



# Northwest Justice Project

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César E. Torres  
Executive Director

January 27, 2020

Chief Justice Deborah Stephens  
Members of the State Supreme Court  
Susan L. Carlson  
Clerk of the Supreme Court  
P.O. Box 40929  
Olympia, WA 98504-0929  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Dear Chief Justice Stephens, Members of the State Supreme Court, and Madam Clerk,

The Northwest Justice Project (NJP) writes in strong support of proposed General Rule 38. NJP is part of a statewide coalition of legal services and community based organizations requesting that this Court adopt General Rule 38 to preserve access to justice for Washington's most vulnerable residents, particularly victims of crime and domestic violence who rely on state courts to ensure their safety and the safety of their families.

## **NJP's Interest as a Provider of Civil Legal Services**

Washington State recognizes that “[t]he provision of civil legal aid services to indigent persons is an important component of the state’s responsibility to provide for the proper and effective administration of civil and criminal justice.” RCW 2.53.005. The Northwest Justice Project is the largest provider of civil legal aid in Washington State, employing over 130 attorneys working in 19 offices across the state. NJP provides representation to low-income people in over 13,000 cases a year. Our clients seek to obtain and preserve safe housing, protect family safety, ensure gainful employment, preserve educational opportunity, combat consumer exploitation, and address the legal needs caused by crime victimization.

A significant proportion of NJP’s civil legal services are to victims of domestic violence, sexual assault, and other crimes.<sup>1</sup> The legal needs of crime victims in Washington are acute. Washington’s 2015 Civil Legal Needs Study report found that on average, domestic violence and sexual assault victims responding to the study experienced an average of over 19 distinct legal problems, a rate twice as high as the general low-income population. Approximately

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<sup>1</sup> NJP receives federal Legal Services Corporation funding to provide civil legal services, as well as funding made available for civil legal aid under the federal Victims of Crime Act, administered by Washington’s Office of Civil Legal Aid (OCLA). Under both funding sources, NJP is specifically authorized to provide representation to undocumented immigrant victims of crime, including victims of domestic violence, sexual assault, and trafficking. 45 C.F.R. § 1626.4.

16% of NJP's total cases in 2018 were on behalf of victims of crime, and 38% of NJP's total cases involved family safety (protection orders, dissolution or marriage, or parenting plans).

**DHS Activity at Courthouses Prevents Immigrant Victims of Crime from Exercising their Fundamental Right of Access to the Courts**

Article 1, section 10 of the Washington state constitution provides that “justice in all cases shall be administered openly and without unnecessary delay.” Const. Art. 1 § 10. This includes the right to seek legal redress in the courts. *King v. King*, 162 Wn.2d 378, 388, 174 P.3d 659 (2007); *see also State v. Vance*, 29 Wn. 435, 70 P. 34 (1902) (recognizing the “right to the usual remedies to collect debts, and to enforce other personal rights” as fundamental rights protected under the Washington constitution’s privileges and immunities clause). The right of meaningful access to the courts is particularly important when the courts are the only mechanism to settle a dispute. *See, e.g., Whitney v. Buckner*, 107 Wn.2d 861, 866, 734 P.2d 485 (1987) (recognizing a constitutional right of access to the courts for the purpose of dissolving marital relationships). *State ex. rel. Taylor v. Dorsey*, 81 Wn. App. 414, 421, 914 P.2d 773, 777 (1996) (persons required to settle disputes through the judicial process must be afforded “meaningful access” to the courts).

For victims of crime seeking protection orders, divorce, and restrictive parenting plans, state court is the only appropriate forum, and that forum is no longer meaningfully available to many immigrants due to immigration enforcement actions. Immigrants across Washington State seeking NJP assistance are already aware that immigration agents are arresting people in and around courthouses. This information has been shared rapidly through family members, co-workers, friends and media coverage. Some of the people who contact NJP attorneys have personally witnessed immigration arrests in and around courthouses. This practice has created deep fear in immigrant communities.

NJP attorneys across the state repeatedly counsel individuals who are hesitant to move forward with legal claims because they fear that filing cases and appearing in court may result in their arrest and possible deportation. Attorneys in NJP's Seattle and Wenatchee offices have advised clients who resisted moving forward with meritorious cases on this basis, including a domestic violence victim who declined to modify a parenting plan and a domestic violence victim who declined to file for divorce from an opposing party incarcerated for sexual abuse. For many people, the potential harms they face in going to court are so untenable that they simply decline to participate in the legal process and thus expose themselves to the risk of future violence. This impact is not confined to domestic violence cases. NJP advocates have counseled clients whom, because of immigration enforcement activities, hesitate to go to court for any reason, including responding to a subpoena or paying a fee.

Attorneys in NJP's Seattle, Omak and Wenatchee offices have represented parties in cases where the perpetrators of crime affirmatively seek to exploit the possibility of civil immigration enforcement to gain legal advantage over NJP clients. These include a child custody case in which the opposing party threatened to call and direct ICE agents to the courthouse to arrest our client (a victim of domestic violence) if he tried to obtain a parenting

plan and access to his children. This was not an idle threat: the opposing party subsequently called law enforcement to solicit our client's arrest due to his undocumented status. In another case, a perpetrator of domestic violence threatened to get an NJP client deported if she filed for dissolution of the marriage.

