

CRIMMIGRATION COMMUNICATION



DISTRICT COURT JUDGE UPHOLDS NEW YORK'S PROTECT OUR COURTS ACT AFTER FEDERAL GOVERNMENT CHALLENGE

District Court Judge Mae A. D'Agostino dismissed the federal government's lawsuit seeking to enjoin enforcement of New York's Protect Our Courts Act (POCA) on preemption and intergovernmental immunity grounds. In a decision dated November 17, 2025 (case 1:25-cv-00744), the Northern District of New York Judge upheld the POCA, and two Executive Orders (170 and 170.1) that forbid disclosures to the federal government for purposes of immigration enforcement except where required by law and require a judicial warrant for any immigration arrests within state facilities.

The federal government sued New York in the Northern District of New York on June 12, 2025, alleging conflict preemption and intergovernmental immunity under the Supremacy Clause by unfairly regulating and discriminating against the federal government. The District Court found in favor of New York on all counts, upholding POCA and dismissing the federal government's claims.

New York State adopted the Protect Our Courts Act in 2020 following a wave of immigration arrests at New York's courthouses. Under POCA:

[a] person duly and in good faith attending a court proceeding in which such person is a party or potential witness, or a family or household member is a party or potential witness, **is privileged from civil arrest** while going to, remaining at, and returning from, the place of such court proceeding, unless such civil arrest is supported by a judicial warrant or judicial order authorizing such civil arrest."

N.Y. Civ. Rights Law § 28(1). POCA defines family broadly. "Civil arrest" is any arrest other than for prosecution on state or federal charges, or for contempt of court. N.Y. Civ. Rights Law § 28(6)(a)(i-ii).

A violation of POCA creates both civil and criminal liability. A willful arrest in violation of POCA or assisting in such an arrest constitutes "contempt of the court and false imprisonment," crimes punishable by up to four years in prison. See N.Y. Penal Law §§ 215.50, 215.51, 135.05 & 135.10. Arrests in violation of POCA should be reported to the New York State Attorney General's office at <https://ag.ny.gov/federal-actions-form>.

THE DECISION

In addressing the federal government's conflict preemption claim, the District Court found no "clear and manifest purpose of Congress to suspend the "historic police powers of the State" to manage its judicial systems, inherent to States sovereignty. The Court noted both that Ice has previously prohibited its officers from conducting arrests in State Courts and that the New York State Legislature determined, on extensive documentation, that public safety is enhanced by protecting parties and witnesses from civil arrests. The Court also agreed that the POCA codified a "very ancient" common law privilege against civil arrest in courthouses, finding no clear Congressional purpose to abrogate that privilege in the immigration laws. Similarly, the Court found no reason to disturb the presumption against preemption where the Executive Orders concern "facilities and activities of state employees." According to Judge D'Agostino, "the United States failed to identify and federal law mandating that

state and local officials generally assist or cooperate with federal immigration enforcement efforts.” *Printz v. United States*, 521 U.S. 898, 935 (1997).

In addressing the immunity claims, the District Court found that New Yorks laws do not regulate the federal government because New York does not prohibit the enforcement of federal immigration law, but merely indicates what activities are impermissible on state property. Further, these rules do not discriminate against the federal government as the federal government did not identify any other state or local entity that might be entitled to the information it is prevented from obtaining. “The mere fact that the Executive Orders touch on an exclusively federal sphere is not enough to establish discrimination.” Further, “the State’s refusal to cooperate in the immigration context — a possibility contemplated by the relevant federal statutes — does not constitute discrimination against the federal government.”

Thus, attorneys should continue to advise non-citizen clients that it is **safe for them to attend and to travel to and from their scheduled appearances in New York State Courts.**

Further, attorneys should be aware of the Office of Court Administration’s relevant policies that require a designated judge to examine any warrant presented by immigration agents seeking to make a courthouse arrest to ensure that has been issued by a federal Judge or Magistrate. The policy requires ICE to announce itself to Court Officers, requires Court Officers to inform the Judge of any intended arrest, and permits the Judge to in turn inform the parties of ICE’s presence and intention to make an arrest on the basis of a valid federal criminal warrant, Further, the policy requires that an incident report be recorded whenever ICE is present in the Courthouse. These

reports are subject to disclosure under New York’s Freedom of Information Law.

CRIMINAL DEFENSE COUNSEL

Counsel should be aware of the protections under the POCA when making decisions about custody, bail applications, and sentencing. While a client is privileged from civil immigration arrest while attending or in transit to and from a scheduled court appearance, the POCA protections do not extend to litigants generally while cases are pending. Therefore, clients who are undocumented, who have previously been ordered removed, or who have been convicted of crimes that render them deportable or inadmissible are still at risk of immigration detention except where

present at or in transit to and from a scheduled appearance at a New York State Courthouse.

Recently the Long Island Regional Immigration Assistance Center has observed an increase of non-citizens facing criminal charges detained during the course of the criminal prosecution. Defense counsel should be aware of

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<https://locator.ice.gov/odls/#/search>, a resource useful for finding clients who have been taken into immigration custody. Further, counsel may find information about a client’s ongoing removal proceedings (immigration court) at:

<https://acis.eoir.justice.gov/en/>. However, these resources may be incomplete or inaccessible without a client’s Alien Registration Number and country of origin. Further, these sources may experience delays or inaccuracies as immigration enforcement efforts move quickly. M

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