



Testimony in favor of SB20-083

Michael Neil

to:

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Dear Chairman Lee, Vice Chair Gonzales, and esteemed members of the Judiciary Committee,

My name is Michael Neil and I rise in strong support of the Prevention of Civil Arrest in a Courthouse act on behalf of Colorado Cross-Disability Coalition and myself. I regret not being able to stay for in person testimony for this bill.

As we all know, one of the greatest beneficiaries of this bill are those immigrants who will likely not come to court when charged with a minor traffic violation or even those who are seeking custody of children in divorce proceedings. Nor might they testify in court cases where their testimony might be important to either prosecutors or defense attorneys. The justice system itself would likely be chilled.

For those immigrants with disabilities, the situation is far worse. Not only is potential jail time more difficult and dangerous due to possible lack of such healthcare as proper medication, but deportation courtesy of Immigration and Customs Enforcement might very likely result in a return to a nation that often lacks the support services, physical accessibility, and societal mentality of inclusion that are available in the United States.

For these reasons, I strongly ask for a "yes" vote.

January 29, 2020

Senate Judiciary Committee  
200 East Colfax Avenue  
SCR 352  
Denver, CO 80203

***Re: Support for SB20-083***

Dear Members of the Senate Judiciary Committee:

We join in this letter as members of Colorado's victim advocacy community. We are organizations dedicated to the representation and protection of victims and survivors of domestic abuse and sexual assault in Colorado. We write in support of Senate Bill 20-083, Concerning Protection of Access to Colorado's Courts. Civil arrests at courthouses interrupt the administration of justice and interfere with victims' rights to come forward and seek the protection of courts without fear of arrest. The legislation preserves the core value of access to justice, which is crucial to people seeking to break cycles of violence.

Domestic abuse and sexual assault are issues of national importance and impact Colorado much as they impact the rest of the country. For starters, according to the Colorado Domestic Violence Fatality Review Board, the number of domestic-violence related deaths went up from 2017 to 2018, rising from 40 to 43.<sup>1</sup> Of those, 26 were the primary victim, 2 were children, 4 were other adults, and 11 were the suspected primary perpetrator. In 2018, 13.5% of victims of violent crimes were an intimate partner of the offender, 26.5% were acquaintances, and 10.8% were family members.<sup>2</sup> Similarly, 9.9% of victims of sexual assaults were an intimate partner of the offender, 21.1% were in a family relationship with the offender, and 43.5% were an acquaintance of the offender.<sup>3</sup>

Civil arrests conducted by federal immigration authorities at courthouses have kept victims away from seeking the protection of the courts. For example, in September 2018, Denver City Attorney Kristin Bronson reported that since President Trump's inauguration, she had dropped 30 cases of domestic violence because the victims were too afraid of deportation to cooperate and appear in court.<sup>4</sup> When victims of domestic abuse and sexual assault are threatened with immigration consequences by their partners, former partners, acquaintances, or family members—who are the most likely to know about immigration status—Colorado courts lose the ability to address a significant proportion of crimes. According to the Pew Research Center, as of 2017 there were 180,000 undocumented individuals in Colorado. Of those, 130,000 resided in the Denver/Aurora/Lakewood area as of 2016/2017.<sup>5</sup> This is not a small concern for our

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<sup>1</sup> <https://coag.gov/app/uploads/2019/12/2019-Colorado-Domestic-Violence-Fatality-Review-Board-Annual-Report-1.pdf>

<sup>2</sup> <https://coloradocrimestats.state.co.us/tops/report/violent-crimes/colorado/2018>

<sup>3</sup> *Id.*

<sup>4</sup> <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271>.

<sup>5</sup> <https://www.pewresearch.org/hispanic/interactives/unauthorized-immigrants-by-metro-area-table/>

communities.

While domestic abuse and sexual assault cuts across religion, class, ethnicity, and immigration status, in cases involving undocumented victims, their immigration status can and often is used against them while they seek redress and protection within the judicial system. Abusers leverage the fear of deportation against their partners, telling them that if they try to file for a protection order, testify against them, or avail themselves of the domestic relations courts, they will be deported and, worse, forever lose their children. These threats impact not only the individuals threatened, but also their children who are forced to continue witnessing and experiencing domestic abuse. Nonprofits have already reported an increase in deportation threats among victims and survivors of domestic abuse.<sup>6</sup> These threats not only force domestic abuse victims to forego seeking safety, but also interfere with their cooperation with law enforcement in prosecuting these crimes of violence.<sup>7</sup> In addition, the threat of being detained creates a deterrent for individuals who are needed in court proceedings, thereby fundamentally undermining the orderly conduct of litigation, by depriving courts, district attorneys, and defense attorneys of witnesses, litigants, and defendants. Senate Bill 20-083 addresses this important issue.

