THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

TESTIMONY OF MANHATTAN BOROUGH PRESIDENT SCOTT M. STRINGER

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION

Oversight Hearing Examining Proposed Local Law to Amend the Administrative Code of the City of New York, in relation to Persons Not to be Detained

Monday, October 3, 2011

I thank the Committee on Immigration, and the Committee Chairs, Council Members Dromm and Crowley, for the opportunity to testify today on the proposed Local Law to amend the Administrative Code of the City of New York, in relation to persons not to be detained.

I am heartened to learn that the Mayor and City Council have agreed to pass this legislation to finally end one of New York's most anti-immigrant policies. I congratulate all of the immigrant rights advocates and leaders of our city for their hard work and success in making this happen. I especially commend Make the Road New York, New Sanctuary Coalition, Northern Manhattan Coalition for Immigrant Rights, Professor Nancy Morawetz, the NYU School of Law Immigrant Rights Clinic, Professor Peter Markowitz and the Cardozo Immigrant Justice Clinic for their remarkable leadership in turning around an enormously harmful policy that has been at odds with New York's positive immigrant tradition. This is indeed a testament to the power of organizing communities on the most critical issues that deeply affect us.

This bill is necessary because despite the fact that no federal, state or city law requires what the Department of Corrections (DOC) has done to participate in the enforcement activities of U.S. Immigration and Customs Enforcement (ICE), the DOC voluntarily cooperates with ICE to annually transfer 3,000 to 4,000 New Yorkers into inhumane immigration detention conditions and eventually deportation. In June 2010, I addressed my concerns in a letter to the Mayor asking that the City adopt a policy clearly separating ICE operations from Riker's Island. Although reforms were made to better inform inmates of their rights related to ICE, these reforms were not enough to address the lack of accountability or transparency in ICE's detention and deportation system. In November 2010, I urged the Committee on Immigration to recommend that the City establish a policy to end these overreaching enforcement practices that upend the fabric of our communities. Furthermore, in April 2011, I published a New York Times Op-Ed with Andrew Friedman of Make the Road New York urging the Mayor to end this policy on Rikers. I am now pleased to support the proposed Local Law presently before the Committee which will protect certain individuals from discharge to ICE from City jails.

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Under the existing practice, thousands of New Yorkers have been transferred by the DOC into ICE custody. The current level of cooperation between the DOC and ICE appears to facilitate the deportation of as many immigrants as possible, without regard to whether these individuals have criminal records or pose a threat to public safety. Indeed, in both 2009 and 2010, nearly half of the individuals at Rikers to whom ICE issued detainers had no criminal convictions.

Under the proposed Local Law the DOC will not be permitted to use its resources to continue to detain an individual solely on the basis of a civil immigration detainer, or to notify federal immigration authorities of that individual's release, when the individual has no prior convictions, is not a defendant in a pending criminal case, is not subject to any outstanding warrants, is not identified as a confirmed match in the terrorist screening database, and has not previously been subject to a final order of removal by immigration authorities.

New York is a city built by immigrants. 40% of our residents are foreign born, of which approximately half are noncitizens. This leaves approximately 20% or 1.6 million of the city's population potentially vulnerable to DOC's facilitation of ICE operations. Longtime immigrant residents who have contributed to our city should not be separated from their families, subjected to inhumane detention conditions and sent to countries where they may be at risk of persecution when they pose no safety threat to our community.

Continuing this practice of DOC's collaboration with ICE would only create a sense of fear and distrust of law enforcement and police among immigrant communities, and would cause these communities to be hesitant to call upon the police for assistance, as they will associate law enforcement with deportation.

Further, this collaboration between DOC and ICE is a wasteful expenditure of the City's resources in a time when it is imperative that we eliminate unnecessary costs for the City, particularly those which do not provide any benefit to our residents.

Ultimately, our local police are not to be in the business of immigration enforcement. I am pleased that with the proposed Local Law this destructive collaboration between DOC and ICE will end and look forward to keep working with you on advancing immigrant rights in our city.

Thank you.

NEW YORK
CITY BAR

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TESTIMONY OF ALINA DAS, MEMBER, CRIMINAL COURTS COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION, IN SUPPORT OF INT. 656-2011

NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION HEARING October 3, 2011

My name is Alina Das, and I am a member on the Criminal Courts Committee of the New York City Bar Association. I am testifying on behalf of the Criminal Courts, Immigration and Nationality Law and Corrections Committees of the New York City Bar Association.[1]

The New York City Bar Association applauds the City Council for taking on this important issue and supports Int. 656, which marks an important first step in limiting the Department of Corrections' (DOC) collaboration with U.S. Immigration and Customs Enforcement (ICE) in our City. Moreover, based on our collective view of the scope of the problems posed by the current DOC-ICE detainer policy, our committees would support even more robust measures to limit this collaboration in light of the harm it causes New York immigrants and the criminal justice system as a whole.

As our committees expressed in our letter to the Honorable Christine Quinn in February of this year and in on our recent report in support of this legislation,[2] we believe that the DOC's current collaboration policy with ICE imposes a significant financial burden on the City and harms our City's residents by creating substantial roadblocks in the criminal justice system. As a bar association that is representative of a broad cross-section of the legal community—defense attorneys and prosecutors, judges, professors, and lawyers who practice in immigration and corrections law—we base our concerns in the real impact that the current detainer policy has in thousands of cases each year.

First, we note that a change in detainer policy is timely and justified. ICE's placement of immigration detainers against individuals at DOC facilities comprises the single largest means by

[1] The Criminal Courts Committee of the New York City Bar Association ("City Bar") is composed of city judges (non-voting), prosecutors, defense attorneys, and law professors with a range of perspectives who together seek to improve the operations of the New York City Criminal Court and the Criminal Term of the New York State Supreme Court. The Immigration and Nationality Law Committee of the City Bar, composed of immigration lawyers, addresses legal issues that arise from immigration and nationality law. The Corrections Committee of the City Bar is composed of judges (non-voting) and government, public-interest and private-sector lawyers, and addresses legal issues including conditions of confinement; access to justice for prisoners, detainees and people with conviction histories; and prisoner reentry.

[2] Letter of the New York City Bar Association to Hon. Christine Quinn, Speaker, New York City Counsel (Feb. 3, 2011), *available at* http://www.nycbar.org/pdf/report/uploads/20072056-LettertoSpeakerQuinnRePorposaltoLimitCollaborationBetweenDOCandICE.pdf. (copy attached); The New York City Bar Association, Report on Legislation in Support of City Council Int. 656-2011 (Sept. 14, 2011), *available at* http://www2.nycbar.org/pdf/report/uploads/1_20072182-Int.656-2011amendingcitycoderegardingdetention.pdf.

which New Yorkers end up in immigration detention; each year 3,000-4,000 New Yorkers are transferred from DOC to ICE custody.[3] These New Yorkers are separated from their families and homes in the City and forced to defend themselves while detained in facilities as remote as Louisiana and Texas, without access to counsel, evidence, and witnesses.[4] This policy is inconsistent with New York City's interests in protecting the due-process rights and other rights of its immigrant residents. The City Council's legislation is an important first step in curbing these practices.

Second, a change in detainer policy would save valuable city resources. A recent study of a segment of noncitizens at Rikers Island with immigration detainers revealed that they spend an average of *73 days longer in jail* before being discharged than people without an ICE detainer.[5] The unreimbursed cost to the City of this prolonged detention, if the cost of DOC personnel and facilities necessary to hold these thousands of immigrant New Yorkers each year is included, surely runs to the tens of millions of dollars.[6] The City Council's legislation will begin to cut down these exorbitant costs by curbing the use of detainers.

Third, a change in detainer policy is necessary to ensure public safety for all New Yorkers. The perception that a criminal arrest will automatically lead to immigration detention and deportation undermines the trust of the immigrant and ethnic communities in local law enforcement. This perception, and DOC's contribution to it through its extensive collaboration with ICE, can have a chilling effect on immigrant New Yorkers who may wish to report a crime for fear that any interaction with police and the courts will result in the deportation of their immigrant family member or loved one. As a matter of public safety, the City's police and prosecutors have cultivated a relationship of trust with the immigrant communities.[7] Immigrant fear of coming forward to report a crime will result in a less safe New York. One example of this is in the domestic violence context where victims of domestic violence may be reluctant to come forward to report abuse or to press charges if they fear that doing so will lead to their abuser's deportation, particularly if the abuser is the family's primary or sole provider or if there are children involved. Indeed, in other criminal contexts as well, if someone in a position to report a crime knows that DOC collaboration with ICE will result in an immigration detainer against the perpetrator, there is a good chance that he or she

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[3] *See* ICE FOIA Response Letter to Prof. Nancy Morawetz, New York University School of Law, dated Dec. 12, 2008. Given the overall immigration enforcement goals of the federal government, these numbers will likely increase if DOC continues to accede to every ICE detainer request. The City Bar, through its Civil Rights Committee, is urging New York State to rescind its May 10, 2010 memorandum of agreement with ICE to participate in the federal Secure Communities program. This June Governor Andrew Cuomo announced that New York would suspend its participation in this program, which would permit ICE to access the fingerprints of individuals in local law enforcement custody and compare those prints with ICE's own database. The federal government, however, more recently announced that state and local officials cannot opt out of the Secure Communities program.

[4] *See, e.g.*, Human Rights Watch. *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2, 2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (Nov. 2009); *Report on the Right to Counsel for Detained Individuals in Removal Proceedings*, New York City Bar Association (August 2009).

[5] Justice Strategies, *New York City Enforcement of Immigration Detainers, Preliminary Findings* (October 2010).

[6] *See* City of New York, Office of the Mayor, *Mayor's Management Report* (September 2010) at 150, which indicates average cost per inmate per year to be more than $76,229 in FY 2010. Based on that figure, the average cost per inmate per day is $208, which multiplied by 73 days comes to a cost of more than $15,000 per each of the 3,000-4,000 New Yorkers transferred from DOC to ICE custody every year.

[7] As part of this effort, for example, District Attorney offices make no distinction between crime victims who are citizens and those who are not (except when they may assist undocumented crime victims to achieve certain immigration protections).

will not want to get the police involved. This directly contravenes efforts by the City to encourage its residents to report crime and work with law enforcement officers to make communities safer.

For these reasons, the City Bar supports the City Council's efforts to curb the DOC's collaboration with ICE by placing reasonable limitations on its detainer policy. This legislation will go a long way towards relieving the financial costs and the erosion of public safety caused by the current DOC-ICE detainer policy.

However, we do note that the City Council could go further to address some of the other concerns that the City Bar has previously outlined in its February 3, 2011 letter to Speaker Quinn, particularly with respect to the DOC-ICE detainer policy's unintended costs—financial and otherwise—to the criminal justice system as a whole. For example, we would urge the City Council to consider the millions of dollars of unreimbursed cost to the City caused by the delayed justice that the current detainer policy creates for immigrants with pending criminal cases. The placement of immigration detainers in pending cases often complicates a plea bargaining resolution that would otherwise be straightforward, practical, and just for all stakeholders in the criminal justice system. These costs of delayed justice include the costs of prolonged detention in City jails when an individual would otherwise be released on bail, costs to the City for transportation of detainees to and from court, as well as extended case processing costs for the District Attorneys' offices, the public defense providers, and the courts. In addition, we note that the placement of immigration detainers often interferes with defendants' ability to participate in the City's renowned alternative to incarceration programs, even when the judge, prosecutor, defense attorney, defendant, and other criminal justice stakeholders all agree that this alternative is the best course of action for the defendant and our community. For these individuals and many others with pending cases, the current DOC-ICE detainer policy creates numerous problems for the criminal justice system as a whole. By expanding the category of individuals who shall not be held under ICE detainers, legislation could further reduce the amount of wasted and unreimbursed City resources and promote criminal justice objectives.

Moreover, we note that our concerns about due process, public safety, and community trust in the criminal justice system extend not only to individuals with no criminal records, but also to the many lawful permanent residents, refugees, and other immigrants who may have a past criminal record but would also be eligible for waivers of deportation if given the chance to defend their immigration cases close to family and counsel here in the City. For these reasons and others that we outlined in our February letter, we ask the City Council to consider our committees' suggestions with respect to a more robust change to the detainer policy in New York.

In summary, the New York City Bar Association supports Int. 656 as an important first step in addressing the harmful and costly detainer policy in our city, and we further urge the City Council to consider our suggestions for even stronger limitations on DOC-ICE collaboration given its adverse effects on the criminal justice system as a whole. In addressing these issues, the City would save valuable resources for which it is not reimbursed by the federal government, while ensuring that there are at least some restraints in place that protect immigrant New Yorkers from a federal immigration enforcement policy that does not serve the ends of justice.

NEW YORK CITY BAR

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February 3, 2011

The Honorable Christine C. Quinn
Speaker, New York City Council
250 Broadway, Suite 1856
New York, NY 10007

Re: Proposal to Limit Collaboration Between New York City Department of Correction ("DOC") and U.S. Immigration and Customs Enforcement ("ICE")

Dear Speaker Quinn:

On behalf of the New York City Bar Association's Criminal Courts Committee, Immigration and Nationality Law Committee and Corrections Committee, we write to urge the City Council to pass legislation that would limit DOC's collaboration with ICE in the holding of immigrant New Yorkers under ICE detainers. DOC's current collaboration policy costs the City millions of dollars every year, imposing a tremendous financial burden on the City's limited resources. The policy also causes significant harm to the City's residents while creating substantial roadblocks in the criminal justice system. Nothing proposed in this letter would serve as a legal impediment to ICE's power to place any individual in removal proceedings.[1]

About Us

The Criminal Courts Committee of the New York City Bar Association ("City Bar") is composed of city judges, prosecutors, defense attorneys, and law professors with a range of perspectives who together seek to improve the operations of the New York City Criminal Court and the Criminal Term of the New York State Supreme Court. The Immigration and Nationality Law Committee of the City Bar, composed of immigration lawyers, addresses legal issues that arise from immigration and nationality law. The Corrections Committee of the City Bar is composed of judges and government, public-interest and private-sector lawyers, and addresses legal issues including conditions of confinement; access to justice for prisoners, detainees and people with conviction histories; and prisoner reentry.

[1] ICE can always initiate removal proceedings against an individual by serving him with a Notice to Appear or other charging document and filing that document with an immigration court.

Action to Limit DOC's Collaboration with ICE Would be Timely and Justified

The City Council's attention to ICE's presence and activities on Rikers Island and DOC's collaboration with ICE on federal immigration enforcement comes at a critical time. Comprehensive immigration reform at the federal level has become unlikely in the near future. As a result, the City's large and thriving immigrant population remains vulnerable to the federal government's enforcement-only agenda of detection, detention and deportation. ICE's placement of immigration detainers against both pre-conviction and post-conviction immigrant detainees at DOC facilities comprises the single largest means by which New Yorkers end up in immigration detention; each year 3,000-4,000 New Yorkers are transferred from DOC to ICE custody.[2] Given the federal government's emphasis on enforcement, these numbers will likely increase if DOC continues to accede to every ICE detainer request.[3]

Many New York City immigrants have valid and strong defenses against deportation when placed in removal proceedings. Many immigrants are lawful permanent residents, refugees, and other immigrants who may be eligible for waivers of deportation. Even undocumented immigrants may also have strong defenses against removal. For example, undocumented immigrants may have a current or foreseeable basis to obtain lawful permanent residence through a family member. They may have been victims of trafficking or other crimes that provide a basis for their obtaining special visas designed to protect them. They may have legitimate asylum claims based on their fear of persecution if returned to their home countries. In addition, their criminal case may result in a dismissal or other disposition that does not block the availability of these defenses. Nevertheless, if they spend any time at Rikers and an immigration detainer is lodged against them, these individuals end up trying to fight their deportation cases from detention facilities as remote as Louisiana and Texas, far away from family and access to adequate legal counsel; as a result they are often unable to defend themselves against their removal charges.[4]

If left unexamined and unrestrained, DOC's extensive collaboration with ICE would remain inconsistent with New York City's interests in protecting the due process and other rights of its immigrant residents. As elaborated below, ongoing and unlimited collaboration also raises economic and public safety concerns. Finally, it would run counter to the City's criminal justice goals.

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[2] *See* ICE FOIA Response Letter to Prof. Nancy Morawetz, New York University School of Law, dated Dec. 12, 2008.

