



April 11, 2025

*-via email only-*

Hon. Elizabeth Clement, Chief Justice  
Hon. Megan Cavanagh, Chief Justice Elect  
Office of Administrative Counsel  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909  
[ADMComment@courts.mi.gov](mailto:ADMComment@courts.mi.gov)

RE: Request for Court Rule Protecting Courthouses from Immigration Arrests

Dear Justice Clement, Justice Cavanagh, and Office of Administrative Counsel:

We write to request that the Court adopt the attached court rule, or take other administrative action, to protect people from being arrested or detained for civil violations, such as immigration violations, when they are conducting business in our state's courts. In light of recent changes in federal immigration policy, not having such protections threatens to undermine the fundamental right of access to the courts and the integrity of our state court system. Immigration enforcement at courthouses also violates long-standing Michigan law protecting litigants from civil arrests. We urge the Court to join other jurisdictions in adopting rules to ensure that all people in our state, regardless of immigration status, are protected from civil arrest.

**Recent changes to federal policy leave courthouses exposed to immigration enforcement.**

Under the previous presidential administration, the Department of Homeland Security ("DHS") observed that immigration enforcement activities "impact people's lives and advance our country's well-being in the most fundamental ways."<sup>1</sup> Accordingly, when Immigrations and Customs Enforcement ("ICE") was conducting an enforcement action, it was instructed to "first examine and consider the impact of where actions might possibly take place, their effect on

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<sup>1</sup> Department of Homeland Security, *Secretary Mayorkas Issues New Guidance for Enforcement Action at Protected Areas* (Oct. 27, 2021), <https://www.dhs.gov/archive/news/2021/10/27/secretary-mayorkas-issues-new-guidance-enforcement-action-protected-areas>.

people, and broader societal interests.”<sup>2</sup> Courthouses were recognized as places of great impact, as “[e]nsuring that individuals have access to the courts advances the fair administration of justice, promotes safety for crime victims, and helps to guarantee equal protection under law.”<sup>3</sup> Under former DHS policy, therefore, ICE was prohibited from carrying out immigration arrests in or near courthouses except in extraordinary circumstances.<sup>4</sup>

As is widely known, the current administration has altered immigration enforcement priorities in ways that have been disruptive and jarring. Among those changes has been the rescission of its policy that limited immigration enforcement actions in or near courthouses.<sup>5</sup> Because civil immigration arrests at courthouses “ha[ve] a chilling effect on individuals’ willingness to come to court or work cooperatively with law enforcement,”<sup>6</sup> such changes in federal immigration policy have the potential to seriously disrupt the fair and efficient functioning of our state courts.

Just last week, it was reported that ICE aggressively and violently accosted a United States citizen in the parking lot of the 35th District Court in Plymouth in what appears highly likely to have been a case of racial profiling.<sup>7</sup> The agents ordered the citizen to the ground, refused to allow him to show his ID, handcuffed him while he was face down on the pavement, and went through his wallet.<sup>8</sup> They allegedly laughed as they continued to pin him down and go through his things before one of them finally said, “Oh, sh\*\*, he’s a citizen,” after which they let him go.<sup>9</sup> The agents then arrested someone else who was leaving the courthouse after appearing on a traffic citation.<sup>10</sup> Advocates have further expressed concerns that local police may be stopping

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<sup>2</sup> *Id.*

<sup>3</sup> Department of Homeland Security, *DHS Announces New Guidance to Limit ICE and CBP Civil Enforcement Actions In or Near Courthouse* (Apr. 27, 2021), <https://www.dhs.gov/archive/news/2021/04/27/dhs-announces-new-guidance-limit-ice-and-cbp-civil-enforcement-actions-or-near>.

<sup>4</sup> *Id.*

<sup>5</sup> ICE Directive No. 11072.3, *Interim Guidance: Civil Immigration Enforcement Actions In or Near Courthouses* (Jan. 21, 2025), [https://www.ice.gov/doclib/foia/policy/11072.3\\_CivilImmEnfActionsCourthouses\\_01.21.2025.pdf](https://www.ice.gov/doclib/foia/policy/11072.3_CivilImmEnfActionsCourthouses_01.21.2025.pdf).