Victims of domestic abuse and sexual assault need to be able to seek the protection of the courts without fear of civil arrest, which can carry dire consequences. Accordingly, we voice our support for SB 20-083, Concerning Protection of Access to Colorado's Courts.

Sincerely,

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<sup>6</sup> <https://coloradosun.com/2019/07/29/colorado-domestic-violence-immigration-threats/>

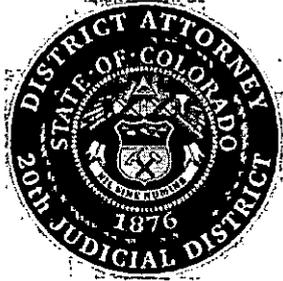
<sup>7</sup> <https://www.npr.org/2017/03/21/520841332/fear-of-deportation-spurs-4-women-to-drop-domestic-abuse-cases-in-denver>



Together we can end relationship abuse



Jake Lilly  
Candidate for District Attorney, Judicial  
District 1



Joanna Pollack  
Director of Victim-Witness Unit  
Boulder District Attorney's Office



January 29, 2020

Senate Judiciary Committee  
200 East Colfax Avenue  
SCR 352  
Denver, CO 80203

**Re: Support for SB20-083**

Dear Members of the Senate Judiciary Committee:

Senate Bill 20-083 provides critical protection from civil arrest for individuals accessing Colorado's judicial system. It is consistent with longstanding principles of constitutional and common law, is designed to protect fundamental rights by ensuring access to justice, and preserves the integrity of Colorado's system of government. The undersigned organizations write in support of this important legislation.

**I. Civil Arrests Occur Regularly at Colorado's Courthouses and Have an Adverse Effect on the Justice System.**

Currently, civil arrests at courthouses are primarily carried out by U.S. Immigration and Customs Enforcement (ICE). *See, e.g., New York v. ICE*, --- F. Supp. 3d ---, No. 19-cv-8876(JSR), 2019 WL 6906274, at \*9 (S.D.N.Y. Dec. 19, 2019). These arrests are connected to immigration removal proceedings, which are civil, not criminal, in nature. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country . . ."); *Ryan v. ICE*, 382 F. Supp. 3d 142, 157-58 (D. Mass. 2019) (describing civil ICE arrests under 8 U.S.C. §§ 1226(a) and 1357(a)(2)).

ICE arrests in Colorado and throughout the country present an ongoing issue. *See, e.g., New York v. ICE*, 2019 WL 6906274, at \*1 (noting that ICE "has increased its civil arrests in or around New York state courthouses by a remarkable 1700 percent and more"). Advocates and attorneys representing non-citizens in Colorado have highlighted the problem since 2016. Videos of arrests in April and May of 2017 showed local<sup>1</sup> and national<sup>2</sup> audiences how ICE's actions wreak havoc upon the court system and the community. In April 2017, in response to community advocacy, Denver officials sent a letter to ICE leadership requesting that the agency cease arresting individuals inside courthouses due to the practice's deleterious impacts on access to justice.<sup>3</sup> ICE rejected this request, making it clear that it would continue to make courthouse arrests.<sup>4</sup> In a directive dated January 10, 2018, ICE defended the practice of conducting civil

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<sup>1</sup> See Erica Meltzer, *New Videos Show ICE arresting immigrants at Denver courthouse, despite local leaders' requests*, Denverite (May 9, 2017), <https://denverite.com/2017/05/09/new-videos-show-ice-arresting-immigrants-denver-county-court-something-local-officials-asked-not/>.

<sup>2</sup> See César Cuauhtémoc García Hernández, *ICE's Courthouse Arrests Undercut Democracy*, New York Times (Nov. 26, 2017), <https://www.nytimes.com/2017/11/26/opinion/immigration-ice-courthouse-trump.html>.