[3] The City Bar, through its Civil Rights Committee, is urging New York State to rescind its May 10, 2010 memorandum of agreement with ICE to participate in the Secure Communities program. This program would permit ICE to access the fingerprints of individuals in local law enforcement custody and compare those prints with ICE's own database.

[4] *See, e.g.*, Human Rights Watch.*Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2, 2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*,OIG 10-13 (Nov. 2009).

DOC's Current Collaboration Policy Wastes Valuable City Resources

Recent preliminary findings by Justice Strategies indicate that noncitizens at Rikers Island with an immigration detainer spend an average of *73 days longer in jail* before being discharged than people without an ICE detainer.[5] The unreimbursed cost to the City of this prolonged detention, if the cost of DOC personnel and facilities necessary to hold these thousands of immigrant New Yorkers each year is included, surely runs in the tens of millions of dollars.[6] The unreimbursed cost to the City must run an additional millions of dollars if the costs of delayed justice are factored into the equation. Because the immigration detainer complicates a plea bargaining resolution that would otherwise be straightforward, practical, and just, these costs of delayed justice include the costs to the City for transportation of detainees to and from court, as well as extended case processing costs for the District Attorneys' offices, the public defense providers, and the courts.

The City has Authority to Pass Legislation that Limits DOC's Holding of New Yorkers Under ICE Immigration Detainers

As ICE publicly recognizes, its civil detainers are *requests* - not mandates - to local law enforcement agencies to detain named individuals for up to forty-eight hours after they would otherwise be released from criminal custody, to allow ICE the opportunity to take these individuals into immigration custody.[7] *New York City and DOC, therefore, are not legally obligated to collaborate with federal immigration detention requests.*

Nevertheless, DOC currently collaborates extensively with ICE toward its enforcement policy. DOC: (i) allows ICE agents to maintain a presence at DOC's facilities; (ii) allows ICE agents to interview DOC detainees and sentenced inmates at DOC's facilities; (iii) shares DOC inmate database information with ICE, including whether or not a DOC inmate is foreign-born; and (iv) detains people at DOC facilities on civil immigration detainers issued by ICE for up to 48 hours

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[5] Justice Strategies, *New York City Enforcement of Immigration Detainers, Preliminary Findings* (October 2010).

[6] *See* City of New York, Office of the Mayor, *Mayor's Management Report* (September 2010) at 150, which indicates average cost per inmate per year to be more than $76,229 in FY 2010). Based on that figure, the average cost per inmate per day is $208, which multiplied by 73 days comes to a cost of more than $15,000 per each of the 3,000-4,000 New Yorkers transferred from DOC to ICE custody every year.

DOC receives some federal money every year under the State Criminal Alien Assistance Program ("SCAAP"), a program that provides federal payments to localities to cover a fraction of the costs incurred for incarcerating certain pre-trial, undocumented immigrants (those with one felony or two misdemeanor convictions and who have been incarcerated for at least four consecutive days). This SCAAP funding is not, however, dependent on DOC's holding people under ICE detainers. DOC's receipt of SCAAP funding should therefore remain unaffected by anything proposed in this letter. In any event, any possible reduction in SCAAP funding as a result of legislation proposed in this letter (to the extent such legislation reduces pre-trial incarceration of qualified immigrants) would only be caused by a much greater reduction in DOC's overall costs of holding immigrants under ICE detainers.

[7] *See, e.g.*, Letter from David Venturella, Assistant Director of ICE, to Miguel Martinez, County Counsel, County of Santa Clara, California, in or about September 2010.

after they would otherwise been released from DOC facilities.[8] DOC engages in this collaboration with ICE as a matter of course without any apparent exercise of discretion, against immigrant New Yorkers *before* they have been convicted of any crime, and whether or not they have been in the United States for many years. Current DOC practice even allows for immigration detainers to issue against teenagers and other young people under 21 years old, victims of trafficking and other crimes, the physically and mentally disabled, primary caretakers of children, and people with U.S. citizen immediate relatives.

City legislation should impose limits on the scope and nature of DOC's collaboration with ICE. It should create a framework for the collaboration that would allow immigrant New Yorkers to face deportation charges here in New York, rather than in remote places far away from supportive family members and available *pro bono* or otherwise affordable legal counsel. These limitations would result in significant cost-saving, as well as fair and reasonable parameters for DOC's practices in the holding of immigrants under ICE detainers.

The following are our legislative recommendations:

- Where no criminal conviction has yet resulted: (i) prohibit DOC from holding immigrants under ICE detainers; and (ii) condition DOC's sharing of pre-trial detainee records with ICE on the severity of the crime charged. Every year, thousands of pre-trial detainees held at Rikers Island are there because they have been arrested for low-level, non-felony criminal charges (such as smoking marijuana in public, jumping a subway turnstile, or shoplifting) and, because they are indigent, are unable to post even a modest bail amount set by the criminal court.[9] Our understanding is that ICE's enforcement priorities focus on a much more select group of removable immigrants who have been *convicted* of serious crimes, such as "aggravated felonies," or who already have deportation orders entered against them. Yet ICE currently issues detainers against both pre-trial Rikers detainees whom it suspects are removable, as well as post-conviction inmates who are serving time on their sentences. DOC currently shares with ICE internal data on immigrants who have only been charged, but not convicted, of criminal offenses. Furthermore, DOC shares this data even in the cases of individuals with low-level, non-felony charges. Finally, DOC keeps these people under ICE detainers even when the criminal court has set a relatively low criminal bail that the defendant's family is ready and willing to pay.

  To ensure that the City assists ICE only in a manner more consistent with ICE's own enforcement priorities, the City should prevent DOC from holding pre-trial detainees under ICE detainers, at least unless and until a conviction for a crime is entered by the criminal court. Moreover, the City should limit DOC's potential sharing of its data on immigrants who have not yet been convicted of a crime. DOC should limit that potential data sharing to those instances where the top charge is for a felony. If a person has been

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[8] NYC Council FY 2011 Preliminary Budget Hearing, March 10, 2010, NYC Council FY 2011 Executive Budget Hearing, June 1, 2010.

[9] *See* Secret, Mosi, "N.Y.C. Misdemeanor Defendants Lack Bail Money," *New York Times* (Dec. 12, 2010).

charged with a felony, DOC should then exercise its discretion as to whether to share information with ICE. Factors to consider in this exercise of discretion should include whether a person is suffering from serious physical or mental illness, disabled, elderly, a juvenile, pregnant, nursing, or otherwise particularly vulnerable.[10]

- Where a criminal conviction does ensue, condition DOC's holding an individual under an ICE detainer on the severity of the conviction. For the thousands of pre-trial detainees facing low-level charges, the disposition of their cases often results in a conviction for a violation such as Disorderly Conduct, or another lesser offense than the crime charged, if it results in a conviction at all. Other detainees who are ultimately convicted of a crime often receive a non-jail sentence, such as probation or community service, or receive only a modest jail sentence because the severity of the crime does not merit more. The City should require DOC to limit its potential holding of people under ICE detainers to only those instances where the conviction is a serious one. We propose that the threshold conviction be (i) for a felony that (ii) resulted in a jail sentence of more than six months. If a person has been convicted of a felony and sentenced to more than six months, DOC should then exercise its discretion as to whether to comply with an ICE detainer with respect to a particularly vulnerable individual.[11] In this manner, the City would ensure that individuals who have been convicted of minor offenses, or who are particularly vulnerable, remain free from routine ICE detention. ICE can still, if it so chooses, initiate removal proceedings against any individual it believes appropriate by serving him with a Notice to Appear or other charging document and filing that document with an immigration court.

- Even where a felony conviction ensues and the sentence imposed exceeds 6 months, condition DOC's compliance with an ICE detainer on sufficient evidence from ICE demonstrating the legitimate basis for the detainer's issuance. DOC should ensure that its compliance with ICE detainers is based on sufficient evidence of the detainer's legitimate basis, such as evidence that a Notice to Appear or other ICE charging document has been served on the individual *and* filed with the local immigration court. This additional restriction on DOC's compliance with ICE detainers would serve two purposes. First, it would provide the City some assurance that ICE has performed a sufficient level of investigation regarding the immigration charges underlying the detainer. Second, it would afford New Yorkers transferred from DOC to immigration custody the opportunity to face their removal charges here in New York.

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[10] Indeed this would be consistent with ICE's own stated enforcement priorities. "*Absent extraordinary circumstances or the requirements of mandatory detention, field office directors should not expend detention resources on aliens who are known to be suffering from serious physical or mental illness, or who are disabled, elderly, pregnant, or nursing, or demonstrate that they are primary caretakers of children or an infirm person, or whose detention is otherwise not in the public interest.*" *See* Morton, John, ICE Assistant Secretary, "Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens" (Policy No. 10072.1; FEA No. 601-14). And in the exercise of prosecutorial discretion, "[p]articular care should be given when dealing with lawful permanent residents, juveniles, and the immediate family members of U.S. citizens." *Id.*

[11] See footnote 10 above.

Currently ICE issues its detainer on a Form I-247, which informs the local law enforcement agency that ICE has taken one of four actions which purport to serve as the basis for the request to hold someone for up to 48 hours beyond their normal release date from criminal custody: (1) investigation has been initiated to determine whether the individual is removable; (2) a Notice to Appear or other charging document has already been served on the individual; (3) a warrant of arrest in removal proceedings has already been issued; or (4) deportation or removal has already been ordered. A detainer that confirms merely that "investigation has been initiated" falls far short of any adequate explanation as to why an individual should be held by DOC for up to 48 hours beyond his normal release date. It is extremely disturbing that the City restrains a person's liberty upon on a mere "notice," issued by a non-judicial ICE officer and without basis in any showing of probable cause. Such a policy might well deprive individuals of their liberty without due process of law. More so where no detailed explanation of the "investigation" is given. Rather than take ICE's word on the mere existence of an investigation, the City should prohibit DOC compliance with any detainer that does not confirm that a charging document has been served on the individual and filed in the local court, and that does not attach a copy of that charging document to the detainer.[12] In this manner, the City can ensure that individuals are afforded notice of ICE's factual allegations and charges of removal against them (the purported basis for the detainer).

Where a Notice to Appear or other charging document has not been served on an individual *and filed* with the New York Immigration Courts, the individual held by DOC beyond his or her normal release date from Rikers may subsequently be detained by ICE and placed in removal proceedings anywhere in the country, often far from New York. The City cannot dictate to ICE where to detain immigrants or where to file a charging document. By limiting the circumstances under which DOC will accede to ICE "requests," however, the City *can* protect New Yorkers against the onerous and prejudicial circumstance of remote detention. Requiring a detainer to confirm that a charging document has been served and filed in a local immigration court as a condition of DOC compliance with the detainer would ensure that New Yorkers transferred from Rikers to immigration custody are afforded the opportunity to face the removal charges against them here in New York, even if they are detained during the proceedings.[13]

Additional Reasons Why Limiting DOC's Collaboration with ICE is Warranted

Current DOC collaboration with ICE undermines public safety. It also interferes with the criminal justice system's goals and priorities.

- Undermines public safety. The perception that a criminal arrest will automatically lead to immigration detention and deportation undermines the trust of the immigrant and ethnic communities in local law enforcement. This perception, and DOC's contribution to it

[12] We do not request here that DOC should be prohibited from compliance where a warrant of arrest has been issued or where deportation or removal has already been ordered.

[13] The City would incur no increased costs if New Yorkers were transferred to and held in immigration detention facilities in or near New York, as opposed to in remote locations. The cost of immigration detention is assumed by the federal government.

through its extensive collaboration with ICE, can have a chilling effect on immigrant New Yorkers who may wish to report a crime for fear that any interaction with police and the courts will result in the deportation of their immigrant family member or loved one. As a matter of public safety, the City's police and prosecutors have cultivated a relationship of trust with the immigrant communities.[14] Immigrant fear of coming forward to report a crime will result in a less safe New York. This result is most apparent in the domestic violence context. Many victims of domestic violence will be reluctant to come forward to report abuse if they fear that doing so will lead to their abuser's deportation. Others who do come forward often are shocked and appalled to learn that their coming forward results in such a disproportionate result as detention and deportation. As a result, they refuse to press charges. Most of the domestic violence incidents in the judicial system are misdemeanor charges, and in many instances the defendant is the family's primary or sole provider, one with whom the complainant has been for many years, and with whom the complainant shares children. District Attorney offices work closely with domestic violence victims to ensure proper punishments and to prioritize the needs of the victim and the victim's children (statistics show that the vast majority of domestic violence "victims" are women). The appropriate punishment, and the needs of the victim, in many cases call for a resolution that keeps the family together, often requiring a defendant to engage in "counseling" and to abide by an order of protection, yet permitting the defendant to have contact with, and to provide support for, the victim and children. Deportation, for many of these cases, is the last result that the victim and her children want or need. If victims know that DOC collaboration with ICE will result in an immigration detainer against the abuser, victims will stop calling the police.

- Interferes with criminal justice system goals and priorities.

    - In New York City, there are multiple alternative to incarceration possibilities for criminal defendants - citizen and noncitizen alike - who pose no threat to public safety and are strong candidates for pre-conviction participation in mental health court, drug treatment programs, and other diversion programs. There are many instances in which judge, prosecutor, defense attorney, defendant and other criminal justice stakeholders all agree that such alternative is the best course of action for the defendant, our community, and in the interest of justice. To participate in such programs, however, the client must be at liberty, and the issuance of an immigration detainer prevents this possibility.[15]

    - In other instances, at arraignment, the Criminal Court judges set only a low bail amount for a noncitizen defendant, after determination that the defendant poses little risk of flight. If the defendant's family or friends cannot post the bail on the

[14] As part of this effort, for example, District Attorney offices make no distinction between crime victims who are citizens and those who are not (except when they may assist undocumented crime victims to achieve certain immigration protections).

[15] *See* New York City Bar Association, Committee on Criminal Justice Operations, *Immigration Detainers Need Not Bar Access to Jail Diversion Programs* (2009).

day of that determination, the defendant is then taken to Rikers, where the ICE detainer is issued against him. Issuance of the ICE detainer prevents the defendant's release, even when family and friends are later ready to post the criminal bail. The result is forced detention of people, sometimes for months or years, before final disposition of their criminal case. This places a heavy burden on criminal justice system resources. Defense counsel who would otherwise counsel their clients toward speedier resolution of a case are forced instead to request multiple continuances as they investigate the impact of immigration considerations on the criminal case. Prosecutors' offices are forced to maintain these cases over longer periods of time. Within a system that is already burdened by overwhelming dockets, courts are frustrated by the difficult and lengthy processing of these cases in particular.

- Some judges may set a high bail for an undocumented defendant even if the defendant poses no risk of flight. These judges are concerned that if a low bail is set, the defendant will "disappear" into immigration detention once their family members post bail. Often, many noncitizen defendants do indeed get whisked away to remote ICE detention facilities. Although they may wish to answer their criminal charges, they are either never produced in criminal court by ICE, or are produced only with great difficulty and expenditure of time and resources by the criminal justice system.

Conclusion

For the above reasons, we urge the City Council to enact legislation that limits DOC's sharing of information with ICE and holding of New Yorkers under immigration detainers. In the ways proposed above, the City would save valuable resources for which it is not reimbursed by the federal government, while ensuring that there are reasonable restraints in place that protect immigrant New Yorkers from a federal immigration enforcement policy that does not serve the ends of justice.

Very truly yours,

Robert Dean, Chair Criminal Courts Committee	Mark Von Sternberg, Chair Immigration & Nationality Committee	Sara Manaugh, Chair Corrections Committee

cc: Councilmember Domenic Recchia
Chair, City Council Finance Committee

Councilmember Daniel Dromm
Chair, City Council Immigration Committee

Councilmember Elizabeth Crowley
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TESTIMONY OF EUGENE J. GLICKSMAN, CO-CHAIR, IMMIGRATION AND NATIONALITY COMMITTEE, NEW YORK COUNTY LAWYERS' ASSOCIATION, BEFORE THE COMMITTEE ON IMMIGRATION, NEW YORK CITY COUNCIL REGARDING INT. 656 – IN RELATION TO PERSONS NOT TO BE DETAINED

PRESENTED OCTOBER 3, 2011

These Comments are solely those of the Committee on Immigration and Nationality of the New York County Lawyers' Association. They have not been approved by the Board of Directors of the New York County Lawyers' Association and do not necessarily represent the views of the Board of Directors.

