



December 16, 2025

*Submitted via online portal*

Hon. Megan Cavanagh, Chief Justice  
Michigan Supreme Court  
Hall of Justice  
925 W. Ottawa St.  
Lansing, MI 48915

Hon. Thomas P. Boyd, State Court Administrator  
Michigan State Court Administrative Office  
Hall of Justice  
925. W. Ottawa St.  
Lansing, MI 48915

RE: Amendment of Michigan Court Rule 8.115 (**ADM File No. 2025-14**)

Dear Justice Cavanagh and State Court Administrator Boyd:

The ACLU of Michigan (“ACLU”) and the Michigan Immigrant Rights Center (“MIRC”) welcome the Michigan Supreme Court’s proposed amendment to Michigan Court rule 8.115 to ensure that people doing business in our courts are protected from warrantless civil arrests. The amendment, which the ACLU and MIRC requested in an April 11, 2025 letter to the Court, will help to secure the fundamental right of access to the courts and the integrity of our state court system. The ACLU and MIRC respectfully submit this comment to underscore the importance of this rule change.

**I. The Amended Rule is Necessary to Ensure Everyone’s Right to Meaningfully Access the Court in Light of Recent Changes to Civil Enforcement Priorities.**

Under the previous presidential administration, the Department of Homeland Security (“DHS”) observed that immigration enforcement activities “impact people’s lives and advance our county’s well-being in the most fundamental ways.”<sup>1</sup> Accordingly, when Immigration 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 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

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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>.

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

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>

Prior federal policy further 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>5</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>6</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>7</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>8</sup> Judge 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>9</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>10</sup> Indeed, a 2018 study illustrated that the fear of deportation prevents immigrants from reporting crimes and participating in court proceedings.<sup>11</sup>

As is widely known, the current administration has altered immigration enforcement priorities in ways that have been disruptive and jarring in ways that contradict the expertise and experiences of judges, prosecutors and law enforcement—expertise and experience which underpinned the previous policy regarding courthouse arrests. Among those changes has been the rescission of its

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

<sup>6</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>7</sup> *Id.*

<sup>8</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-/>.

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

<sup>10</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>11</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>.

policy that limited immigration enforcement actions in or near courthouses.<sup>12</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>13</sup> such changes in federal immigration policy have the potential to seriously disrupt the fair and efficient functioning of our state courts.

However, in Michigan, there is opportunity to maintain the integrity of our court system despite the changes in enforcement priorities. That is because 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 below. Thus, adopting this 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.

## **II. The Amended Rule Brings Courts in Compliance with Michigan Law.**

By amending MCR 8.115 to include a prohibition on warrantless civil arrests, this Court will successfully bring Michigan courts into compliance with MCL 600.1821, which provides that “[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). Additionally, MCL 600.1835(1) 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.” The statutory scheme provides for robust enforcement. A civil arrest made in violation of the statutes are “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.” *Grundy v Refior*, 312 Mich 428, 435 (1945). This includes immigration removal proceedings, which are civil matters, not criminal matters. See *INS v Lopez-Mendoza*, 468 US 1032, 1038 (1984) (“A

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<sup>12</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>13</sup> *DHS Announces New Guidance to Limit ICE and CBP Civil Enforcement Actions In or Near Courthouse*, *supra*.

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

deportation proceeding is a purely civil action to determine eligibility to remain in this country.”).

The amended 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.

### **III. The Amended Rule Brings Courts into Compliance with Longstanding Policy.**

The Court’s amendment to MCR 8.115 facilitates the implementation of the statutory scheme described above, which reflects a longstanding 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 presidential 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>15</sup>

The adoption of the amended rule also furthers the longstanding principle that the federal government cannot commandeer state and local resources to reinforce the agenda of the federal government. 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

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<sup>15</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>.

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).

The proposed amendment recognizes and reflects these important considerations, which underlie both state and federal policy.

#### **IV. The Amended Rule Brings Courts into Compliance with Both the United States and Michigan Constitutions.**

In addition to reflecting statutory and policy considerations, the amended rule would bring courts into compliance with both the United States and Michigan Constitutions, which establish a fundamental right to meaningfully access the courts. 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, 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, has 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.

### **Conclusion**

We applaud the Michigan Supreme Court’s expedited consideration of the amendment of MCR 8.115. Not only does the rule satisfy controlling state law and state and federal policy, it also ensures that everyone has the right to meaningfully access the courts without fear of arrest, regardless of their immigration status. Immigrants—whether they are witnesses, victims of crimes, or people defending themselves against accusations of crimes or traffic offenses—will be more inclined to make use of the court system. Ensuring that everyone can exercise their fundamental right to access the justice system is essential to the integrity of Michigan’s courts. The proposed rule helps to achieve that goal.

Very truly yours,

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