

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----STATE OF NEW YORK and ERIC

GONZALEZ

Plaintiffs,

-v-

U.S. IMMIGRATION AND CUSTOMS

ENFORCEMENT, et al.

Defendants.

December 19, 2019

English common law provided a privilege against any civil arrests in and around courthouses, and also against civil arrests of witnesses and parties necessarily traveling to and from the courthouse.⁷

Blackstone's famous Commentaries, on which early U.S. courts heavily relied in incorporating English common law into the laws of the several states and the United States, provides explicitly that:

Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting.

³ William Blackstone, Commentaries on the Laws of England 289 (1768). Furthermore, although the privilege goes back to at least the fifteenth century, Lasch, *supra* n.7, at 423, English courts reconfirmed this privilege in several late eighteenth and early nineteenth century cases, i.e., at the very time that English common law was being incorporated into the laws of the new states of the nascent American republic. See, e.g., *Meekins v. Smith* (1791), 126 Eng. Rep. 363, 363 ("[A]ll persons who had relation to a suit which called for their attendance, whether they were compelled to attend by process or not, were intitled [sic] to

privilege from arrest eundo et redeundo [going and returning], provided they came bona fide."); *Walpole v. Alexander* (1782), 99 Eng. Rep. 530, 530-31 (holding that a witness from France could not be arrested in England while in the country to testify in another case); *Orchard's Case* (1828), 38 Eng. Rep. 987, 987-88 (holding that a lawyer who was arrested while he was at a court in a non-professional capacity was not validly arrested).

The purposes of this privilege were both to encourage parties and witnesses "to come forward voluntarily," *Walpole*, 99 Eng. Rep. at 531; *The King v. Holy Trinity in Wareham* (1782), 99 Eng. Rep. 530, 530-31, and also to maintain order in the courthouse, *Orchard's Case*, 38 Eng. Rep. at 987 ("To permit arrest to be made in the Court would give occasion to perpetual tumults . . ."). It thus served, in either case, to enable courts to function properly. 8

This privilege was adopted into American common law after independence.

The common law privilege was never thought to apply to criminal arrests.