The New York County Lawyers' Association
Committee on Immigration and Nationality Law

Eugene J. Glicksman, Co-Chair
Gilbert C. Ferrer, Co-Chair

TESTIMONY OF EUGENE J. GLICKSMAN, CO-CHAIR, IMMIGRATION AND NATIONALITY COMMITTEE, NEW YORK COUNTY LAWYERS' ASSOCIATION, BEFORE THE COMMITTEE ON IMMIGRATION, NEW YORK CITY COUNCIL REGARDING INT. 656 – IN RELATION TO PERSONS NOT TO BE DETAINED

PRESENTED OCTOBER 3, 2011

On behalf of the Immigration and Nationality Committee of the New York County Lawyers' Association, this letter is being submitted to urge, as strongly as possible, that the New York City Council adopts the above-cited amendment to the Administrative Code of the City of New York regarding persons not to be detained by the New York City Department of Corrections ("DOC") on behalf of the federal **office of** Immigration and Customs Enforcement ("ICE") with the changes prepared and proposed by this Committee.

The legislative findings and intent of the proposed amendment clearly state the facts that while the City of New York generally, and the DOC specifically, have no obligation to cooperate with ICE's Criminal Alien Program ("CAP"), DOC (i) allows ICE agents to maintain a presence at DOC's facilities, (ii) allows ICE agents to interview DOC inmates at DOC's facilities, (iii) shares DOC inmate database information with ICE, including place of birth, and (iv) honors immigration detainers issued by ICE for up to 48 hours. The findings go on to clearly show that in 2009 and 2010, roughly one-half of those persons against whom ICE had issued detainers had no criminal convictions or any criminal record at all.

The results of honoring these detainers are that families are torn apart, persons who pose no threat to society are processed for deportation, trust and cooperation between the City's law enforcement agencies and the various immigrant communities is badly damaged or destroyed, and NYC taxpayer dollars are needlessly wasted in these efforts while programs for NYC's citizens are badly in need of funding. It is for these reasons and more that we support this proposed amendment to the Administrative Code of the City of New York. We believe, however, that the proposed amendment needs further modification before being presented to the full Council for a vote.

As proposed, subsection (b) of §9-131 reads as follows:

> b. Prohibition on use of department resources. The department shall not use any department resources to honor a civil immigration detainer by: (1) holding an individual beyond the time when such individual would otherwise be released from the department's custody or (2) notifying federal immigration authorities of such individual's release, provided that such individual (i) has never been convicted of a misdemeanor or felony; **(ii) is not a**

defendant in a pending criminal case; (iii) has no outstanding warrants; (iv) is not and has not previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1; and (v) is not identified as a confirmed match in the terrorist screening database.
(Emphasis added.)

Since the thrust of this amendment is that New York City "...should not be a willing participant in a program that separates thousands of immigrant families each year without a concomitant benefit to public safety," it cannot be stated too strongly that the presumption of innocence must not be ignored. There can be no dispute that the public at large will benefit by notifying ICE of those convicted of serious violations of law so that they may be removed from the United States in a legal and expeditious manner. However, those merely charged with committing an offense, but who have not been convicted, would have their identities and personal data given to ICE under the above cited provision. Permitting information on such individuals to be shared with ICE would undercut the stated rationale for this amendment; that only those convicted of serious offenses, rather than merely charged, should be placed into removal proceedings. We therefore urge that the cited language be deleted in its entirety from the proposed amendment.

We join with the members of the New York City Council who introduced and sponsored this bill in believing that the sharing of information with ICE regarding those whose only "crime" is to have been born outside of the United States should neither be the responsibility nor duty of DOC. Immigration law is Federal law, both to be made and enforced by Federal, not City, agencies. Absent any binding legal requirement, no City agency should voluntarily cooperate with ICE with regard to reporting those non-citizens who are or may be convicted of a serious crime. We believe that New York City should join Illinois' Cook County Board of Commissioners, who on September 12 voted 10-5 against honoring ICE's 48-hour voluntary immigration detainers, citing the prohibitive cost of detaining individuals.

We strongly urge that you review and accept this proposal in order to reduce existing problems and prevent the creation of even greater and more serious ones. We believe that the proposed amendment to the Administrative Code, with our suggested change, will go far to provide this to all the residents of this City.

Respectfully submitted,

EUGENE J. GLICKSMAN
Committee Co-Chair

Testimony before the New York City Council Committee on Int. No. 656 – In Relation to Persons Not to be Detained: Monday October 3, 2011, 10:00 am

Good morning. My name is Ermela Singh, and I am a Staff Attorney in the Family Law and Domestic Violence Unit at Legal Services NYC (LS-NYC). As a Staff Attorney, I represent low-income, primarily immigrant survivors of domestic violence on family law as well as immigration matters. With respect to family law matters, I represent clients on divorces, custody/visitation, family offense petitions, spousal support and child support cases. With respect to immigration matters, I file VAWA Self-Petitions, U Visas, and Battered Spouse Waivers with the goal of adjusting status and securing permanent residency for my clients and their children.

I would like to thank the Council Members for the opportunity to testify at today's hearing regarding Resolution 656, which LS-NYC strongly endorses. The passage of Resolution 656 is long overdue, and I believe it would contribute to the safety and stability of domestic violence survivors throughout New York City by encouraging survivors to come forward to report crimes of violence they experience to local authorities, to escape abusive situations and to build stable, safe lives for themselves as well as their children.

Over the recent years, programs such as "Secure Communities," 287(g) and the Criminal Alien Program (CAP) implemented by the U.S. Immigration and Customs Enforcement (ICE) have resulted in the unprecedented entanglement of state and local law enforcement with federal immigration enforcement. Although Governor Cuomo has suspended New York's participation in the Secure Communities program, the CAP program is very much alive at Rikers.[1] Under CAP, jail officials notify ICE if non citizen has been taken into custody and ICE is deployed to local jails to identify and assume custody of non citizens and take enforcement actions. Local law enforcement typically does not take into

[1] Although New York has suspended it's participation in the Secure Communities program, in June, 2011, DHS recently announced on August 5, 2011, that it no longer needs agreements with state and local law enforcement agencies to implement the program (*See e.g.* "ICE declares 'Secure Communities' Mandatory, Not Optional" available at http://www.immigration.net/news-and-articles/midaug2011news/article2). With respect to the 287 (g) program that allows state and local law enforcement to enter into partnerships with ICE to receive delegated authority for immigration enforcement, as of 9/2/2011, no jurisdiction in New York State participates in the 287 (g) program (*See* "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act" available at http://www.ice.gov/news/library/factsheets/287g.htm).

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consideration any mitigating factors before submitting fingerprints to the FBI, such as whether a person is a victim of domestic violence or whether the charges they are facing may be the result of a false or retaliatory report made by the abuser. Even for individuals who are not subsequently charged with a crime, if local law enforcement enters their fingerprints into the local database, scrutiny by ICE will be triggered.

Therefore, local law enforcement entanglement with ICE puts survivors of domestic violence at increased risk in situations such as:

- Dual arrests (arresting both people) in domestic violence cases, particularly where language is a barrier and hinders survivors' ability to explain in detail what happened and whether they acted in self-defense;
- Perpetrators reporting false or retaliatory allegations to the police in order to expose victims to ICE;
- Local law enforcement entering victims' fingerprints into the FBI/ICE database because they incorrectly think they must, because they fail to determine that the person is a victim, because they think being in the United States without documents is a crime (it is not) or because they fail to follow ICE prioritization standards;
- Other immigrant survivors in the community becoming further isolated with increased fears of contacting the police or seeking help, thus allowing abusers to use distrust of the system and threats of deportation as tools of abuse.

Although ICE recently issued new guidelines regarding the prioritization of ICE enforcement actions, in which they emphasize that ICE officials should focus on serious criminal offenders, and that they should take particular care not to start deportation proceedings against a person known to be a victim or witness to a crime, there is still profound fear and mistrust faced by our clients given the current anti-immigration climate as well as ICE's guidelines are discretionary and questions remain as to how and whether they will be followed.[2] In fact, some advocates for survivors of domestic violence in New York City have resorted to advising clients not to contact the police if they are undocumented, especially since many civil legal services are under-funded and understaffed, rendering them without the capacity to represent women held in detention.[3]

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[2] *See* "ICE Memorandum on Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, June 17, 2011" available at http://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf. For an overview of these guidelines, *see e.g.* Immigration Policy Center's Report "The Morton Memo and Prosecutorial Discretion: An Overview" available at http://www.immigrationpolicy.org/special-reports/morton-memo-and-prosecutorial-discretion. For a discussion of the extent to which ICE has been off target with its stated guidelines, *see e.g.* AILA's Report, "Immigration Enforcement Off Target: Minor Offenses With Major Consequences" available at http://www.aila.org/content/fileviewer.aspx?docid=36646&linkid=236762.

[3] *See* "Homeland Security Laws Create Dangers for Victims of Domestic Violence" available at http://www.safehorizon.org/index/pressroom-5/safe-horizon-in-the-news-28/news/homeland-security-laws-create-dangerfor-victims-of-domestic-violence-52.html.

I believe that the passage of Resolution 656 could help to lessen survivors' fear and mistrust of local law enforcement that prevents them from reporting the violence they face, as Resolution 656 seeks to curb the unfettered cooperation between the New York City Department of Correction ("DOC") and ICE. I would like to tell you about one of my clients, to provide an example of the extent to which local law enforcement's cooperation with ICE leads to suspicion of local law enforcement, and is particularly harmful and dangerous to survivors of domestic violence.

My client, who I will refer to as Jane, is a survivor of horrific violence from her former boyfriend, a U.S. citizen, with whom she has a young child. During their relationship, my client experienced severe sexual and physical abuse including being violently raped, strangled, punched, put in a headlock, dragged outside the home, pushed down the stairs, and her head being pushed in a toilet bowl full of excrement several times. She also experienced severe verbal and emotional abuse including being called "whore," "bitch," "piece-of-shit," "scumbag," and "ignorant immigrant." Her abuser also constantly threatened her. His threats included killing her, which became more graphic over time, as well as reporting her to immigration authorities to have her deported, and separated from her United States born child. Because of the pattern of horrific abuse and threats, particularly to have her deported and separated from her child, and her understanding of the immigration system as being draconian, she believed that this would actually happen, and was therefore, too fearful to report the abuse. She believed that she would be deported, and could not bear the thought of living without her child.

Therefore, she continued to live with the abuse. It was only through the intervention of strangers that the abuser was finally arrested. Earlier this year, my client miscarried because of the abuse against her. On the way home from the hospital, her abuser threw her out of the car and dragged her along the street. Several witnesses to the event called the police, and the abuser was arrested and a criminal case brought against him.

However, the abuse did not end in spite of the abuser's arrest and the valid orders of protection issued in favor of my client. The abuser continued to threaten and intimidate my client via emails and third parties. Even more troublingly, he attempted to use the criminal justice system against my client in the effort to get her deported and separated from her child, as he had threatened. A few months after the abuser's arrest, my client was arrested on uncorroborated charges made by a member of the abuser's family. After seeing a criminal court judge, who released her on her own recognizance, she was then held by local law enforcement, who advised her that she would be turned over to ICE because of an immigration detainer placed on her.[4]

At the time that she was held by local authorities for transfer to ICE's custody, my client had no prior arrests. She had never been convicted of a felony. She had never been convicted of a misdemeanor. There were no outstanding warrants or previous orders of removal issued against her. She certainly did not pose a threat to the welfare and safety of the general public. Her only crime was that she had finally escaped a virtual prison – a violent, abusive relationship – and that her abuser was finally being brought to justice, causing him to seek revenge. At the time she was taken into custody, my client was also suffering from severe PTSD as a result of the abuse and miscarriage, and was still nursing severe physical injuries from the last assault. At the time she was held, Jane also had a 2 year old child, and every moment she spent in detention gave her abuser a greater chance of taking custody of that child from her. To make matters worse, all her fears about facing deportation if she reported the abuse

[4]For a discussion of immigration detainers, *see e.g.* National Immigration Project's Report, "Understanding Immigration Detainers: An Overview for State Defense Counsel" available at http://www.nationalimmigrationproject.org/legalresources/practice_advisories/pa_Understanding_Immigration_Detainers_05-2011.pdf.

suddenly became a real possibility. Imagine the powerful feelings of regret Jane must have felt for ever seeking help from the police at that moment she was told she would be turned over to ICE.

In Jane's case, she was one of the fortunate few who did have legal representation. I advocated with ICE on her behalf, explaining the long, severe history of domestic violence against her, providing documentation of the abuse, as well as explaining that the allegations against her were retaliatory. I also explained how her mental health had been severely affected by the abuse, and how further damaging it would be to her health if ICE were to detain her. I explained that her two-year old child needed her at home and the harm it would cause her child if she could not be there for her. As a result, ICE lifted the detainment against Jane and she was released later that day and reunited with her child. Had she not been one of the very few who had the benefit of having an attorney at the time the immigration hold was placed on her, she would have been held indefinitely with no ability to document her situation from her holding cell and her child could have ended up in the care of the abuser. Equally disturbing, without immediate LS-NYC's intervention, Jane would most likely have been transferred to an ICE detention center out of state, separating her from our office and affecting our ability to continue to represent her.

My understanding of the resolution being proposed today is that it would not prohibit the use of DOC resources to honor a civil immigration detainer where there is a pending criminal case against an individual. I urge the Council make an exception for survivors of domestic violence, particularly if the pending criminal case involves the abuser, or people under his control and influence, as the complaining witness. As Jane's case illustrates, survivors of domestic violence often endure severe and long-lasting abuse precisely because they are often suspicious of local law enforcement officials, which when compounded by an abuser's threats to have them deported, discourage them from reporting the most severe abuse. As Jane's case further illustrates, abusers often act on their threats, and are quite adept at using the criminal justice system as well as the federal immigration system against their victims. If DOC is allowed to use resources to honor a civil immigration detainer when there is a pending criminal case based on an abuser's allegations, how long would Jane have been detained based on unverifiable allegations made by a vengeful abuser? It can take several months before a criminal case is resolved in New York City. Such a detainment would undoubtedly cause great harm to survivors as well as their children, and could impact their lives even after they are released, the most glaring example being their ability to retain custody of their children.

Without changes to the current law, survivors of domestic violence will continue to be fearful and distrustful of local law enforcement, and unwilling to report violence against them. They will continue to believe that there is no distinction between local law enforcement and federal immigration authorities. They will continue to fear that their abusers would act on threats to use the criminal justice system against them to have them detained and deported, and separated from their children, compounding the mental and physical trauma they experience.

Therefore, given all of these factors, LS-NYC supports Resolution 656, and urges the passage of this Resolution, in the effort to enable New York City's undocumented domestic violence survivors to achieve safe, secure, stable lives for themselves and children.

Thank you.

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Jacqueline Esposito, Esq.
New York Immigration Coalition, Director of Immigration Advocacy
New York City Council Committee on Immigration
Hearing regarding Int. No. 656, A Local Law to amend the Administrative Code of the City of New York, in relation to persons not to be detained

Introduction

My name is Jacqueline Esposito and I am the Director of Immigration Advocacy at the New York Immigration Coalition (NYIC). The NYIC is an umbrella policy and advocacy organization for nearly 200 groups in New York State that work with immigrants and refugees. The NYIC aims to achieve a fairer and more just society that values the contributions of immigrants and extends opportunity to all. In my prior capacity, I was a Staff Attorney at the Criminal Defense Division of the Legal Aid Society in Manhattan where I witnessed firsthand the impact of the rapidly expanding merger of immigration enforcement with the criminal justice system. I appreciate the opportunity to testify before you today about Int. No. 656, A Local Law to amend the Administrative Code of the city of New York, in relation to persons not to be detained. This proposed amendment is an important first step toward protecting the rights of immigrants because it imposes some limits on the Department of Corrections collaboration with U.S. Immigrations and Customs Enforcement (ICE), the interior immigration enforcement bureau of the Department of Homeland Security (DHS).

The merger of the civil immigration system and criminal justice system is nowhere more apparent than the Criminal Alien Program (CAP). In New York City, CAP allows federal immigration agents to interview immigrants in Department of Corrections (DOC) custody, share DOC inmate database information with ICE, and jail immigrants for up to 48 hours after their scheduled release from DOC custody based upon non-binding "immigration detainers"[1] for what I.C.E. calls "investigative purposes." Those subject to detainers include undocumented immigrants, as well as lawful permanent residents[2] and even those with valid claims for immigration relief.