<sup>6</sup> *DHS Announces New Guidance to Limit ICE and CBP Civil Enforcement Actions In or Near Courthouse*, *supra*.

<sup>7</sup> Ryan Stanton, *U.S. Citizen Mistakenly Detained by ICE Outside Michigan Courthouse Speaks Out*, MLive (Apr. 5, 2025), <https://www.mlive.com/news/ann-arbor/2025/04/us-citizen-mistakenly-detained-by-ice-outside-michigan-courthouse-speaks-out.html>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

and ticketing people with valid Mexican driver's licenses,<sup>11</sup> creating fear in the community that appearing in court on the citation will result in detention by ICE.<sup>12</sup>

If such tactics are allowed to continue, our justice system risks becoming inaccessible to immigrant communities. Immigrants—whether they are witnesses, victims of crimes, or people defending themselves against accusations of crimes or traffic offenses—will be afraid to make use of the court system. Adopting a court rule governing courthouse arrests would help to ensure that Michigan's justice system remains available to all.

### **The requested rule implements Michigan statutes.**

Michigan law provides that people “going to, attending, or returning from any court proceedings in any action in which their presence is needed are privileged from service of process if service could not have been made on them had they not gone to, attended, or returned from the proceedings.” MCL 600.1835(1). Similarly, “[a]ll parties, attorneys, and subpoenaed witnesses are exempt from arrest on civil process while going to, attending, and returning from the places they are required to attend.” MCL 600.1821(4). The statutory scheme provides for robust enforcement. A civil arrest made in violation of the statute “is void and a contempt of court.” MCL 600.1821(8). “[E]very justice of the supreme court,” “every circuit court judge” and the court or officer before whom a witness is subpoenaed all have “authority to discharge any person arrested” contrary to the law. *Id.* In addition, persons who make an unauthorized civil arrest are not only guilty of contempt of court, but can also be held liable for double damages if certain conditions are met. MCL 600.1821(9).

Under prior versions of these statutory protections, Michigan's courts noted that “[f]or reasons of public policy and the due administration of justice, the courts have uniformly given such statutes a liberal interpretation in favor of the privilege.” *Lingemann v Dehnke*, 247 Mich 597, 600 (1929). The privilege also extends to “every proceeding of a judicial nature,” including depositions and consultations with criminal defense lawyers for those accused of a crime. *Grundy v Refior*, 312 Mich 428, 435 (1945).

Michigan law thus clearly bars civil immigration arrests of persons attending court proceedings as parties or witnesses. Immigration removal proceedings are civil matters, not criminal matters. See *INS v Lopez-Mendoza*, 468 US 1032, 1038 (1984) (“A deportation proceeding is a purely civil action to determine eligibility to remain in this country.”).

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<sup>11</sup> Most foreign nationals are permitted to drive in Michigan if they have a license issued by a country other than the United States. MCL 257.302a

<sup>12</sup> *U.S. Citizen Mistakenly Detained by ICE Outside Michigan Courthouse Speaks Out*, *supra*.

The requested rule would help ensure that courts, court security staff, counsel, litigants, witnesses and law enforcement know that under existing Michigan law, civil arrests—including immigration arrests—are prohibited when a person is required to attend court proceedings.

**The requested rule is supported by long-held principles of law and policy.**

Michigan’s statutory scheme reflects longstanding judicial recognition that “[i]t is the policy of the law to protect suitors and witnesses from arrests upon civil process while coming to and attending the court and returning home.” *Person v Grier*, 66 NY 125, 125 (1876). The United States Supreme Court held almost a century ago that the general rule is that witnesses, suitors, and their attorneys, while in attendance in connection with the conduct of one suit are immune from service of process in another. *Lamb v Schmitt*, 285 US 222, 225 (1932). This rule has historically been used to grant individuals immunity from civil arrests as well. *Long v Ansell*, 293 US 76, 83 (1934); see also *Carl v Ferrell*, 109 F2d 351 (CA DC, 1940).