<sup>3</sup> Noelle Phillips, *Mayor Hancock tells ICE: Back off arrests in courthouses and near schools*, Denver Post (Apr. 8, 2017), <https://perma.cc/WB2C-FT2V>.

<sup>4</sup> Noelle Phillips, *ICE official tells Denver Mayor that courthouse arrests will continue*, Denver Post (June 8, 2017), <https://perma.cc/H43L-PRUJ>.

arrests at courthouses, and further specified procedures and expectations for how and when such arrests would continue to be carried out.<sup>5</sup>

ICE continues to disregard the requests of local and state courts, prosecutors, policy makers, and elected officials, and arrest individuals who are at courthouses, at probation appointments, or otherwise accessing Colorado's judicial process.<sup>6</sup> This practice adversely impacts the administration of justice, as victims, defendants, litigants, witnesses, and the general public have been chilled from accessing Colorado's judicial system.<sup>7</sup> Senate Bill 83 is a critically needed response to this access-to-justice crisis.

## **II. SB20-083 Is Consistent with Longstanding Legal Principles and Is Necessary to Protect Access to Justice and the Functioning of Colorado's Government.**

Two recent court decisions have found ICE's civil arrests at courthouses to be unlawful. *New York v. ICE*, 2019 WL 6906274 (denying ICE's motion to dismiss); *Ryan*, 382 F. Supp. 3d 142 (granting preliminary injunction for plaintiffs). These decisions show that federal courts stand ready to protect the rights that SB20-083 codifies for Coloradans. They recognize that the threat that persons may be subject to civil arrest while participating in court proceedings is a threat to the proper functioning of government and to individual rights. These decisions were based in longstanding common law principles that SB20-083 will help to clarify in Colorado.

### **A. Civil arrests that occur at courthouses and that interfere with court proceedings threaten the functioning of Colorado's government and Coloradans' fundamental constitutional rights.**

One of the rights enumerated in the Colorado Bill of Rights is that "[c]ourts of justice shall be open to every person . . ." Colo. Const. art. II, § 6. The United States Supreme Court has said that "courts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every [person] who necessarily approaches them." *Stewart v. Ramsay*, 242 U.S. 128, 129 (1916). The Court "has recognized that the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy." *Cox v. State of Louisiana*, 379 U.S. 559, 562 (1965) (citing *Wood v. Georgia*, 370 U.S. 375, 383 (1962)). The Colorado Supreme Court has similarly stated that public access to

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<sup>5</sup> ICE Directive Number 11072.1.

<sup>6</sup> While it is difficult to capture the exact number of ICE arrests that have interfered with the judicial process, documents obtained by a Denver news agency show that from October 5, 2016, through May 9, 2017, ICE agents in Colorado carried out 52 arrests at courthouses, 44 at probation offices, and two at pre-trial services in the Denver area. Chris Walker, *ICE Busts Ten Times Higher Than City Knew*, Westword (Sept. 19, 2017), <https://www.westword.com/news/immigration-agents-breaking-protocol-during-courthouse-arrests-in-denver-9499512>

<sup>7</sup> For example, in September 2018, Denver City Attorney Kristin Bronson reported that since President Trump's inauguration, she had dropped 30 cases of domestic violence because the victims were too afraid of deportation to cooperate and appear in court. *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC News (Sept. 22, 2018), <https://www.nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271>.

courts serves a vital role in the functioning of Colorado's judicial process and is a "cornerstone of our republican form of government." *In re Foster*, 253 P.3d 1244, 1251 (Colo. 2011).

Civil arrests carried out when people are accessing the justice system interfere with the administration of justice and individuals' fundamental rights, especially the rights of the accused. These rights include the right to a jury trial, to be present and testify at trial, to call witnesses, to compel the attendance of witness, and other rights that form the bedrock of our criminal justice system and underscore the court's truth-finding process. Defendants who are forcefully removed from this process cannot assert their innocence or avail themselves of these rights. Equally as important, ICE civil arrests at courthouses create a chilling effect on appearance for court, and disincentivize defendants who seek to arrive at plea dispositions that balance the acceptance of responsibility with rehabilitative potential.