Immigration detainers have severe consequences for immigrants held in jails. Detainers directly

[1] The term "detainer" in this context can be misleading. In the criminal justice system, a detainer is issued by a law enforcement agency, approved by a judge, and thus constitutes a mandatory arrest warrant. However, in the immigration context, a detainer is not an arrest warrant issued or approved by a judge; it is merely a non-binding request by ICE to detain an individual without actual evidence that the person has committed a crime or is unlawfully present in the country.

[2] Immigration law provides that lawful permanent residents and other legal visa holders may be deportable for minor violations and misdemeanors. Immigrants may even be deported retroactively for past criminal convictions. For example, a non-citizen arrested for a current traffic violation may be subject to an immigration detainer and later deported for a crime committed in the past, even when that act was not a deportable offense at the time committed, and even where the sentence has been served.

impact an individual's due process rights and can have severe collateral consequences in a person's criminal case. New York City also incurs significant costs as a result of prolonged incarceration of immigrants who could have otherwise been released from DOC custody.

The widespread use of detainers has resulted in disparate treatment of immigrants in the criminal justice system.

ICE's indiscriminate issuance of detainers has led to rapidly increasing numbers of non-citizen defendants being subjected to significantly longer periods of incarceration. For example, a detainer often affects a non-citizen's ability to be released on bail pending criminal charges. When ICE issues a detainer, courts sometimes consider the detainer an adverse factor when determining a bail amount or whether to set bail at all. This not only leads to prolonged pre-trial detention but also significantly interferes with a non-citizen defendant's ability to defend against criminal charges. According to preliminary research conducted by Justice Strategies, a non-profit research organization, non-citizens in DOC custody with an immigration detainer spend 73 days longer in detention, on average, than individuals not subject to an immigration detainer facing similar charges.[3]

Individuals subject to a detainer are also effectively disqualified from participating in drug or alcohol treatment programs, or other jail diversion programs. Notwithstanding the fact that such programs often allow defendants an opportunity to enter treatment instead of incarceration and have been proven successful in reducing recidivism and lowering the costs to the criminal justice system.[4]

The use of detainers has led to greater numbers of immigrants being held in DOC custody for prolonged periods of time at great expense.

Longer detention periods mean that more local tax dollars are spent on detaining immigrants. The unreimbursed cost to New York City of this prolonged detention is estimated to be in the tens of millions of dollars.[5] The practice of jailing non-citizens based upon immigration detainers also exposes local governments to significant financial liability. In some cases, inmates held under detainers longer than 48 hours have successfully obtained civil damages from the detaining authority. In 2009, an immigrant obtained a $145,000 settlement with the City of New York after being held unlawfully for more than a month on an immigration detainer.

Collaboration between local law enforcement and ICE undermines public safety.

Detainers are the keystone of programs like CAP and Secure Communities, which increasingly rely on collaboration between local law enforcement and ICE. When local law enforcement agencies, like the NYPD and Department of Corrections, collaborate with federal immigration

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[3] Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" Justice Strategies (Oct. 2010), *available at* http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_0.pdf.

[4] Association of the Bar of the City of New York, "Immigration Detainers Need Not Bar Access to Jail Diversion Programs." (June 2009), *available at* http://www.nycbar.org/pdf/report/NYCBA_Immigration%20Detainers_Report_Final.pdf.

[5] National Immigration Forum, "Immigrants Behind Bars: How, Why, and How Much?" (Mar. 2011), *available at* http://www.immigrationforum.org/research/enforcement.

enforcement agents, immigrant communities become fearful that any kind of interaction with the police will lead to detention and deportation. As noted by federal, state and local law enforcement officials, fear of local enforcement of immigration laws discourages members of immigrant communities from reporting crimes and cooperating in the investigation of crimes, making citizens and non-citizens alike less safe.

Conclusion

The expansive use of detainers has allowed DHS to vastly increase deportations at local communities' expense. Countless families have been torn apart. The trust between local police and the communities they serve has been badly damaged. And the fairness of the criminal justice system has been severely compromised. The proposed amendment to the Administrative Code is a welcome first step in addressing these challenges.

Jessica Jane Orozco, Esq.
Director of Immigration and Civic Engagement
Hispanic Federation

Testimony on Int. No. 656, A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained.

October 3, 2011

Good Morning. My name is Jessica Orozco and I am the Director of Immigration and Civic Engagement for the Hispanic Federation. I am testifying on behalf of our President Lillian Rodriguez-Lopez. I would like to thank Chairman Daniel Dromm and the entire New York City Council's Committee on Immigration for recognizing the importance of this issue and affording me and my fellow immigration advocates the opportunity to express our views on the criminal detainer program currently in effect between New York's Department of Corrections (DOC) and U.S. Immigration and Customs Enforcement (ICE).

As you may know, the Hispanic Federation is one of the leading Latino organizations in the nation and is dedicated to promoting the social, political and economic well being of the Hispanic community. We achieve this by working with 100 Latino non-profit member agencies to provide much-needed community programs and services, and advocating locally and nationally with respect to the vital issues of education, health, immigration, economic empowerment, civic engagement and the environment.

The Hispanic Federation (HF) unequivocally supports the proposed City Council legislation that would limit DOC's cooperation with ICE. We strongly believe that this bill is firmly aligned – from a civil rights, criminal justice, economic and public safety standpoint – with the interests of our great City.

The City Council's attention to DOC's collaboration with ICE on federal immigration enforcement comes at a critical time. Over the past ten years, our nation's shortsighted and damaging push for enforcement-only immigration policies has created an environment of constant fear in our immigrant communities. Recently, the Obama administration and ICE has tried to assuage that fear by stating that the federal government's Criminal Alien Program and Secure Communities Program is only focused on removing immigrants who pose a threat to public safety and national security. However, to date these words have fallen tragically short of reality and these programs continue to drive the federal government's enforcement focused agenda of detection, detention and deportation. In 2009 and 2010, approximately half of the individuals detained by ICE from Rikers did not have criminal records.

The esteemed body of the New York City Council has come to recognize that the current level of cooperation between law enforcement and ICE leads to the detention and deportation of individuals who have no prior criminal convictions or pose any threat to society. Accordingly, it has moved to correct this injustice by pushing forward bill Int. No. 656 – introduced by Council members Daniel Dromm and Melissa Mark-Viverito.

This bill will help to seriously curtail New York City's participation in this immigrant dragnet program and bring a sense of relief to immigrants across our five boroughs. Of major import is the fact that the bill will help to reduce the number of individuals sent to detention centers. Many Latino immigrants have reached out to the Hispanic Federation asking for assistance in working through the Kafkaesque detention process. They are lost, nervous and scared when a loved one is taken into detention, in which detainees have no right to phone calls to contact family to update them on their situation. In addition, these detainees are often times relocated to detention centers in other states without any notification to family members or lawyers.

Additionally, the bill will help to reduce the backlogged immigration judicial system. Since many non-criminals are eligible for prosecutorial discretion, there is no need for these individuals to wait such long periods of time, many times more than a year, to be heard by an immigration judge.

Taking action to protect non-criminal immigrants from being transferred to federal detention will undoubtedly help keep immigrant families together and save them from unnecessary emotional and economic hardships. It will also save the city a significant amount of money, possibly tens of millions of dollars. And it is congruent with the new DHS policy directive that states it is only focused on detaining and deporting noncitizen criminals who pose a threat to the public.

As the quintessential city of immigrants, New York City must no longer participate in a process that unjustly separates immigrant families and creates panic in our communities. For all the aforementioned reasons, the Hispanic Federation very much looks forward to the passage of bill Int. No. 656.

Thank you again for the opportunity to speak to you today.

Northern Manhattan
COALITION FOR IMMIGRANT RIGHTS

Testimony to New York City Council Immigration Committee
October 3, 2011

Good Afternoon.

My name is Lili Salmeron and I am a community advocate for the Northern Manhattan Coalition for Immigrant Rights. We are a non-profit organization based in Washington Heights that has been providing immigration related legal services for almost 30 years.

I want to thank the members of the City Council for this opportunity to speak. The ICE out of Rikers Bill is a very important first step in protecting our immigrant communities from the immigration dragnet that results from the collaboration between local law enforcement and ICE. At NMCIR we are very happy to see that, through this bill, the City Council recognizes that the presence of ICE in Rikers places our immigrant communities at risk and does not necessarily improve public safety.

The entanglement between Rikers and ICE, combined with over-policing, has led to an escalation of the number of deportations in our community. Our community in Washington Heights and the Bronx has been devastated by the War on the Drugs. Many of us in the room have worked to reform the Rockefeller Drug Laws, as well as to address the issue of NYPD stop-and –frisk practices and marijuana arrest policies that target communities of color. However, the immigration system does not acknowledge the possibility of discriminatory patterns of policing in immigrant communities. Thus, as a result of the War on Drugs, our community has been also been disproportionately impacted by the punitive and inflexible immigration laws passed by Congress in 1996. These laws further expanded the list of crimes that triggered mandatory deportation for non-citizens and severely restricted the ability for the vast majority of immigrants to have a fair day in court to fight their deportation. As a result, we have seen the number of deportations grow rapidly.

Hundreds of legal permanent residents come to our office each year seeking guidance on whether they are in danger of being deported if they decide to naturalize, renew their green card, or travel out of the country. Because of the combination of harsh immigration laws and the history of crime enforcement in our communities, we unfortunately need to advise them that a past criminal conviction on their record—many of them minor and non-violent—would subject them to mandatory deportation proceedings if they decided to naturalize, renew their green card or travel out of the country. And for most people, because of the draconian immigration laws, they have no opportunity to challenge their deportation at all. The record-breaking numbers of deportations of which ICE boasts—392,000 this past year—can be felt daily in our community as children are separated from their parents, mothers from their sons, husbands from their wives. These are people who have made New York their home, many of whom who have lived here for decades, who have US citizen spouses and children, who contribute positively to their communities, and who are 100% rehabilitated.

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It is widely recognized that the immigration system is broken. We need to change the laws that so severely restrict the ability of our community members to challenge deportation orders and the permanent exile of so many of our loved ones. The fight for an immigration system that upholds due process rights, gives immigrants a fair day in court, and allows judges to judge is critical for our families and our communities. At NMCIR we are deeply concerned about local law enforcement collaboration with ICE in Rikers because it is dangerous and unjust to funnel thousands of New Yorkers into a broken immigration system.

Thus, what is safe and just for our communities is to stop the entanglement between the criminal justice system and immigration enforcement, and this bill is an important first step towards that goal.

Thank you.

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Testimony of the Benjamin N. Cardozo School of Law's Kathryn O. Greenberg Immigration Justice Clinic before the New York City Council Committee on Immigration, in support of Introduction 656-2011

Sam Solomon
October 3, 2011

Thank you, Speaker Quinn, Chairman Dromm, and thank you to the rest of the committee for the opportunity to speak today. I would also like to thank Councilwoman Melissa Mark-Viverito for her leadership on this legislation and all of you for your serious consideration of this legislation.

My name is Sam Solomon. I'm here today on behalf of the Kathyrn O. Greenberg Immigration Justice Clinic, from the Cardozo School of Law, here in Manhattan. The clinic was founded in 2008 to provide pro bono legal representation to indigent immigrants facing deportation and to provide legal support to community based organizations, like Make the Road New York, which are engaged in public advocacy, media, and litigation efforts on behalf of immigrant communities.

You have heard Javier Valdes discuss the dire consequences of continuing the city's current practice on immigration detainers. Now, I will first detail the problematic way that federal immigration authorities currently operate in our City jails and how this legislation would mitigate many the problems they cause. Second, I will discuss the legal principles that make clear that the City Council would be acting within its legal authority in passing this bill.

How will this legislation work? Allow me to walk you through one immigrant's case. Let's call him Arthur. This is a true story. Arthur is a young gay man who lives in the city with his mother. He arrived here without documentation from Mexico several years ago, followed by his mother. They came here because Arthur was being persecuted in his hometown because of his sexual orientation. Arthur lived in New York for several years until one evening not too long ago he was the victim of a gay-bashing attack. Arthur fought back to defend himself and one of his attackers was injured. The police arrived and Arthur was arrested.

What happens next in this story is Arnold gets tossed into a holding cell until he can be arraigned before a judge and formally charged. In Arthur's case the prosecutor decided to press charges and the judge agreed to set bail. But like four out of five New Yorkers, Arthur didn't have family members in the courtroom at that moment, cash in hand, so he wasn't able to make bail at the time of arraignment. So Arthur is sent to Rikers.

Now, remember that Arthur has been arrested for defending himself. He hasn't been convicted of anything. He's innocent until proven guilty. But because of the way federal immigration authorities currently operate on Rikers, as soon as Arnold crosses that bridge to Rikers, the federal officers from ICE will be able to discover that they have a new foreign-born detainee to investigate. We know there are over 13,000 people like Arthur every year – foreign-born New Yorkers, still under the presumption of innocence, who get sent to Rikers because they are remanded or can't make bail. Our DOC currently provides ICE with special access to its internal databases to help them identify foreign born detainees and allows ICE free rein to come in and interrogate these thousands of people—including Arthur.

So ICE now knows about Arthur, and they will come try to interrogate him. Because of advocacy by many of the individuals sitting before you in this room, today Arthur will have an opportunity to refuse to participate. This is a relatively recent and very welcome development intended to curb deceptive practices regularly employed by ICE agents conducting these interrogations. But whether or not Arthur consents to that interview, the ICE enforcement machine is now rolling with one goal in mind: figure out whether there is any possible way they can deport Arthur or any of the thousands of other people like him each year. ICE isn't interested in what New York City law enforcement or New York judges say about him. They're not interested in whether or not he's guilty of the crime charged, or of any crime at all. They're not interested in whether he has a family in New York that he supports. They're not interested in whether he was the victim of a crime or whether he might suffer persecution if he is deported. ICE just wants to know if there is any possible way they can deport Arthur, and if they think the answer is yes then they exercise no discretion: they issue a detainer on him, like they do to about 3,500 New Yorkers per year. That is exactly what happened in Arthur's case. As Mr. Valdes told you, a detainer is a request that DOC not let Arnold go, even after charges have been dropped, so ICE can come get him, send him to one of their immigration jails anywhere in the country, and start deportation proceedings.

This is the crucial point. Once that detainer is issued, New York City's current policy is that DOC will simply hand over to ICE whoever they ask for. Every single person, every single time. In Arthur's case, he was put on trial and argued that he had acted in self-defense and a jury of New Yorkers believed him and decided to acquit. But ICE doesn't care. It doesn't matter that Arthur has been found not guilty and has no criminal record whatsoever. When Arthur was supposed to be released from Rikers, DOC instead handed him over to ICE. DOC exercises *zero* discretion in deciding whether Arnold is somebody who we, as New Yorkers, believe should be separated from his family, incarcerated potentially thousands of miles away without adequate access to legal help or medical care, and very possibly ultimately banished to a country that he left to flee persecution. All this because Arthur was the victim of a hate crime in our city and he had to stay at Rikers while he worked to prove he was not guilty.

Stories like Arthur's are all too common. The only thing unusual about Arthur's case is that he has the assistance of several of my colleagues at the Immigration Justice Clinic in applying for a crime victim's visa and fighting his deportation. Even with legal help, which most immigrant New Yorkers don't have at all, Arthur may still end up being deported, like most of the 3,500 individuals with detainers each year are.

It doesn't have to be this way. There's no rule that says DOC has to spend New York City taxpayer dollars to deport New Yorkers like Arthur. As Mr. Valdes explained, that's not how it works in Chicago. They don't treat their community members like that. Nor do other major cities and counties across the U.S. We don't have to either.

If we pass this legislation, what we will be doing is saying that some of our fellow New Yorkers in situations like Arthur's don't deserve the fate that he has suffered. What the bill says, in section 9-131(b), is that we will continue with our current policy for some people – people who get convicted of a crime, or have outstanding warrants on them still, or have already been ordered deported, or are suspected of terrorism – but that we will not simply hand over everyone, indiscriminately, without using any discretion whatsoever. What we will be saying is that there are some people we won't hand over to ICE – people found not guilty, people who have their charges dropped, people who do not have criminal records, and juveniles who are adjudicated under rehabilitative programs like our city's youthful offender or juvenile delinquent programs. This kind of policy is known as detainer discretion. That's what this bill will do.