There are compelling policy reasons for finding that “[t]he privilege of a witness should be absolute.” *Person* at 126. This includes the recognition that otherwise, “witnesses might be deterred, and parties prevented from attending, and delays might ensue or injustice be done.” *Id.* It has also been recognized that the rule against civil arrests is “founded upon the needs of the court.” *Long* at 83. It is “founded upon the necessity of judicial administration and operates to protect litigants and witnesses from being harassed, embarrassed, or vexed while attending the trial of a case.” *Marlowe v Baird*, 301 F2d 169, 170 (CA 6, 1962). The privilege thus does not only belong to the person it protects; it is also privilege of the court. *Page Co v McDonald*, 261 US 446, 448 (1923). The previous administration’s policy recognized these concerns, noting that “as law enforcement officers and public servants, we have a special responsibility to ensure that access to the courthouse—and therefore access to justice, safety for crime victims, and equal protection under the law—is preserved.”<sup>13</sup>

**Both the United States and Michigan Constitutions provide a right to access to the courts, regardless of citizenship.**

Michigan’s Constitution establishes the right “to petition the government for redress of grievances,” and that in doing so, “[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney.” Const 1963, art 1, §§ 3, 13. Similarly, the Petition Clause of the First Amendment to the United States Constitution has been held to “protect the rights of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.” *Borough of Duryea, Pa v Guarnieri*, 564 US 379,

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<sup>13</sup> Department of Homeland Security, *Civil Immigration Enforcement Actions In or Near Courthouses* (Apr. 27, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

387 (2011). One aspect of the right to petition the government is the right of access to the courts. *California Motor Transp Co v Trucking Unlimited*, 404 US 508, 510 (1972).

It is not sufficient to merely provide access to the courts, however. Due process further requires that access to the courts be meaningful. “[P]ersons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.” *Boddie v Connecticut*, 401 US 371, 376 (1971). Michigan’s Constitution likewise promises that “[n]o person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color, or national origin.” Const 1963, art 1, § 2. Michigan’s Constitution also guarantees rights for crime victims, including the right to attend multiple court proceedings, the right to confer with the prosecution, and the right to address the court at sentencing. Const 1963, art 1, § 24.

The right to meaningfully access the courts, enshrined in both the United States and Michigan Constitutions, have long been held to apply to both citizens and non-citizens. “The Fourteenth Amendment to the Constitution is not confined to the protection of citizens.” *Yick Wo v Hopkins*, 118 US 356, 356 (1886). Its provisions “are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws.” *Id.* at 369. The Due Process Clause applies to all people within the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v United States*, 533 US 678, 679 (2001). This reasoning has been applied to hold that the Fifth and Sixth Amendments also protect people regardless of their immigration status. *Wong Wing v United States*, 163 US 228, 238 (1896); *Padilla v Kentucky*, 559 US 356, 374 (2010).

Citizens and non-citizens have countless reasons to go to court. They testify as crime victims and seek personal protection orders. They get divorced and resolve custody disputes. They litigate all manner of civil cases. The proposed court rule would help ensure that they are not subject to civil arrest when they exercise their right to access the courts.

**The federal government cannot commandeer state resources for its enforcement agenda, and federal policy bars courthouse arrests when precluded by state law.**

Given that Michigan courthouses are arms of the state, it is particularly appropriate for state courts to separate their operations from federal immigration activities. “[W]here the Federal Government compels States to regulate, the accountability of both state and federal officials is diminished.” *New York v United States*, 505 US 144, 169 (1992). Federal courts have applied this cautionary statement to conclude that states may not be ordered to enforce the federal government’s immigration agenda. For example, the Third Circuit, finding that the federal government could not require the states to imprison people for deportation proceedings, held that “any law that commandeers the legislative processes [and agencies] of the States by directly

compelling them to enact and enforce a federal regulatory program is beyond the inherent limitations on federal power within our dual system.” *Galarza v Szalczyk*, 745 F3d 634, 643 (CA 3, 2014). In striking down a previous ICE directive allowing courthouse immigration arrests for this very reason, one court noted that ICE courthouse arrests do “commandeer[] state and local judges and court officials not to take action in response to ICE’s arrests, even when the federal agency causes great disruption to the functioning of the state judiciary and the state agents would therefore normally intervene.” *New York v ICE*, 431 F Supp 3d 377, 394 (SDNY, 2019).