Similarly, victims to crime are adversely impacted by ICE civil arrests. They are often retraumatized by the possibility of an ICE arrest at court. As a result, many victims decline to participate in the jury trial process, undermining the ability to obtain plea dispositions or convictions at trial in criminal cases. Moreover, victims who are afraid to access the court system may also decline to avail themselves of their rights under the Victim Rights Act, including the right to be present for all critical stages of the criminal justice process. *See* C.R.S., §§ 24-4.1-301, *et seq.* Finally, some crime victims seek resolution in a criminal case but do not wish for a defendant otherwise deserving of rehabilitation to be deported.

As the General Assembly recently acknowledged, access to justice can be particularly important to vulnerable communities: "In times of crisis, Colorado courts are the main points of contact for the most vulnerable, including crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited English speakers, unrepresented litigants, and children and families who seek justice and due process of law." HB19-1124, § 1(f). The specter of civil arrest for those accessing Colorado's courts undermines trust and confidence in the judicial system.

Furthermore, public scrutiny of court proceedings allows the public to observe the functioning of their government and determine whether justice is meted out fairly. Providing this transparency also serves as a critical check on the use and abuse of judicial power—a check that is essential to our structure of self-government. ICE arrests at the courthouse discourage certain members of the public from observing court and providing this important check on the government.

Access to courts also implicates the constitutional rights to free speech and equal protection. Public access protects Coloradans' First Amendment right to discuss the government and to engage in informed discussion. As the U.S. Supreme Court has discussed, "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs. By offering such protection, the First Amendment serves to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government." *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 604–05 (1982) (internal

quotations and citations omitted). Universal access also protects Coloradans' rights to equal protection of the laws—and Colorado's right to benefit from the informed views of all.

**B. The Colorado General Assembly and courts have the power and duty to protect the integrity of court proceedings.**

Colorado has the reserved power under the Tenth Amendment to protect its court proceedings, as well as the obligation under the United States Constitution to preserve Colorado's republican form of government. The Supreme Court has repeatedly held that the federal government cannot commandeer state resources, and cannot "compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz v. United States*, 521 U.S. 898, 925 (1997). Consistent with the Tenth Amendment, states, cities, and their officers retain the option to "decline to administer" federal immigration law. *New York v. United States*, 505 U.S. 144, 176-177 (1992). In *New York v. ICE*, the court upheld plaintiffs' Tenth Amendment claim against dismissal, finding that "ICE's policy has commandeered 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." 2019 WL 6906274, at \*12.

Courts have the power and the obligation to protect the integrity of their proceedings. The powers of the courts include the power to preserve and enforce order in their immediate presence and in court proceedings. C.R.S. § 13-1-114. The Colorado Supreme Court has clearly stated: "In their responsibilities and duties, the courts must have complete independence . . . free from directives, influence, or interference . . . [that] would interfere with the operation of the courts, impinge upon their power and thwart the effective administration of justice." *Bd. of Cty. Comm'rs of Weld Cty. v. Nineteenth Judicial Dist.*, 895 P.2d 545, 548-49 (Colo. 1995) (quoting *Smith v. Miller*, 384 P.2d 738, 741 (1963)). Accordingly, courts have "affirmative obligations to assert and fully exercise their powers, to operate efficiently by modern standards, and to protect their independent status." *Peña v. Dist. Court*, 681 P.2d 953, 956 (Colo. 1984) (internal quotations, citations, and alterations omitted).

One method for courts to protect the integrity of their proceedings is through the contempt power. *See, e.g., Wood*, 370 U.S. at 383 ("We start with the premise that the right of courts to conduct their business in an untrammelled way lies at the foundation of our system of government and that courts necessarily must possess the means of punishing for contempt when conduct tends directly to prevent the discharge of their functions."); *In the Interest of J.E.S.*, 817 P.2d 508, 511 (Colo.1991) ("The judiciary's authority to punish for contempt of court has long been recognized as an inherent power essential to the effective administration of justice."). Another such means is a writ of protection. "The courts have power to issue all writs necessary and proper to the complete exercise of the power conferred on them by the constitution and laws of this state." C.R.S. § 13-1-115. As demonstrated below, SB-083 codifies courts' ability to ensure unfettered access to courthouses and court proceedings through their contempt power and the common-law writ of protection.