This brings me to the next issue I want to touch on here today. Some critics have spread misinformation that you, the City Council, do not have the legal authority to choose this kind of city policy. That is false. It's a red herring. Detainers are merely requests from ICE – not orders. This is well established. You don't have to take our word for it on this. ICE itself has clearly, publicly, and repeatedly explained that detainers are mere requests—not requirements. They can't be requirements. The Supreme Court has explained that the Constitution forbids the federal government from forcing New York City to use its employees and resources to carry out federal immigration activities. This is a matter of city law enforcement and incarceration policy that you, the City Council, have clear authority to legislate on.

I hope that I've been able to make clear what effect this legislation would have in practice, and that you absolutely have the legal authority to make this change. I urge you to pass this legislation. The consequences of failing to act are disastrous not only for New York City's immigrant community but also for the city as a whole. We need a policy that makes sense for us and for our interests, not a policy that helps ICE funnel innocent New Yorkers into an unfair deportation system. Thank you for your time.

NEW YORK CITY COUNCIL
TESTIMONY FROM JOHN FEINBLATT, CHIEF ADVISOR TO THE MAYOR FOR POLICY AND STRATEGIC PLANNING
Committee on Immigration
October 3, 2011

Good morning, Speaker Quinn, Chair Dromm, and Council Members of the Immigration Committee. I am here to testify today concerning the detention of foreign-born inmates by the New York City Department of Correction (Department) and the nature of the City's cooperation with the federal agency, Immigration and Customs Enforcement, commonly known as ICE. This is a complex issue, so I want to start off by thanking the Speaker, Council Member Mark-Viverito (Mark-Viv-vah-REE-toe), the Chair and Committee members, and representatives from the City's immigrant communities for working hard with us to reach an agreement. Our goal is always to protect public safety and maintain national security, while ensuring New York remains the most immigrant-friendly city in the nation. This strikes the right balance.

In addressing this issue, the question we had to answer was - how do we continue to work with ICE to protect public safety and national security, while keeping New York the most welcoming city in the world? Simply not cooperating with ICE was not an option – our cooperation with law enforcement is vital, and helps keep the city streets safe of criminals, gang members and terrorists. At the same time, we needed to consider individuals who came through Rikers, but – with their cases dismissed and no record of criminal activity or other apparent threat – seemed to pose little risk to the community.

The agreement we have reached manages to strike this balance by honoring requests by ICE for holds in cases of public safety and national security, while protecting those who: 1) have

never been convicted of a misdemeanor or felony; 2) are not defendants in a pending criminal case; 3) have no outstanding criminal warrants and have not absconded from an order of removal hearing; 4) are not identified as participants in an organized criminal gang; 5) are not and have never been subject to a final order of removal; and finally 6) have not been identified as a possible match in the terrorist screening database.

In addition to protecting public safety, this agreement recognizes the importance of our longstanding relationships with other jurisdictions—including Federal law enforcement—in maintaining a safe City. The Federal government this summer clarified its own priorities for immigration enforcement, focusing on those who are a risk to public safety or national security, those who have committed crimes or are subject to warrants, gang members, and those who have committed egregious violations of immigration law such as illegal reentry after removal. I feel confident that our agreement is largely in-line with the new enforcement priorities.

As I said, this was a complex issue, so I want to thank again the Speaker and council members for their work in crafting this new arrangement. I also want to recognize New York City Department of Correction Commissioner Dora Schriro who has been instrumental in reaching this agreement and will be vital to its implementation. Together, I think we have found a thoughtful and appropriate solution, and one that can set an important precedent for the country. I look forward to continuing to work with the Council to finalize a bill to address this important issue.

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INTRO. 656 – *Persons Not To Be Detained*
NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION
TESTIMONY BY MSGR. KEVIN SULLIVAN, EXECUTIVE DIRECTOR
MONDAY, OCTOBER 3, 2011

Good morning Mr. Chairman and committee members. My name is Msgr. Kevin Sullivan, Executive Director of Catholic Charities, Archdiocese of New York. I am here today to speak in favor of Intro. 656.

Thank you for the opportunity to testify on this bill which limits the detention of harmless foreign-born individuals past their scheduled release in order to be turned over to the United States Immigration and Customs Enforcement (ICE) and, equally important, by not providing notification to federal officials that their release is impending. We are a federation of 90 agencies that:

- Protect and Nurture Children & Youth
- Feed the Hungry and Shelter the Homeless
- Strengthen Families and resolve Crisis
- Support the Physically and Emotionally Challenged, and
- Welcome and Integrate Immigrants and Refugees.

Before I go on, I would like to thank the Speaker and Members of the City Council who have introduced and supported this bill.

For nearly 100 years the Catholic Charities of the Archdiocese of New York has worked tirelessly to help refugees fleeing persecution to get protection in the United States and immigrants to reunite with their families legally, obtain proper work authorization, apply for naturalization, learn English and civics, and prepare to pass their citizenship exams. We are particularly privileged to operate the New York State Immigration Hotline which, this year alone, has received close to 30,000 calls and made over 40,000 referrals in 17 different languages.

Through our work with immigrants, we know firsthand the devastating effects that local immigration enforcement efforts have on families and communities. Across the nation, we see that the failed attempt to bring forth comprehensive immigration reform has created a piecemeal legislative race – at state, city, and county level and on both sides of the political aisle – to "fix" the problem of illegal immigration. Some localities are encouraging and actively participating in immigration enforcement, whereas others – such as New York City - understand that these actions are counter-productive, diminish the effectiveness of community policing, and threaten the fabric of our communities. We, at Catholic Charities, believe there are a number of significant reforms that can be affected nationally, statewide and locally. We have developed an immigration agenda that does just that. It includes administrative, legislative and budgetary actions that can begin to address the 'gaps' as we await comprehensive immigration reform.

The bill we have before us is carefully constructed not to endanger our city, not to inhibit turning dangerous, foreign-born criminals over to ICE to be put in deportation proceedings. It forbids the Department of Corrections from using city resources to continue to detain certain foreign-born individuals - those who were never convicted of misdemeanors or felonies, are not defendants in a pending criminal case, do not have outstanding warrants or previous deportation orders, and do not match the terrorist screening database -- simply in order to give ICE notification and time to come and pick them up.

The bill also entails a wise allocation of New York City resources at a time when we should be looking for all possible ways to curb costs: no city funding is to be expanded to detain harmless immigrants who have had their charges dismissed or dropped, and to tear families apart, often depriving them of their bread-winners and sending them onto a downward spiral towards destitution, homelessness, and reliance on public benefits. We all know that non-profits in and around the City are struggling to provide services in this economic climate. New York City, like other municipalities, is cutting its own budget while trying to provide necessary services. I can think of much better uses for City funds! Our food pantries, for example, have had to reduce the number of bags of food they provide to families so that we can feed more clients.

Turning harmless immigrants over to ICE has disastrous effects on community policing, the fabric of our city of immigrants, and families whose loved ones – sometimes the main bread-winners – are torn from their midst. We understand these effects firsthand because we see them in the 3,300 legal consultations we did last year, the 1,500 new cases we accepted for representation, the 2,750 naturalization applications, relative petitions, green card applications and other benefit applications that we submitted.

In conclusion, because it keeps immigrant families together, restores faith in community policing and diverts scarce city resources from being spent on turning harmless immigrants over to ICE -- Catholic Charities supports Intro 656 and thanks you again for having the courage to stand up for what is undeniably, morally right.

Testimony of

Robert M. Morgenthau

New York City Council

Monday, October 3, 2011

Thank you for your invitation to address an issue of enormous importance to many New York families: immigration reform.

I appear this morning to convey my wholehearted support for the proposed law restricting City Corrections referrals to federal immigration authorities. And I wish also to commend you for holding these hearings. Today, you shine a spotlight on a population too easily forgotten -- immigrants who would have their freedom, but for a single piece of paper: an ICE detainer that keeps them imprisoned in a local jail.

This morning, if I were asked to characterize our national immigration policy, I would say it is most notable for the conflict between rhetoric and reality.

The rhetoric of immigration policy emphasizes the need to protect citizens against violent criminals, drug dealers

and terrorists. The rhetoric of immigration policy promises to exercise with care and compassion the awesome powers to detain and to deport.

But the reality of immigration policy is too often a system distorted beyond reason.

This conflict is nowhere more apparent than in the Criminal Alien Program. The title of the program, its official description, and even the language of its enabling legislation, all outline a program designed to surgically remove the most serious criminals from our midst. But in practice, the program is anything but selective.

As it operates in our city jails, the Criminal Alien Program too often confirms the most cynical stereotypes of immigration policy. Everyone who lists a foreign place of birth is reported to immigration authorities. A majority of these persons do not come even close to matching the profiles of dangerous criminals described in the program's enabling legislation. Many of them are charged with petty crimes, many have no criminal records at all, and indeed many of them will eventually be acquitted. But once they

are referred to immigration, it is too late. If someone has overstayed a visa, or is believed to have committed some other technical violation of immigration law, they may be subject to deportation proceedings.

And so, the next step is that tens of thousands of these immigrants are charged with immigration offenses and transferred to an immigration court system that is already strained to the breaking point.

According to the most recent figures I've seen, New York State now has a backlog of over 45,000 immigration court cases, second only to California. On average, immigration cases in New York remain on the docket for over 500 days without being resolved. And yet, because of the way in which our City Corrections officials administer the CAP program, every day many more case files are dumped into a system ill-prepared to adjudicate them.

And make no mistake, the majority of the New Yorkers whose lives are documented in those files pose no threat whatsoever to the safety of this City.

Indeed, in my view the greater threat to public safety

is the erosion of confidence in law enforcement that results when immigration laws are administered in such an arbitrary fashion. Police officers cannot protect, and prosecutors cannot investigate and convict, without the cooperation and trust of all New Yorkers. And that includes the immigrants among us.

Every day the cooperation of immigrants could help authorities to combat crimes like human trafficking and domestic violence. When one foreign-born New Yorker spotted a car bomb smoldering in Times Square, he and a friend instinctively reached out to the person they knew would protect them - a New York City Police Officer. That kind of cooperation is the real foundation of homeland security.

That is why, when I was District Attorney, I adopted policies to ensure that crime victims and witnesses would not become ensnared in the immigration courts. And it is why, when I retired from public service, I pledged to make immigration reform an important part of my private law practice.

Quite simply, the administration of our immigration

laws must be in accordance with our most fundamental principles of justice. In many instances, this means only that the government should obey its own principles and polices -- that it should do what it says and say what it does. Today, the City claims that in administering the Criminal Alien Program it is acting pursuant to its obligations under federal law. But in fact it is acting far more rashly. The federal legislation that established the Criminal Alien Program defines the term "criminal alien." That term as defined includes serious offenders and terrorists. Nothing in the Act requires the City to turn over, wholesale, files on every inmate who reports a non-US place of birth.

The proposal that is today before the City Council seeks to do no more than require the Department of Corrections to act within sensible restraints. The proposed law provides that the Department of Corrections shall not turn over to immigration authorities a defendant who has not been convicted of a crime, is not charged in a pending criminal case, has no outstanding warrants, has never been the subject to a final order of removal, and is not on a terrorist watch list. And the proposal explicitly requires all city agencies to cooperate with immigration

authorities whenever federal law mandates.

In short, the proposed law simply requires that Corrections officials, while carrying out their legal duties under federal law, act also in accordance with basic principles of fairness toward those in its custody, regardless of where they were born.

Virtually all of us are immigrants, or children or grandchildren of immigrants. It is easy to forget how we arrived on these shores. My paternal grandfather came to these shores 150 years ago. I want to make sure that United States government today treats immigrants at least as well as he was treated.

Recently, I have tried to convey some of my concerns about immigration policy in a series of opinion pieces that appeared in the Daily News and the Wall Street Journal, and I ask that those pieces be made a part of this record. But I doubt that anything I have done, in those pieces or elsewhere, will make as great a contribution as the law you propose and the hearings you hold today, and I thank you for including me in this great initiative.

The feds' deportation crimes

BE OUR GUEST

BY ROBERT MORGENTHAU

When I was district attorney, facing a flood of new arrests every day, I learned the critical importance of prosecutorial discretion. Given limited resources, it is essential to focus on the most serious cases, exercise leniency toward those who deserve it and dismiss unprovable cases at the earliest possible stage.

Federal immigration officials also face a flood of new cases. But recent data suggest that they are not exercising their discretion wisely or effectively.

Figures from U.S. Immigration and Customs Enforcement (ICE) disclose that the federal government cannot effectively prosecute even 4% of its potential caseload annually. Long ago, the government should have made sensitive policy decisions about when and against whom to seek deportation, and made sure those decisions were carried out.

Regrettably, on too many occasions, the government's exercise of discretion has been little short of folly. I vividly recall President Richard Nixon's unrelenting efforts to deport a man he believed to be a threat to America: John Lennon.

Recent administrations have attempted to be more rational. For more than a decade, the Homeland Security Department has published sound criteria for the exercise of discretion in removal cases. But then, too often, those principles have simply been ignored.

ICE Director John Morton issued a memorandum this year instructing all ICE employees to follow these principles in enforcing immigration laws. Priority one would be to focus enforcement efforts on deporting undocumented immigrants who pose a danger to national security, or a risk to public safety. And where cases did not merit prosecution, the director instructed his agents to dismiss them promptly.

It was a great directive – if only it had been followed. Now, more than six months later, the statistics show that the backlog of cases has only gotten worse, and the focus of prosecution even less rational.

A study by a research center based at Syracuse University discloses that by the end of July, the backlog of pending cases before our immigration courts had reached an all-time high – more than a quarter of a million cases, an increase of 3.7% over the backlog just three months earlier. The average length that a pending case has been awaiting review is now a staggering 490 days. For no sane reason I can imagine, Armenians face even bleaker odds: Their cases have been pending, on average, nearly twice as long – 923 days.

One immigration attorney in Los Angeles recalls getting an adjournment date in one of his cases. "What year, judge?" he asked.

All this might be less vexing if immigration officials had been executing the ICE director's supposed top priority, focusing on public safety. But most disturbing of all, the figures show just the opposite is true.

Of ICE's massive docket, only 8.3% consisted of "criminal cases" – persons charged with criminal activities or actions adverse to national security or aiding terrorism. That's *down* from 9.1% the year before. Clearly, the staff did not get the message on the executive policy.

The bulk of the immigrants they're going after pose no danger to society

And even the dwindling percentage of "criminal cases" includes too many that simply do not merit prosecution. Thirty-four percent of those persons arraigned in New York City Criminal Court eventually have their cases dismissed. Those defendants should simply be allowed to continue with their lives. But New York correction officials routinely refer detainees reporting non-U.S. places of birth to 15 ICE inspectors stationed at Rikers Island.

As a result, many defendants find that posting bail or winning their criminal case has left them in an even worse predicament: facing an immigration detainer and potential deportation.

When discretion is not exercised thoughtfully, the law ceases to be an instrument of justice. When immigrants cannot rely upon rational enforcement of our deportation laws, they become afraid to report a crime or to file an income tax form, lest they come to the attention of ICE. A victim of domestic violence may hesitate to report the father of her children to authorities if she believes the next step will be his mandatory deportation.

What is to be done? We need not wring our hands searching for solutions.

The Homeland Security Department has already published a small library of well-reasoned policy papers stating exactly what must be done. All that is needed is the political will to do it.

Morgenthau, former Manhattan district attorney, is of counsel at Wachtell, Lipton, Rosen & Katz.

N.Y. immigrants on thin ICE

BE OUR GUEST

BY ROBERT MORGENTHAU

Say what you mean. Mean what you say.

There is a vast gulf between the claimed purpose of immigration laws and the execution of these laws. These laws are theoretically designed to keep the country safe and rid us of dangerous criminals. In actuality, they are frequently applied with the questionable involvement of state and local authorities to detain and exclude undocumented immigrants who have committed no crime whatsoever and are no danger to the public.

Many well-intentioned local officials utter platitudes in support of the right of hardworking undocumented immigrants to stay here and contribute to their communities. But their words do not inform the actions of our local governments that have become the handmaidens to the federal government's general enforcement of immigration laws.

Even as officials talk about the importance of welcoming new immigrants and about their essential contributions to social and economic welfare in the U.S., thousands of the undocumented are being quickly detained and deported "under the radar."