Federal regulations themselves also recognize that States may not be compelled to participate in immigration enforcement. See 8 USC 1357(g)(9)-(10). And even current federal policy provides that ICE officers may conduct civil immigration enforcement actions in or near courthouses only “where such action is not precluded by laws imposed by the jurisdiction in which the enforcement action will take place.”<sup>14</sup> In Michigan, such actions *are* precluded, as explained above. Thus, adopting a court rule would align with ICE’s own recognition that, where state law precludes civil courthouse arrests—as in Michigan—ICE cannot conduct such arrests.

**Due to the chilling effect of courthouse arrests by ICE, other jurisdictions have taken action to limit them.**

Prior federal policy recognized that “[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals’ access to courthouses and, as a result, impair the fair administration of justice.”<sup>15</sup> In 2018, nearly 80 former judges asked ICE to stop making arrests at courthouses, noting that “[p]ersons arrested include defendants facing criminal charges, survivors of domestic violence, persons disputing traffic tickets, and parents seeking to protect their children from unsafe living conditions.”<sup>16</sup> Their letter further noted that “[j]udges simply cannot do their jobs—and our justice system cannot function effectively—if victims, defendants, witnesses and family members do not feel secure in accessing the courthouse.”<sup>17</sup> In 2019, a Massachusetts prosecutor and then-Oakland Circuit Court Judge Denise Langford-Morris spoke together on a panel, agreeing that courthouse arrests were a threat to the administration of justice because undocumented witnesses and crime victims were afraid to come to court.<sup>18</sup> Judge

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<sup>14</sup> ICE Directive No. 11072.3, *supra*.

<sup>15</sup> *Civil Immigration Enforcement Actions In or Near Courthouses*, *supra*.

<sup>16</sup> Douglas Keith, *Former Judges Denounce Immigration Arrests at Courthouses*, Brennan Center (Dec. 12, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/former-judges-denounce-immigration-arrests-courthouses>.

<sup>17</sup> *Id.*

<sup>18</sup> American Bar Association, *Judge and Prosecutor Agree: ICE Arrests at Courthouses Threaten Justice* (Jan. 26, 2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/01/judge-and-prosecutor-agree--ice-arrests-at-courthouses-threaten-/>.

Langford-Morris warned that “[w]e would have pandemonium if we had witnesses, victims, and defendants all terrified to come to a state courthouse.”<sup>19</sup> Police chiefs and prosecutors alike have denounced ICE’s practice of making courthouse arrests, explaining that these arrests “have hampered their ability to investigate and prosecute crimes” because witnesses and victims, for fear of being arrested, do not appear for court.<sup>20</sup> Indeed, a 2018 study illustrated that the fear of deportation prevents immigrants from reporting crimes and participating in court proceedings.<sup>21</sup>

In response to these concerns, other jurisdictions have adopted court rules or other administrative rules limiting ICE activity in or near courthouses. This is so even in states that do not have a statutory scheme like Michigan’s, which explicitly prohibits courthouse arrests. For example, in New Jersey, the Chief Justice of the Supreme Court issued a directive related to immigration-related policies.<sup>22</sup> The directive advised that New Jersey courts would no longer collect immigration-related data for demographic or other non-specific purposes, and that ICE officials seeking to carry out civil enforcement actions near courthouses must identify themselves to courthouse security personnel, who must notify courthouse officials of ICE presence. Similarly, New Mexico’s Second Judicial District Court prohibits any law enforcement officer from making an arrest or taking an individual into custody in public spaces “in or around the courthouse “unless pursuant to a “lawful warrant or lawful court order,” shown to court personnel upon entering the courthouse.<sup>23</sup> And in New York, arrests inside the courthouse are barred without a warrant, which is required to be reviewed by court personnel.<sup>24</sup> Enforcement actions inside courtrooms are barred absent “leave of the court under extraordinary circumstances.”<sup>25</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Hannah Rappleye, *Immigration Crackdown Makes Women Afraid to Testify Against Abusers, Experts Warn* (Sept. 22, 2018), <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271>.

<sup>21</sup> ACLU, *Freezing Out Justice: How Immigration Arrests at Courthouses Are Undermining the Justice System* (2018), p. 1, <https://www.aclu.org/publications/freezing-out-justice>.

