview 1*, Aug. 1, 2017, available at https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/motions_to_suppress_in_removal_proceedings_a_general_overview.pdf.