New York City cooperates with Immigration and Customs Enforcement (ICE) agents as part of what's called the Criminal Alien Program. But CAP does not focus on immigrants who have been convicted of serious crimes and who have thus demonstrated that they do not belong here. In 2009, 57% of the immigrants deported under CAP had no criminal convictions. Under the more recent Secure Communities program, the number of noncriminal deportations is even higher. For example, in Jefferson Parish, La., 71% of those deported through Secure Communities were noncriminals.

Federal law does not require local law enforcement agents to cooperate with federal immigration agents. Nonetheless, immigration agents have operated at Rikers Island for 20 years – despite the absence of a formal agreement allowing them to be there. Correction Department officials provide these agents with a list of foreign-born arrestees. ICE agents interview those arrestees and place immigration holds or detainers on those who may be deported. As a result, 1,000 immigrants at Rikers Island were detained by ICE in 2010.

Cooperation between ICE and city officials has an impact on the city apart from deportations. According to the Mayor's Office to Combat Domestic Violence, immigrant women are at greater risk of being killed by their partners than any other group of women. Why? It is reasonable to assume that cooperation between ICE and the city leads to distrust of the local police force – making immigrant women afraid to solicit the help of the police, lest they or their partners be deported. Other crime victims, including many preyed upon because they are vulnerable immigrants, refuse to cooperate with the authorities.

Perhaps the most disturbing aspect of local cooperation with ICE is how arbitrary and inhumane that agency's enforcement efforts often are. Legal permanent residents and other legal visa holders who have not yet gained U.S. citizenship can be deported for trivial violations and misdemeanors as well as technical immigration violations.

Stop arbitrary detentions and deportations

For example, Erla Lillendahl, a native of Iceland, was on her way to a vacation in the U.S. when she was arrested at Kennedy Airport, held in shackles and denied the opportunity to call her friends and family for 48 hours before being deported. This happened because she had overstayed a U.S. visa 10 years ago.

Segundo Encalada married an American and became a father to her son. When his wife was pregnant with their first daughter, he was forced to leave the U.S. All the family's efforts to help him return failed. The family spent all of its money on immigration lawyers. Isolated from his family, Encalada eventually committed suicide. Other New York City residents are held for lengthy periods in detention centers in New Jersey, Alabama, Texas, Arizona and Louisiana, far from their families.

In addition, detainees are subject to abuse and sometimes even death – 107 people died in immigration detention from 2003 to 2010.

Mayor Bloomberg, citing an economic study, has stated that "more than 40% of Fortune 500 companies were founded by immigrants or children of immigrants, and those companies employ more than 10 million people worldwide and have combined revenues of $4.2 trillion." If we truly believe that our new immigrants likewise are a major asset to New York and the United States, as I do, it is time that we start treating them as assets instead of harassing, abusing and alienating them from society.

Mean what you say. Even more importantly, do what you say.

Morgenthau, the former Manhattan district attorney, is of counsel to Wachtell, Lipton, Rosen & Katz, where he works pro bono on immigration reform.

THE WALL STREET JOURNAL.
WSJ.com

OPINION | MAY 19, 2010

The Police and Immigration: New York's Experience

A spouse may be reluctant to report abuse if she fears that the consequence will be deportation for the father of her children.

By ROBERT MORGENTHAU

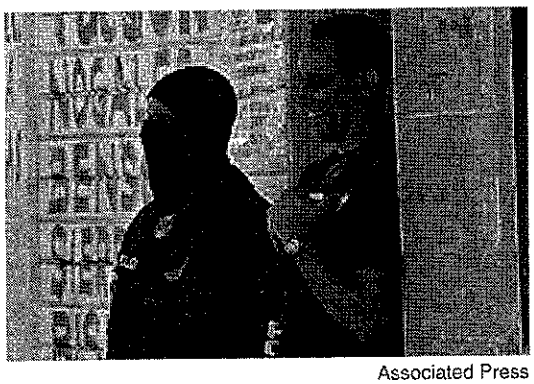
Arizona's new immigration law has been roundly criticized for encroaching on the federal government's authority to enforce immigration laws. It requires police to demand documentation from an individual when they have a "reasonable suspicion" that a person is here illegally. Arizona's own police chiefs association opposes this entanglement of state law enforcement with federal immigration policy on the grounds that it will undermine the public's trust in local officials.

Arizona isn't alone in involving local officials in federal immigration policy to an unwarranted degree. Federal immigration officials are active in 300 local jails and nearly every state prison in the country as part of the Criminal Alien Program, which is designed to identify potentially deportable inmates.

Although the precise method of operation of the program varies across communities, the basic strategy remains the same: Federal immigration officials are allowed access to information about foreign-born inmates in local jails, either through in-person interviews with inmates or through access to local databases. This allows them to quickly identify inmates eligible for removal. Strikingly, 48% of all deportable immigrants identified by U.S. immigration officials in 2009 were discovered as a result of this program, according to an October 2009 report issued by U.S. Immigration and Customs Enforcement.

Even New York City, which has long had a reputation as a welcoming place for immigrants, works with federal immigration officials, providing them with direct access to the Department of Corrections' database that contains information on foreign-born arrestees housed in city jails. Federal Immigration and Customs Enforcement (ICE) officials maintain an office of 15 agents at the city's largest jail, Rikers Island, where they routinely interview newly booked inmates. In 2007, ICE officers interviewed approximately 4,000 Rikers inmates. Once ICE officers identify potentially deportable inmates, they issue an immigration "detainer"—an official request that local officials notify ICE prior to releasing an inmate so that the inmate can be transferred into ICE custody for potential deportation.

In 2007 alone, ICE initiated deportation proceedings against 3,212 inmates being held at Rikers. Some 13,000 Rikers inmates have been identified by ICE as potentially removable since



Associated Press

Federal immigration agents in Phoneix.

2004. This includes not just undocumented immigrants but lawful, permanent residents and those with valid claims to remain here.

The close relationship between ICE and the Department of Corrections drastically alters the normal course of operations at New York City's jails. Typically arrestees remain in jail until the city relinquishes custody, which can happen for a number of reasons: the inmate is released on his or her own recognizance; the inmate posts bail; the charges against the inmate are dropped; or there has been a finding of guilt or innocence. However, an inmate subject to a detainer is held in jail by the Department of Corrections for 48 hours past this date—even in the case of dismissed charges or an acquittal—to give federal immigration officials an opportunity to assume custody of the individual.

The city bears most of the expense of holding the inmate for the 48 hours. The issuance of immigration detainers also discourages inmates from posting bail, even when they can afford to do so, because inmates subject to detainers who succeed in posting bail are transferred directly into federal immigration custody. Thus the city also bears the expense of housing those inmates who would otherwise be out on bail. This costs the city at least $150 per inmate per day according to the Department of Corrections.

The New York City Bar Association has also argued that the use of immigration detainers lowers the rate of participation in the city's alternative-to-incarceration programs because judges and prosecutors are quick to assume that immigrants subject to detainers are ineligible for such programs. These alternative programs reduce recidivism and lower costs to the criminal justice system.

But by far the most severe consequence of the city's cooperation with federal immigration officials is the lack of trust in law enforcement that it creates among the public. A spouse, for example, may be reluctant to report abuse if she fears that the consequence will be deportation of the father of her children. When immigrants perceive the local police force as merely an arm of the federal immigration authority, they become reluctant to report criminal activity for fear of being turned over to federal officials. Given that immigrants (legal and illegal) currently comprise 36% of the city's population, this unwillingness to cooperate with local law enforcement presents an obstacle to stemming crime in the city as a whole. That's why during the 35 years I was district attorney in Manhattan, I made it a policy never to turn over names of individuals involved with the criminal justice system to immigration authorities until after they were convicted of a serious crime.

Charges are ultimately dropped against a significant percentage of arrestees in the city's jails. In 2009, for example, charges were eventually dismissed in 34% of all cases arraigned in criminal court in New York City. Federal law provides that lawful permanent residents with green cards can be deported if they are convicted of certain offenses—including aggravated felonies and the vast majority of controlled substance offenses. But in New York City, ICE officials have access to foreign-born inmates from the moment they are booked into the city's jails, regardless of whether charges might later be dropped. This early involvement of federal officials is unwarranted and imposes considerable costs monetarily and in terms of public perception.

No one disputes that the names of violent offenders should be turned over to federal immigration officials, but the current approach treats those charged with petty offenses (and those who may not be guilty of any crime) in the same manner as convicted felons.

A more nuanced approach to cooperation between local authorities and federal immigration officials—in which only the names of those convicted of violent crimes were turned over to ICE—would avoid this problem. It would go a long way towards separating the roles of local police and federal immigration authorities in the eyes of the public, and would encourage more inmates to post bail, thus reducing costs to the city. New York authorities should make clear they do not approve of the haphazard and sometimes cruel way that federal immigration policy is enforced.

Mr. Morgenthau, district attorney of Manhattan from 1975 until 2009, is currently of counsel to Wachtell, Lipton, Rosen and Katz.

Friday
March 19, 2010

DAILY NEWS NYDailyNews.com

Immigrants deserve better

BE OUR GUEST

BY ROBERT MORGENTHAU

This week marks the 30th anniversary of the Refugee Act of 1980, which provides the foundation for our nation's asylum and refugee resettlement programs. The passage of that bill was part of a long tradition in our country of welcoming immigrants, in particular the persecuted.

Unfortunately, today our immigration system places unfair burdens on both those fleeing persecution and those seeking a better life, putting these individuals in sometimes dire and vulnerable situations and undermining our country's proud heritage.

As district attorney, I prosecuted many cases in which individuals fraudulently pledged to secure legal status for immigrants but never performed the promised services. In one egregious case, a Georgia man defrauded at least 14 immigrants by falsely promising to help them get Green Cards. Wilmer Rivera Melendez advised his victims to petition the government for a form of immigration relief for which he knew they were ineligible. As a result, the federal government initiated deportation proceedings against all of his clients – despite the fact that they later cooperated in bringing Melendez to justice.

The system is arbitrary and confusing

Since I launched the Immigrant Affairs Program in December 2007, the district attorney's office has received 1,300 complaints, about half of which relate to allegations of immigration scams by unauthorized attorneys.

Why are immigrants exploited so frequently? To begin with, they know little if anything about our legal system and often cannot speak or read English; they therefore find themselves unable to navigate the intricate web of statutes and regulations that govern our immigration courts. Though New York has many fine nonprofit organizations dedicated to aiding immigrants, these groups are overwhelmed by the number of immigrants seeking help.

But the true cause of these fraud schemes goes much deeper. It is the fundamental arbitrariness and lack of transparency plaguing U.S. immigration policy.

To take just one example, each year thousands of immigrants with legitimate fears of persecution in their native countries are denied asylum because they fail to file their applications within an arbitrary one-year deadline. According to a 2006 report by the American Bar Association, 35,000 people were placed in removal proceedings from 1998 to 2006 for failure to meet the one-year deadline for asylum applicants.

Individuals arriving at the border without proper documentation are subject to expedited removal and detention even if they may face persecution upon return to their homeland. And immigrants with valid claims to legal status often sit for months or even years in immigration detention centers because they have no access to counsel.

We seem to have lost sight of the spirit of our immigration laws. My grandfather, an immigrant himself who later became President Woodrow Wilson's ambassador to Turkey, led a Greek refugee resettlement program following World War I. My father, secretary of the treasury under the Roosevelt and Truman administrations, emphasized the importance of making our country a safe haven for refugees from World War II.

Aggressively prosecuting the perpetrators of immigration fraud is a good first step to make things right. We should also revise our laws to allow victims of immigration fraud who cooperate with the government to receive legal resident status in return for their help. Today, victims of violent crimes who aid the government in prosecuting perpetrators are granted legal status; but no such provision exists for victims of fraud.

Ultimately, however, we need to rewrite our immigration laws entirely. Immigration policy should not be solely concerned with policing our borders, but with opening our arms to the persecuted and those yearning to contribute to our democracy.

Morgenthau was New York County district attorney from 1975 to 2009.

FOR THE RECORD

Testimony of Cyrus R. Vance Jr.
New York County District Attorney
Before the Committee on Immigration
Monday, October 3, 2011
Int. No. 656

By Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Foster, Brewer, Chin, Jackson, Koslowitz, Lappin, Mendez, Palma, Rodriguez, Rose, Barron, Gonzalez, Ferreras, Levin, Comrie, Vann, Cabrera, Dickens, Arroyo, James, Van Bramer, Eugene, Reyna, Seabrook, Sanders, Rivera, Crowley, Koppell, Williams, Lander, Garodnick, Wills, Mealy and Koo

New York City is a city of immigrants:

The 2010 census found that 21.3% of reporting households included foreign-born individuals; 28.5% of households spoke a language other than English. When you consider that immigrant-based households are more reluctant to participate in the census than households in general, it is clear that a sizeable portion of our city consists of foreign born individuals and families.

Recognizing this important demographic, my office opened an Immigrant Affairs Unit in 2007. Led by veteran Assistant District Attorney Daysi Mejia, the program investigates and prosecutes frauds, such as impersonating an immigration attorney, real estate fraud, and construction safety cases. The Immigrant Affairs Program has a hotline, accepts referrals, and takes walk-ins; since its inception, they have had more than 2000 intakes.

An essential element of the program is outreach to aid victims and witnesses who fear cooperating with law enforcement because of their immigration status. The program aims to not only prosecute fraud committed against immigrants, but also to educate the public through fraud prevention presentations, so that they can identify a scam when they see one.

The New York County District Attorney's Office will not report a crime victim or witness to immigration authorities for the purpose of having deportation proceedings commenced against that

individual, because we are here to seek justice, regardless of the victim's immigration status. In some cases, we even work with crime victims to apply for a U-Visa. U visas provide a temporary immigration status to victims of certain qualifying offenses, namely domestic violence and other violent crimes, that can lead to obtaining a green card or permanent resident card. For a victim of domestic violence a U-Visa can allow someone living here illegally who was promised sponsorship by their abuser to make an independent application for permanent resident status.

Much like the general population, immigrants are by and large peaceful, hard-working people who contribute to the diversity and character of our city's fabric. But again, much like in the general population, there are some individuals who break our laws and pose a threat to the public safety. It is that group – those who flout the penal law – who are rightly subject to sanctions.

When it comes to undocumented immigrant offenders, the system relies upon a voluntary relationship between The New York City Department of Corrections (Corrections) and the federal Immigration and Customs Enforcement (ICE) Criminal Alien Program. ICE agents are present at Corrections facilities, ICE and Corrections share information, and Corrections honors ICE detainers.

The system breaks down when detainers are honored for people who are never convicted of a crime.

Imagine this scenario: An individual is arrested for an alleged crime. Upon intake, Corrections asks all inmates for the country of birth; every individual who states a foreign country of birth has their vital statistics sent to the ICE database, regardless of their current immigration status. This impacts a lot of people: Corrections identified 12,710 inmates as foreign born in FY 2009. Immigration and Customs Enforcement (ICE) then has the authority to issue a detainer, which is a request -- not a command -- that local law enforcement notify ICE prior to releasing an individual from custody so that ICE can arrange to take over custody. Interestingly, an individual does not need to be here illegally in order for ICE to place a detainer on them; there simply needs to be a determination that they are deportable. In FY2009, ICE placed detainers on 3,506 inmates in New York City Department of Corrections custody.

All of the individuals in question are in NYC DOC custody because of an alleged criminal offense. Approximately 50% of those people have a conviction history – that 50% is fairly evenly split between misdemeanor and felony convictions. That leaves 50% with no conviction history. To put that in real numbers, more than 1,700 people without prior conviction histories were subject to an ICE detainer in 2009.

The group in question here is the percentage of those people with no prior convictions who also aren't convicted of the alleged offense that put them on the ICE radar, but are still discharged to ICE. In other words, at no point do these individuals stand convicted of a crime, but they are still deported. The bill states that approximately half of the people issued ICE detainers had no criminal conviction.

The proposal that is before us today deals strictly with the New York City Department of Corrections and its relationship with ICE. It would prohibit Corrections from using any department resources -- defined as "department facility, space, buildings, land, equipment, personnel or funds" -- to honor a civil immigration detainer by either:

A) holding an individual beyond the time they would otherwise be released; or

B) notifying federal immigration authorities about an individual's release.

This **does not apply** to individuals with a conviction history for a felony or misdemeanor, defendants in a pending criminal case, confirmed matches to the terrorist database, or individuals subject to a final order of removal pursuant to federal law.