<sup>22</sup> Supreme Court of New Jersey, Directive #07-19 (May 23, 2019), <https://www.njcourts.gov/sites/default/files/notices/2019/05/n190523a.pdf>.

<sup>23</sup> New Mexico Judicial Branch, Second Judicial District, SJDC Policy No. 2017-SJDC-010, <https://seconddistrict.nmcourts.gov/wp-content/uploads/sites/21/2023/11/SJDCCourthouseAccessPolicy20171120.pdf>.

<sup>24</sup> Office of the Chief Administrative Judge, New York Unified Court System, *Protocol Governing Activities in Courthouses by Law Enforcement Agencies*, No. 1-2019 (Apr. 17, 2019), <https://www.nycourts.gov/ip/Immigration-in-FamilyCourt/PDFs/OCA%20Directive%201-2019.pdf>.

<sup>25</sup> *Id.*

**The proposed rule is based on Michigan law and provides clear guidance to courts, litigants and law enforcement.**

The proposed rule, which is attached, is drawn from two sources. First, subsection A reflects the requirements in MCL 600.1821 and MCL 600.1835. Consistent with those statutes, the rule bars civil arrests of persons who are required to attend court proceedings both while they are at the courthouse and while traveling to and from court proceedings. It also tracks the statutory provisions by providing for both contempt orders and release orders if the rule is violated.

Second, subsection B sets out procedures for civil arrests on court property for persons not covered by subsection A. This would include, for example, family members attending court proceedings. The model language draws from the examples cited above from New Jersey, New Mexico, and New York, as well as a petition for a similar court rule in New Mexico. Under this subsection, a judicially issued warrant is required. The rule also sets out protocols to be followed before a civil arrest is made.

**Expedited action in the implementation of a court rule or administrative rule is needed.**

The Michigan Court Rules addressing the amendment procedure provide that, if there is a need for immediate action, the amendment to the court rule can be made before notice is made to the public, in which case a public hearing will occur *after* the rule is adopted. MCR 1.201(E). Here, emergency action is needed. As is clear from last week's incident where a U.S. citizen was racially profiled and arrested near a courthouse, relevant actors either do not know or are not following Michigan law. Absent swift action by this Court, more and more people will be deterred from accessing important courthouse services. With the rise in civil enforcement activities and the removal of protections in sensitive locations, expedited preventive measures are needed to protect people's right to access the courts and to protect the integrity of our state court system.

**Conclusion**

The right to access the courts without fear of arrest, which applies regardless of a person's immigration status, is well-established under Michigan law and is essential to the integrity of Michigan's courts. Given recent changes in ICE's civil enforcement activities, and to make it clear that civil enforcement actions cannot occur in or around Michigan's courthouses, we urge the Court to issue a new court rule to that effect. Alternatively, we request that this Court issue an administrative rule limiting such actions in Michigan's courts. We would welcome the opportunity to discuss any questions or concerns you may have.

Very truly yours,

Loren Khogali  
Executive Director  
American Civil Liberties Union of Michigan

Susan Reed  
Director  
Michigan Immigrant Rights Center



## **PROPOSED NEW RULE**

### **Civil arrests in or near courthouses**

- A. No civil arrests shall be made at any court or on any court property upon any party, attorney, witness, victim, or other person whose presence is needed, or upon any such person who is *en route* to or from any court. Execution or attempted execution of such a civil arrest in violation of this rule constitutes contempt of court. Any such civil arrest is void and the court may, consistent with any other applicable law, order the release of any person arrested in violation of this rule.
- B. For civil arrests on court property of persons other than those listed in subsection A, law enforcement agents must have a judicially issued warrant and must abide by the following protocol:
  - a. Identify themselves to courthouse security officers, stating their specific law enforcement purpose and the proposed enforcement action to be taken. The law enforcement agent must produce the judicially issued warrant they seek to execute for inspection.
  - b. The courthouse security officer must inform the chief judge of the law enforcement agent's presence, their purpose, and their proposed enforcement action. The chief judge must also inspect the warrant and confirm that it was judicially issued before providing leave to effectuate the arrest.
  - c. Absent an emergency, law enforcement agents may conduct an arrest only after the conclusion of the relevant court event, and should execute the arrest in a non-public area if possible.