The General Assembly also has the duty and obligation to protect Colorado's courts. "A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence [and] . . . to vindicate the State's interest in assuring justice under law." *Cox*, 379 U.S. at 562. Through SB20-083, Colorado is appropriately regulating the courts, as well as the courthouse premises and environs, from activity that threatens the fair and nondiscriminatory administration of justice and openness of courts.

**C. SB20-083 codifies a common law privilege from civil arrest while attending, or going to or coming from, courthouses and court proceedings.**

Consistent with these principles, the proposed legislation clarifies a common law privilege that protected the right of access to courts and the integrity of court proceedings. *See generally* Christopher N. Lasch, *A Common-Law Privilege to Protect State and Local Courts During the Crimmigration Crisis*, 127 YALE L.J. FORUM 410, 423-31 (2017). As the U.S. District Court for the Southern District of New York summarized last month:

Courts cannot be expected to function properly if third parties (not least the executive branch of the government) feel free to disrupt the proceedings and intimidate the parties and witnesses by staging arrests for unrelated civil violations in the courthouse, on court property, or while the witnesses or parties are in transit to or from their court proceedings. Accordingly, more than 500 years ago, the English courts developed a common law privilege against civil arrests on courthouse premises and against arrests of parties and other persons necessarily traveling to or from court. This ancient privilege, incorporated into American law in the early years of our republic by virtually all state and federal courts, has remained largely intact over the centuries.

*New York v. ICE*, 2019 WL 6906274, at \*1.

The privilege initially developed when civil arrests were used to initiate cases. *Id.* at \*8; *Ryan*, 382 F. Supp. 3d at 155. It was applied broadly, covering courthouses, their surroundings, other judicial proceedings, and the process of going to and returning from such proceedings. *See* Lasch, *supra* at 424-31. The United States Supreme Court adopted a broad notion of the privilege from civil arrest at courthouses. *See Stewart*, 242 U.S. at 129 (holding that "suits, as well as witnesses, coming from another state or jurisdiction, are exempt from the service of civil process while in attendance upon court, and during a reasonable time in coming and going"); *Page Co. v. MacDonald*, 261 U.S. 446, 448 (1923) (holding that privilege was "founded in the necessities of the judicial administration"). As the court articulated in *New York v. ICE*, "What these cases demonstrate is that the common law privilege against courthouse arrests had as its fundamental purpose the protection of the courts in carrying out their functions, and that this policy was so strong that . . . the privilege was being expanded." 2019 WL 6906274, at \*9.

At common law, courts issued writs of protection to witnesses who feared arrest while coming to court. *See, e.g., Parker v. Marco*, 32 N.E. 989, 989 (N.Y. 1893). But the writ was not

necessary for the privilege from arrest to apply; rather, it simply provided “convenient and authentic notice to those about to do what would be a violation of the privilege. It neither establishes nor enlarges the privilege, but merely sets it forth, and commands due respect to it.” *Bridges v. Shelton*, 7 F. 17, 44 (D. Vt. 1880).

The common law of England, unless legislatively repealed, is part of the “rule of decision” in Colorado. C.R.S. § 2-4-211. The common law privilege from civil arrest has not been legislatively repealed in Colorado. Indeed, provisions of Colorado law have enumerated protection from arrest in various circumstances. *See* C.R.S. §§ 16-9-204 (clarifying protection from arrest when obeying summons to testify from out of state or when passing through Colorado), 16-9-303 (clarifying protection from arrest or for material witness passing through Colorado counties when obeying summons); C.R.S. § 28-3-406 (exempting from arrest or service of process any National Guard member en route to or from required military service). Similarly, both the United States and Colorado constitutions recognize privileges from arrest for legislators while they are attending, going to, and returning from legislative sessions. U.S. Const. art. I, § 6, cl. 1; Colo. Const. art. V, § 16; *see also Williamson v. United States*, 207 U.S. 425, 443 (1908) (comparing legislators’ privilege to common law privilege from arrest, which “is conceded by law to the humblest suitor and witness in a court of justice”).

SB20-083 thus provides a necessary clarification of the common law in Colorado. The legislation clarifies judicial power to enforce the privilege in order to maintain access to state courthouses and court proceedings, and to prevent interruption of the administration of justice. It also clarifies that the privilege extends to proceedings conducted under the authority of a court, such as probation and pretrial services appointments.