Secondly the proposal before us today creates a reporting requirement. NYC DOCS would need to post to their web site, annually, the number of individuals held pursuant to civil immigration detainers; transferred to ICE pursuant to a detainer (divided into felony, misdemeanor, and no conviction history); amount of state federal funding requested and received for criminal alien assistance, and the number of individuals for whom detainers were not honored pursuant to this proposed law.

ICE's stated programmatic goal is to "screen inmates and place detainers on criminal aliens to process them for removal before they are released to the general public." The current practice of deporting aliens who do not have a criminal conviction history and are not convicted of the current offense for which they are detained by NYC DOCS directly contradicts that state programmatic goal.

This proposal, by and large, creates a practice that is consistent with the stated goal. It is also consistent with the goals of my office's Immigrant Affairs Program. I therefore fully support the passage of the legislation as proposed.

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Professor Nancy Morawetz

TESTIMONY OF NANCY MORAWETZ, PROFESSOR OF CLINICAL LAW, NEW YORK UNIVERSITY SCHOOL OF LAW, IN SUPPORT OF INT. 656-2011

NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION HEARING October 3, 2011

Thank you for this opportunity to speak about Int. No. 656. My name is Nancy Morawetz and I am a professor at New York University School of Law. For the past fifteen years, I have specialized on issues related to deportation and detention, with a primary focus on laws that affect lawful permanent residents.

Up to now, New York has followed a "don't ask, just say yes" policy for requests from immigration authorities. It has allowed immigration officers into New York's jails and onto New York's computer systems. It has accepted so-called detainers to hold New Yorkers after the date they should be home with their families, without asking any questions about whether the detainers are lawful or whether they in fact provide any authority at all to deprive those New Yorkers of liberty. This bill takes an important step to assert the City's authority and will save many New Yorkers and their families from unfair and illegal detention and deportation.

I would like to address the New Yorkers who won't be helped by this bill. As written, the bill doesn't help anyone who has ever been convicted of a misdemeanor or a felony – and it won't help those who have pending misdemeanor or felony charges. It might seem easy to cut them out of the bill. But I believe that the Council is making a mistake. If you knew what happened to those with detainers, and how the immigration detention system deprives New Yorkers of due process, you would act more broadly.

To explain why people with criminal convictions or pending charges should get your attention, I will describe a real story from the New York Times about a student who lived through the horror of the immigration system and is finally back here with his family. His story is not unusual and it illustrates the very serious lack of due process for New York immigrants who face detainers. It shows how immigrants picked up through detainers face a system that at best resembles that faced by criminal defendants before Gideon v. Wainwright – a system where individuals are locked up without counsel or any fair way to defend themselves.

Jerry Lemaine is a lawful permanent resident, coomonly referred to as a "green card" holder. He came to New York from Haiti when he was three years old. He grew up in Canarsie, attending New York City schools. He got into some scrapes with the law, but nothing that led to a prison sentence or made him deportable. His family later moved to the border between Queens and Long Island. Jerry, his mother and his brother have green cards. His father, another brother and two sisters are United States citizens. In 2007, when his immigration nightmare began, Jerry was living with his mother, who is a nursing aide, and a sister, who suffers from a brain disorder. Jerry was studying for a nursing degree. Along with his mother, Jerry helps to care for his sister.

Jerry had worked hard at double shifts to help his family. But he was not perfect in the eyes of the law. In 2007 he was arrested for having a marijuana cigarette in his pocket. He took a plea with a $100 fine and no jail time. If he had been a citizen, he would have walked out of jail. But he was a lawful permanent resident – a green card holder -- and he was placed under a detainer from ICE. The day that he was due to be released, he was shackled, taken into immigration detention, and then moved to Texas. Someone is Jerry's situation would not be helped by your bill because he had a past misdemeanor conviction.

From Texas, Jerry faced the nearly impossible task of defending his right to remain with his family. He was almost 2000 miles away and the government did not provide a lawyer. The government also didn't allow him to seek release on bond. No judge could look at whether he was a danger or a flight risk. Instead he had to stay locked up while he fought to remain with his family.

Jerry's family did what they could to fight his case in Texas. They hired a lawyer. The lawyer had to fly to Texas three times to represent Jerry and the bills piled up. The family faced bills of $15,000 for the lawyer's fees. But being down in Texas also meant that Jerry faced the law of a very unfriendly court. He was denied any chance to have anyone testify from his family about why he should not be deported. After an appeal, his family's resources were spent. They reached out looking for someone who could help. Luckily for Jerry, a pro bono lawyer at a major law firm, Gibson Dunn and Crutcher, agreed to take his case. They proceeded to argue to the federal courts that the immigration court had applied the wrong rule and that Jerry deserved a hearing where his family could testify and a judge could consider all the facts of Jerry's case.

Meanwhile, Jerry faced the day to day horror of immigration detention. When he was first transferred, he was in a holding cell with fifty people and nowhere to sleep. Later he lost 45 of his 190 pounds. He was woken in the middle of the night with no information and transferred to other facilities, all the while fearing that at any moment he would be sent to the country he left at the age of three. And in one facility, he was the only black man in his dormitory and was beaten up by six other inmates. To protect himself, he went into solitary confinement which cut him off from human contact and caused him to despair. He spent three years in detention, even though he had never been sentenced to spend a day in jail.

Jerry's case drew the attention of the New York Times. Without that attention, Jerry probably would have spent more than three years in detention. But instead, he was finally released. Then the Supreme Court ruled that the federal courts in Texas were applying the wrong rule. Finally, Jerry got a hearing. The judge ruled that Jerry should remain a lawful permanent resident. But Jerry still lost three years of his life, his family lost money to lawyers, and he finally succeeded only because he was one of the very few lucky people who drew the attention of a pro bono lawyer.

But we know that the situation is much more bleak for countless New Yorkers. In information released in this past year, we learned that over half of the immigrants picked up in New York by ICE are transferred out of the state. And that does not count that many who are held in facilities in New Jersey and have their cases heard in New York. Two thirds of those transferred are sent to Texas and Lousiana, where access to lawyers in minimal. We now know that 79% - that is almost eight out of ten - will have to navigate the immigration system without a lawyer. That means that they sit in detention, often in Texas, without a lawyer, without access to family, and are forced to work through a legal code that is every bit as complicated as the tax code. Most can't do it and countless are deported even though they should be able to prove that they deserve to stay. Let me repeat that – New Yorkers with children, parents, and spouses here in New York are deported – separated permanently from their families – because they are in detention in Texas without lawyers and unable to fight their cases the way that Jerry did. Every person deported leaves behind a broken family that may lose its housing, suffer emotionally, and lose its ability to contribute to New York.

Now you might say – isn't this a problem with federal policy? Shouldn't we go to Washington to change the way they transfer people to places where there are no attorneys? Shouldn't we work to get better conditions in detention facilities? Shouldn't we ask them to let more people out of detention?

Of course we should, and we do. But that does not mean that New York should collaborate in sending its residents into such a broken and illegal system. Should we knowingly send people where they won't have a lawyer; where they will not have access to family during their case; where the appeals cost tens of thousands of dollars because the federal courts in Texas repeatedly apply rules that are struck down by the Supreme Court many years later? New York has a choice. It does not have to honor detainers, as you recognize in this bill. It does not have to collaborate in a process that it knows will lead to illegal detention without any chance of bail. It does not have to comply with a system in which more than half of those with detainers are sent far away from their families to fight a complex case on their own. It does not have to aid and abet the denial of due process to New Yorkers.

At the very least, New York has to start asking questions. Why are detainers being issued? What basis do immigration authorities assert for the detainers? What will happen to those who are picked up through detainers? Will they be provided lawyers? Will they have a chance at release from detention based on an analysis of whether they are dangerous or a risk of flight? Will they be kept where they can get the evidence they need to win their cases? What are their ties to this country, including citizen and lawful permanent resident family members like

Jerry's? Immigration and Customs Enforcement will not answer these questions and will not make any basic assurances that those transferred will be treated fairly. Under these circumstances, New York should not assist them in subjecting New York residents to a complete violation of due process.

AILA
New York Chapter

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October 3, 2011

New York City Council
Committee on Immigration
250 Broadway
14th Floor Committee Room
New York, NY

Re: Int. No. 656, *A Local Law to amend the administrative code of the City of York, in relations to persons not to be detained*

Honorable Members of the Committee on Immigration:

I am very pleased to appear in support of Int. No. 656 on behalf of the New York Chapter of the American Immigration Lawyers Association (AILA). AILA is the national association of over 11,000 attorneys and law professors who practice and teach immigration law. Our New York Chapter has almost 2,000 members.

For years AILA has been encouraging Immigration and Customs Enforcement (ICE) to focus its limited resources on smart, targeted enforcement. The New York City Department of Correction's (DOC) cooperation with ICE has resulted in thousands of immigrants with no criminal convictions automatically being taken into custody by ICE upon their release from DOC. They are most usually then transported from New York to ICE facilities in New Jersey, Pennsylvania, and Texas, far away from their families, homes, jobs, friends, and attorneys. Many such immigrants end up being deported, causing a sometimes permanent separation between them and the family members they leave behind.

Int. No. 656 is directly in line with ICE's recent announcements regarding its enforcement priorities. During the last few months ICE has issued various memoranda in which it indicates that it will focus its enforcement on its main priorities: enhancing border security, removing "criminal aliens," and those individuals who pose a threat to public safety and national security. In his memorandum, dated 6/17/2011 (Policy No.

AILA
New York Chapter

10075) John Morton, Director of ICE, states that ICE must exercise "prosecutorial discretion" if it is to prioritize its enforcement efforts. He points out that prosecutorial discretion "is the authority of an agency charged with enforcing a law to decide to what degree to enforce the law against a particular individual. Director Morton goes on to state that ICE officers, agencies, and attorneys may exercise prosecutorial discretion to a broad range of discretionary decisions at any stage of the removal proceedings, including deciding whom to detain or release on bond, supervision, personal recognizance, or other conditions.. On 8/18/2011, Janet Napolitano, Secretary of the Department of Homeland Security (DHS) announced in a letter to various members of the U.S. Senate, that she was establishing a high-level committee to ensure implementation of its enforcement priorities, as set forth in Director Morton's 6/17/2011 memorandum.

We enthusiastically endorse Int. No. 656, because it will help ICE focus on its main enforcement priorities: removing criminal aliens and those individuals who pose a threat to public safety and national security. It will allow ICE to exercise prosecutorial discretion for those immigrants who do not have criminal convictions and who are not a threat to public safety and national security. This is good for immigrants, ICE, and for New York City.

Sincerely yours,

Jan H. Brown

JAN H. BROWN

FOR THE RECORD

centerforconstitutionalrights

on the front lines for social justice

Testimony of the Center for Constitutional Rights

Before the New York City Council Immigration Committee

October 3, 2011

On behalf of the Center for Constitutional Rights, I would like to thank the Committee on Immigration for holding this hearing and inviting us to take part. The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization committed to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. These rights and protections must extend to everyone in the country regardless of race, national origin, or immigration status.

The problems with Immigration and Custom Enforcement (ICE) detainers that the City Council has identified raise precisely the concerns at the core of CCR's police accountability and immigrant justice advocacy and litigation. For example, CCR has brought a class action lawsuit challenging the constitutionality of the New York Police Department's (NYPD) stop-and-frisk practice. The NYPDs stop-and-frisk practice has led to hundreds of thousands of suspicion-less and race-based stops of Black and Latino New Yorkers.[1] Last year, NYPD officers conducted over 600,000 total stops, 84% of them of Black and Latino New Yorkers, with less than 15% of all stops leading to an arrest or summons.[2] This past month a federal judge ruled the case should to move forward to trial, writing that the case "presents an issue of great public concern."[3]

Additionally, along with our co-counsel, we are currently litigating a large Freedom of Information Act (FOIA) case to uncover information and bring transparency to the federal "Secure Communities" program run by ICE, the Department of Homeland Security (DHS) and the Federal Bureau of Investigations (FBI). Secure Communities effectively transforms local police officers into federal immigration agents by requiring local police to run the fingerprints of anyone they arrest through DHS's Automated Biometric Identification System (IDENT) database. If there is a "hit" in the database, ICE is notified and can take action to place a detainer on that individual.

Although ICE presents Secure Communities as an innocuous information sharing program, documents we have uncovered show it to be a mismanaged program that operates more like a dragnet, funneling people into the already problematic ICE detention and removal system. The combination of racially discriminatory police practices like stop-and-frisk with faulty ICE programs like Secure Communities greatly increases the chances an immigrant in New York will end up with an ICE detainer and in removal proceedings.

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[1] More information on our case *Floyd v. City of New York*, is available at: http://ccrjustice.org/floyd

[2] Al Baker, "Stop-Question-and-Frisk Numbers Go on Display," New York Times, February 24, 2011. Further data provided by the NYPD to CCR pursuant to *Floyd v. City of New York*, 08-cv-01034.

[3] Al Baker, "Judge Declines to Dismiss Case Alleging Racial Profiling by City Police in Street Stops," *New York Times*, September 1, 2011.

A growing number of government officials, advocates and law enforcement officials are speaking out and challenging these defective policies and programs. New York's Governor Andrew Cuomo, along with the governors of Illinois and Massachusetts, has taken a public stand against implementing the Secure Communities program.[4] Citing our case, the New York Times has said that Secure Communities is "bad for public safety."[5] Among the numerous police officials to publicly criticize the program is Sheriff Michael Hennessy of San Francisco, who wrote an op-ed attacking Secure Communities for violating the "hard-earned trust" between police and immigrant communities.[6]

This bill before the City Council - Int. No. 656 – is a necessary response to these types of failed ICE policies. Instead of following their own enforcement priorities, ICE continues to use programs such as the Criminal Alien Program (CAP) and Secure Communities to cast as wide a net as possible, ripping apart families and sowing distrust of the government in immigrant communities. As the Council notes in its findings on the Rikers CAP program, in 2009 and 2010, "roughly half of the people at Rikers on whom ICE issued detainers had no criminal convictions."[7] In addition, the Council found many of those with convictions were convicted of only minor offenses.

The statistics regarding detention and removals through Secure Communities that have been provided by ICE are similarly problematic.[8] But regardless of status or conviction, once a detainer is placed on an individual, that person is thrown into a broken and unjust immigration system, where they are stripped of their right to a government-appointed lawyer, held in remote detention centers thousands of miles from their homes, and ultimately denied a fair day in court.

New York City, like many other cities across the country, thrives because of its immigrant communities. We urge the Council to stop enforcing unjust detainers by passing this bill. We should stand with our immigrant communities rather than against them.

Thank you for letting the Center for Constitutional Rights submit testimony at this hearing.

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[4] Kirk Semple, "Cuomo Ends State's Role in Checking Immigrants," *New York Times*, June 1, 2011.
[5] Editorial, "No Exit From a Bad Program," *New York Times*, February 27, 2011
[6] Michael Hennessey, "Secure Communities destroys public trust," *San Francisco Chronicle*, May 1, 2011.
[7] New York City, New York, Int. 0656-2011, "A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained," available at: http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=967785&GUID=9F7C289B-A8D8-4A95-8882-BF044CBB5EE2&Options=&Search=
[8] Though the end of July 2011, ICE's data shows that 58.91% of nationwide removals since Secure Communities began in 2008 were for "non-criminal" ("ICE Fugitive" / "Prior Removals and Returns" / "EWIs, Visa Violators and Overstays") and minor convictions ("Level 3"), which runs counter to the stated enforcement priorities of the program. The data is available at: http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf

LUIS

Good morning my name is Luis and I am a member of the New Sanctuary Movement and a college student at BMCC.

I know why we need to get ICE out of our jails because I was there.

3 years ago I was a junior in high school studying art and design, when the police arrested me for a crime I had nothing to with.

They took me to Rikers and the next day they told me I had a legal visit.

When I got to the meeting, it was Immigration Agents. I said I wasn't going to talk to them but that didn't matter.

I told them I was innocent but they said guilty or innocent I was getting deported.

I was in Rikers for 17 months and there were witnesses that knew I had nothing to do with the crime, but they were scared to talk to the police because they knew the police worked with immigration and they might also be deported.

When my charges were finally dropped and my case was dismissed, I wasn't released to go back to my family and finish school.

I was sent straight to immigration detention. I spent another 4 months in detention in Texas, far from my friends and family not knowing if I will ever see them again.