The specter of civil immigration enforcement in courthouses can also lead NJP clients to limit their arguments and remedies. In some instances, perpetrators of domestic abuse seek to exploit the fact that the victim is undocumented to obtain financial or other forms of control. An attorney in NJP's Tacoma office represented a client seeking a protection order and divorce who omitted evidence that the opposing party routinely threatened her job, because that evidence could expose her status as undocumented and subject her to risk of arrest.

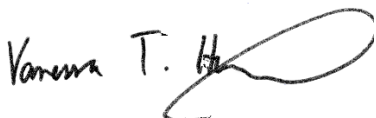
The chilling effect caused by immigration enforcement activity undermines Washington State's policy of preventing domestic violence and enabling access to justice for undocumented immigrant victims of crime. *See Rodriguez v. Zavala*, 188 Wn.2d 586, 588 398 P.3d 1071 (2017) ("As a community, we have recognized the importance of domestic violence as an offense against our ordered society and we have committed to providing victims the maximum protection from abuse which the law and those who enforce the law can provide.") Washington has a strong public policy of preventing and ending domestic violence, with the Legislature recognizing domestic violence as a "serious crime against society" and the "necessity for early intervention by law enforcement" to mitigate the harm. *See* RCW 10.99.010; *see also* *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 193 P.3d 128 (2008); Laws of 1992, ch. 111, § 1; Laws of 2004, ch. 17 § 1(1).

Washington recognizes that immigrant victims have particular barriers to accessing justice. In 2018, the legislature passed the Safety and Access for Immigrant Victims Act, RCW 7.98.900, recognizing that "the protections available to immigrants under the law are designed to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of trafficking in persons, domestic violence, sexual assault, and other crimes while offering protections to such victims." RCW 7.98.005. Our communities are safer when all people can access the protection of the law, and participate in the legal process.

### **Suggested Amendments to the Rule and Conclusion**

Since the GR 38 petition was filed in October 2019, NJP and other members of the statewide coalition supporting the rule have continued to engage with stakeholders, including judges, clerks, legal experts and community members. Those discussions identified the need for a few amendments to clarify the proposed rule to ensure its effectiveness. We have attached proposed amendments, which NJP supports, to this letter for your reference. We ask this court to address the access to justice crisis created by immigration enforcement in and around courthouses, and to adopt proposed General Rule 38 with the amendments attached.

Sincerely,

Handwritten signature of Vanessa T. H.

Vanessa Torres Hernandez, Director of Advocacy

**PROPOSED AMENDMENT LANGUAGE TO PETITION GR 38**  
**COURT RULE PROHIBITION ON CIVIL ARRESTS**

Amended Language in red:

1. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the person is inside a court of law of this state in connection with a judicial proceeding or other business with the court.
2. No person shall be subject to civil arrest without a judicial arrest warrant or judicial order for arrest while the traveling to a court of law of this state for the purpose of participating in any judicial proceeding, accessing services or conducting other business with the court, or while traveling to return home or to employment after participating in any judicial proceeding, accessing services or conducting business with the court. Participating in a judicial proceeding includes, but is not limited to, participating as a party, witness, interpreter, attorney or lay advocate. Business with the court and accessing court services includes, but is not limited to, doing business with, responding to, or seeking information, licensing, certification, notarization, or other services, from the office of the court clerk, financial/collections clerk, judicial administrator, courthouse facilitator, family law facilitator, court interpreter, and other court and clerk employees.
3. Washington courts may issue writs or other court orders necessary to enforce this court rule. **Unless otherwise ordered, the civil arrest prohibition extends to within one mile of a court of law. In an individual case, the court may issue a writ or other order setting forth conditions to address circumstances specific to an individual or other relevant entity.**

**For purposes of this rule:**

- A. **“Court of law” means any building or space occupied or used by a court of this state and adjacent property, including but not limited to adjacent sidewalks, all parking areas, grassy areas, plazas, court-related offices, commercial spaces within buildings or spaces occupied or used by a court of this state, and entrances to and exits from said buildings or spaces.**
- B. **“Court Order” and “Judicial Warrant” include only those warrants and orders signed by a judge or magistrate authorized under Article III of the United States Constitution or Article IV of the Washington Constitution or otherwise authorized under the Revised Code of Washington. Such warrants and orders do not include civil immigration warrants or other administrative orders, warrants or subpoenas that are not signed by a judge or magistrate as defined in this section. Civil immigration warrant means any warrant for a violation of federal civil immigration law issued by a federal immigration authority and includes, but is not limited to, administrative warrants issued on forms I-200 or I-203, or**

their successors, and civil immigration warrants entered in the national crime information center database.

- C. "Subject To Civil Arrest" includes, but is not limited to, stopping, detaining, holding, questioning, interrogating, arresting or delaying individuals by state or federal law enforcement officials or agents acting in their official capacity.

**From:** [OFFICE RECEPTIONIST, CLERK](#)  
**To:** [Tracy, Mary](#)  
**Subject:** FW: Comment letter in support of GR 38  
**Date:** Monday, January 27, 2020 3:32:34 PM  
**Attachments:** [image001.png](#)  
[2020-01-27 NJP Letter GR 38.pdf](#)

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**From:** Vanessa Torres Hernandez [mailto:Vanessa.Hernandez@nwjustice.org]  
**Sent:** Monday, January 27, 2020 3:08 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
**Subject:** Comment letter in support of GR 38

Good afternoon. Please find attached the Northwest Justice Project's letter in support of proposed General Rule 38.

Best,  
Vanessa

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