\* \* \*

Civil arrest of individuals at Colorado’s courthouses or their environs, or persons attending, or going to or from, court proceedings, threatens core values of public access as well as the core functions of Colorado courts. SB20-083 is an essential measure that would preserve Coloradans’ rights and the functioning of our government.

Sincerely,



Colorado Lawyers Committee



**MEYER**  
LAW OFFICE

Hans Meyer  
Arash Jahanian  
Meyer Law Office, P.C.



ACLU of Colorado

Colorado Criminal Defense Bar

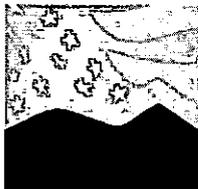


ROCKY MOUNTAIN  
victim law center

Rocky Mountain Victim Law Center



Colorado Hispanic Bar Association

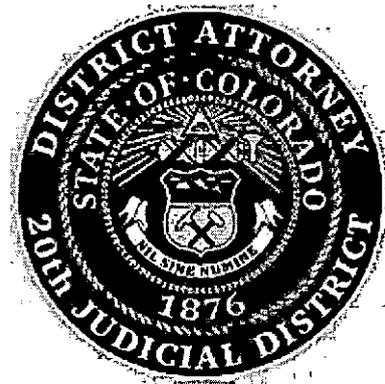


**RMIAN**  
rocky mountain immigrant advocacy network  
Rocky Mountain Immigrant Advocacy  
Network



Violence *free*  
COLORADO™

Together we can end relationship abuse  
Violence Free Colorado



Michael Dougherty  
Boulder District Attorney



Beth McCann  
Denver District Attorney



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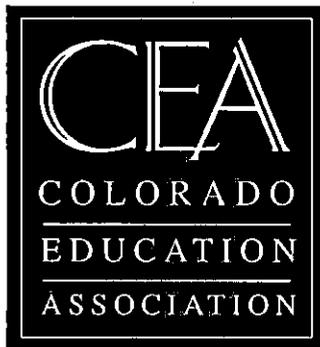
Project Safeguard

Jake Lilly  
Candidate for District Attorney, Judicial  
District 1



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OF COLORADO  
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Interfaith Alliance of Colorado



Colorado Education Association

  
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*Bringing Love and Reason to Life, Building a Just and Compassionate World*  
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Fellowship Immigration Justice Task Force



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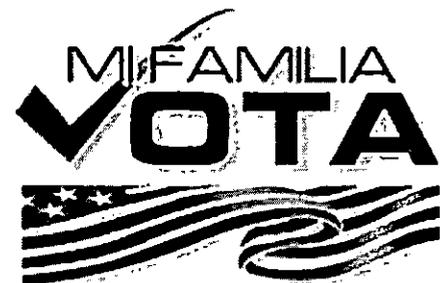
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American Friends Service Committee



Mi Familia Vota



Colorado Immigrant Rights Coalition



Colorado People's Alliance



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# HINDS & HINDS

FAMILY LAW

Dear Mr. Jahanian,

First may I comment that your draft letter to the Senate Judiciary is very well written and I am in support thereof.

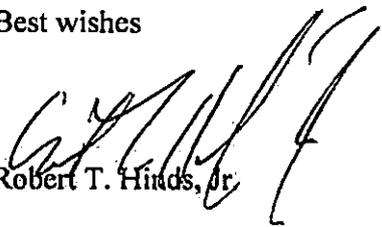
My review of the bill as drafted recognizes the important protection to further the basic principles of access to the justice system. This access is deterred by the fear of those who could be subject to civil arrest who then cannot avail themselves of the Colorado Civil Justice System.

Our Colorado Courts, particularly in Domestic Relations matters, have the important responsibility of assisting and protecting children and families in resolution of their domestic disputes.

The chilling effect for fear of civil arrest endangers the ability of the Courts to access and protect the very persons most in need of this judicial service. I commend the bill and am sorry that my schedule for January 29, 2020 is such that I am precluded from testifying at that time.

My sincere hopes for a meaningful response to your letter.

Best wishes

  
Robert T. Hinds, Jr.

Robert T. Hinds, Jr.  
*Fellow of the American Academy  
Matrimonial Lawyers*

Robert T. Hinds, III  
*Shareholder*

Nathan M.J. Dowell  
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Frank L. McGuane, Jr.

*Of Counsel*