Now I am back in New York and going to college but they are still trying to deport me.

I was brought here from Mexico when I was 8 years old. My brother and sister were born here and are citizens.

America is the only country that I know.

If I am deported, I would be sent to a country where I don't know anybody.

Inside I met so many people whose families were here and had been here for many years.

They were being deported for little things, like driving without a license and jumping the train, and people like me who never committed any crime.

New York is supposed to be a city of immigrants.

But working with ICE in our jails, we are devastating thousands of immigrant families.

We need to get ICE out of our jails. We need to get them out now.

Rec'd Into Records

The Victoria Congregational Church U.C.C.

an open and affirming church

The Rev. Mark Marsh, Pastor | 144-64 87th Avenue, Briarwood, NY 11435 | Telephone (718) 297-9733

Testimony of Rev. Mark Marsh
Treasurer of New York City's New Sanctuary Coalition
Pastor of Victoria Congregational Church
Jamaica, New York

Re: Bill Restricting the Access of ICE Agents to Our City Jails
October 3, 2011

I offer my support for the proposed bill today to restrict ICE Agents access to New City jails. While this proposal is not the full asking from the NYC New Sanctuary Coalition and other pro immigrant right coalitions and faith communities, it does give more protection to the human rights of our immigrant community in the metropolitan area.

In 2007 one of my parishioners who is a native of China was arrested in Queens County and held for over 6 months because his landlord reported him as a terrorist who threaten her with a knife. This landlord wanted to rent his apartment to another tenant. My parishioner was found not guilty, but was held by New York City for ICE. His wife who was pregnant lost her child due to stress and she had to go through extensive counseling. He missed his immigration hearing, because he was in jail.

This not only caused physical damage, but psychological damage not to mention the cost to the New City tax payers to hold him for ICE. He is a very amiable and mild tempered individual. While he was seeking the correct modes of moving legally through immigration, he was stopped by the unjust access of ICE. In a country where we pride ourselves on a principle of "innocent until proven guilty," this incident and many others of the same type gives the impression of "guilty until proven innocent." Therefore, making individuals, immigrant and non-immigrant, fearful of the police's ability to insure justice and protect them, whether it is in a civil or criminal matter.

I thank the City Council and the especially the Immigration Committee for taking this matter seriously. While I would hope for a more restrictive bill, I think that this will at least give a head start to restoring some of the trust for New York City police and their pursuit to protect, serve and promote justice for ALL those living in the metropolitan area. Thank you very much.

Testimony of Make the Road New York before the Committee on Immigration on the Department of Corrections Entanglement with ICE

October 3, 2011

Good morning. My name is Javier H. Valdes, and I am the deputy director at Make the Road New York, the largest immigrant-based community organization in the City, with over 8,000 dues-paying members. I would like to thank Speaker Christine Quinn and the Committee on Immigration, as well as the other members of the City Council, for allowing our organization to testify at this important hearing today.

I am joined today by other community and faith based organizations: New Sanctuary Coalition, and Northern Manhattan Coalition for Immigrant Rights; public defender groups: Bronx Defenders, Neighborhood Defender Services, Brooklyn Defender Services, Immigration Defense Project and The Legal Aid Society; legal experts from New York University School of Law and Benjamin N. Cardozo School of Law; and affected New Yorkers.

We are here today to support the bill that is currently being proposed to the New York City Council. This bill comes as a reaction to a terrible problem: the indiscriminate funneling of New Yorkers into a broken immigration detention and deportation system. New York City, where immigrants make up nearly 40% of the population, has historically been a leader on immigration issues. But on this issue we are trailing behind other major cities. Let's change that. With this bill, we can begin to put an end to a practice that tears apart New York City families and makes all of us less safe.

The most common way that New Yorkers are landing in immigration detention is through the Department of Corrections' entanglement with the Department of Homeland Security's Immigration and Customs Enforcement bureau, known as ICE. The DOC is participating in ICE's immigration investigations by give ICE access to DOC internal databases and using DOC personnel to facilitate ICE interrogation. ICE then issues something called an "immigration detainer" against any DOC detainee they think they can deport. A detainer is a request that DOC hold an individual, at DOC's own expense, in order to facilitate their transfer into federal immigration detention when they would otherwise have been released. Detainers are requests, they are not legal obligations. Notwithstanding our legal authority to exercise discretion, current City policy is to hold anyone and everyone subject to a detainer for transfer into immigration custody.

Once these individuals land in ICE custody, most of them, approximately two-thirds, are sent far away to detention centers in Texas, Louisiana, or elsewhere, where they are isolated from their families and the resources necessary to mount a defense. Only a lucky few have access to lawyers while 79% remain unrepresented because immigrants have no right to an attorney in deportation proceedings. Because the deck is stacked against these New Yorkers, only 3% of such individuals mount a successful defense to their deportation. The immigration detention system is notoriously brutal with a deplorable record of medical care, which has led to the deaths of many immigrants across the country, including New Yorkers. The severity of this situation was exposed in DOC Commissioner Schriro's own report analyzing the state of the ICE detention system, written while she worked for the Department of Homeland Security. This is the unfair system that our City is currently subsidizing through DOC's detainer policy.

The impact of this policy is felt in all New York City communities. The destructive nature of current DOC practice can be felt in three main ways. First, it destroys New York families. When DOC funnels a New Yorker into immigration detention, a broken family is left behind. Often these families become reliant on some form of public assistance, further draining the City's limited resources. A recent Urban Institute study found that approximately 50% of the immigrant families that lose breadwinners to deportation become reliant on some form of public assistance.

Second, it undermines public safety by weakening our City's community policing efforts and making immigrants fearful of contact with the police. When immigrant New Yorkers begin to view the City's criminal justice system as the gateway to immigration detention and deportation, they become fearful of the police. When any portion of our community is afraid to come forward as witnesses and victims of crimes, that make all New Yorkers less safe. As you will hear in later testimony, the impact on victims of domestic violence is particularly severe. People are forced to suffer in silence because they fear that contacting the police is a direct pipeline to deportation. When any New York residents are afraid to cooperate with police, we are all less safe.

Finally, this policy squanders scarce City resources. Our City spends inordinate amounts of money every year handing over New Yorkers to ICE. In a new report from the Independent Budget Office, the DOC reported that the marginal savings from reducing the number of inmates at Rikers by just 100 comes out to $71.51 per inmate per day. We also know that inmates with immigration detainers spend an average of 73 extra days in DOC custody compared to inmates without detainers, because they may not want to pay bail and be sent to ICE to begin their deportation proceedings immediately. So DOC is spending more than $5,200 per year that it otherwise would not spend for each inmate with an ICE detainer. With 3,000 to 4,000 detainers being issued against people at Rikers each year, we're talking about New York City taxpayers paying as much as $20 million per year to help deport New Yorkers. The federal government

reimburses us for a truly miniscule proportion of that amount, and, furthermore, refuses to indemnify the City for any liability that we incur if a detainee falls ill or dies as a result of those extra days spent in DOC custody. In this difficult fiscal environment, every dollar going to subsidize the federal government's civil immigration enforcement activities is a dollar not spent on other critical local priorities. Firehouses stay closed and libraries shut their doors because the City chooses to help ICE sustain a fatally flawed system, which leads only to broken families, less safe streets, and money thrown away.

The bill before you today says that New York City will not be in the business of assisting ICE to throw innocent New Yorkers into this broken system of immigration detention and deportation. It represents a sensible and balanced first step to preserving cooperative relationships between police and immigrant communities.

New York City has the legal authority and the moral obligation not to subsidize the unjust deportation of New Yorkers. The City has the right to decide who is turned over to ICE and who is not. When it comes to incarceration policy, New York City's job is to ensure public safety. With this legislation, we can begin to make sure New York is in the public safety business, not the deportation business. This bill helps ensures that the fundamental rights of immigrant New Yorkers are protected, public safety is ensured, and family unity is maintained, while at the same time effectively using our valuable city resources. We have an opportunity for New York City to be a leader on this issue. Let's work together to make this happen. Thank you for your time.

October 3, 2011

Testiomony of Rev. Dr. Omar Almonte, Pastor, Central Baptist Church in Brooklyn

Hello. My name is Rev. Dr. Omar Almonte, and I am the pastor at Central Baptist Church in Bushwick, Brooklyn. Members of the City Council, community leaders like Make the Road New York and other allies in the struggle, I am thankful for the opportunity to testify in support of this legislation to limit the city's participation with ICE in our local jails.

Every week in Bushwick in our congregation and neighborhood we hear stories of pain and injustice caused by our immigration system. As a pastor I am deeply aware that the system at a national level is acting against the fundamental teachings of the Bible – to love your neighbor, to welcome the stranger in your midst. And I am profoundly aware of the role of the church in the struggle for justice for all. As religious leaders we are called to stand with our most vulnerable, and to support efforts to protect and empower them.

That is why today I have hope that together we can create a more just, more humane city.

As a pastor I teach using stories, and it is the stories that show us the reason why we must pass this bill. I have heard of a man who was arrested and accused of stealing a box of chocolates. His charges were later dropped, but because of ICE's presence in Riker's Island, he was deported anyway. He had done nothing wrong. There are many others in his position.

I also hear every day from my congregants – we are scared of the police, we don't trust the government, they are not here to help us. This is not a good situation. Our elected leaders must take action to make this city a place where our immigrants are not scared

away from government, where we hide from one another and push a vulnerable group even farther into the shadows. This legislation will do that – no longer will someone who

is innocent have to fear speaking to the police about anything. Today, a wrongful arrest often ends in deportation.

Lastly, in times when we have little hope nationally, even despite the President's recent announcement of changes in deportation practices, this legislation shows us that that we can take power into our hands at the local level. This year New York will send a message to municipalities across the country – stand up for your immigrants. Protect our families. You have the power.

This legislation is a change. Thanks to the leadership of Councilman Dromm, Mark-Viverito and Speaker Quinn, we are ready to make New York City a leader once again in our nation's immigrant history. I am proud to support it and thank you for the opportunity to speak in favor. Thank you.

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Press Packet

1. One Page Summary of Legislation to Protect New York City Residents from Unfair Immigration Detention

2. Full Text of Legislation

3. Stories of Individuals Affected by Current DOC Policy

4. FAQ on New York City's Entanglement with ICE

5. Other Jurisdictions Implementing Similar Policies

6. Selected Press Coverage

   a. In Change, Bloomberg Backs Obstacle to Deportation, by Sam Dolnick, *New York Times*, September 30, 2011

   b. Council Bill Would Curb Assistance by Rikers to Immigration Officials, by Sam Dolnick, *New York Times*, August 1, 2011

   c. The Feds' Deportation Crimes, by Robert Morgenthau, *Daily News*, September 28, 2011

   d. Saquemos a ICE de Rikers Island, by Speaker Christine Quinn and Councilmember Melissa Mark-Viverito, *El Diario*, September 30, 2011

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PROTECT NYC RESIDENTS FROM UNFAIR IMMIGRATION DETENTION

Proposed Law Would Keep Families Together, Promote Public Safety, and Cut Jail Costs

MAKE THE ROAD NEW YORK

LA UNIÓN HACE LA FUERZA
THE COMING TOGETHER OF THE LATIN AMERICAN INTEGRATION CENTER AND MAKE THE ROAD BY WALKING

WHAT'S THE PROBLEM?

- **The City is paying to deport thousands of New York City residents each year.** The City's Department of Corrections (DOC) holds 3,000 to 4,000 New Yorkers every year for transfer to Immigration and Customs Enforcement (ICE) custody. Some of those New Yorkers are asylum seekers, victims of human trafficking or domestic abuse, legal permanent residents, juveniles, people with no criminal records whatsoever – **even people whose cases have been dismissed** are being held for immigration.
- **When ICE requests someone from the DOC, the DOC says yes *every single time*.** That means DOC ends up holding people for longer than they should have to stay, **entirely at the city's expense**. Once in ICE custody, these people are often shipped to immigration jails in Texas, Louisiana, Alabama, or even farther away, where they are held without adequate access to medical care or legal help. Families are torn apart.
- DOC's entanglement with ICE has **serious consequences for New Yorkers: it makes us less safe and it costs us tens of millions of dollars every year**. When immigrant communities view the City's criminal justice system as the gateway to detention and deportation, immigrant witnesses and victims of crimes are afraid to come forward to talk to the NYPD. That makes us all less safe. And DOC's cooperation costs the city tens of millions of dollars per year. Especially with a tight city budget, New York taxpayers shouldn't have to foot the bill.

WHAT'S THE SOLUTION?

- The solution is known as **detainer discretion**. Our City is under no legal obligation to subsidize flawed federal immigration enforcement programs. When ICE asks us to hold a New Yorker for deportation, **we can say no to ICE's unreasonable requests**.
- A proposed law, Introduction 0656-2011, would accomplish that. The law would **stop transfers of innocent New Yorkers** from DOC custody to ICE custody. People convicted of crimes would still be transferred, but people cleared of their charges would not.
- The law would protect innocent New Yorkers, keep families together, protect public safety by restoring immigrants' confidence in our criminal justice system, and save the city millions of dollars. **We urge you to help pass this detainer discretion law.**

WANT TO LEARN MORE?

- Contact Javier Valdes at 718-565-8500 ext. 4408 or javier.valdes@maketheroadny.org.

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File #:	Int 0656-2011 Version:*	Name:	Persons not to be detained.
Type:	Introduction	Status:	Committee
		Committee:	Committee on Immigration
On agenda:	8/17/2011	Final action:	
Enactment date:		Law number:	
Title:	A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained.		
Sponsors:	Melissa Mark-Viverito, Christine C. Quinn, Daniel Dromm , Helen D. Foster, Gale A. Brewer, Margaret S. Chin, Robert Jackson, Karen Koslowitz, Jessica S. Lappin, Rosie Mendez, Annabel Palma, Ydanis A. Rodriguez, Deborah L. Rose, Charles Barron, Sara M. Gonzalez, Julissa Ferreras, Stephen T. Levin, Leroy G. Comrie, Jr., Albert Vann, Fernando Cabrera , Inez E. Dickens, Maria Del Carmen Arroyo, Letitia James, James G. Van Bramer, Mathieu Eugene, Diana Reyna, Larry B. Seabrook, James Sanders, Jr., Joel Rivera, Elizabeth S. Crowley, G. Oliver Koppell, Jumaane D. Williams, Brad S. Lander, Daniel R. Garodnick, Ruben Wills, Darlene Mealy, Peter A. Koo		

Date	Ver.	Action By	Action	Result	Action Details	Meeting Details	Multimedia
8/17/2011	*	City Council	Introduced by Council		Action details	Meeting details	Not available
8/17/2011	*	City Council	Referred to Comm by Council		Action details	Meeting details	Not available

Int. No. 656

By Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Foster, Brewer, Chin, Jackson, Koslowitz, Lappin, Mendez, Palma, Rodriguez, Rose, Barron, Gonzalez, Ferreras, Levin, Comrie, Vann, Cabrera, Dickens, Arroyo, James, Van Bramer, Eugene, Reyna, Seabrook, Sanders, Rivera, Crowley, Koppell, Williams, Lander, Garodnick, Wills, Mealy and Koo

A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council finds that although there is no agreement obligating them to do so, the New York City Department of Correction ("DOC") cooperates with the federal Immigration and Customs Enforcement's ("ICE") Criminal Alien Program ("CAP") by: (i) allowing ICE agents to maintain a presence at DOC's facilities, (ii) allowing ICE agents to interview DOC inmates at DOC's facilities, (iii) sharing DOC inmate database information with ICE,

including place of birth, and (iv) honoring immigration detainers issued by ICE for up to 48 hours. In CY 2009 DOC identified 12,710 DOC inmates as foreign born. ICE placed detainers on 3,506 of those inmates.

Additionally, the Council finds that in calendar year 2009, of the inmates in DOC custody with immigration detainers, 22.4% had a felony and 20.2% had a misdemeanor as their highest prior conviction. This means more than 50% of the inmates in DOC custody with immigration detainers had no prior convictions at all. Of the inmates discharged to ICE from City jails in 2009, 20.7% had been previously convicted of a felony, 20.9% had a misdemeanor conviction as their highest prior conviction, and 49.3% had no prior convictions.

The Council further finds that the percentages were just as troubling in calendar year 2010. From January through November 2010, of the inmates in DOC custody with immigration detainers, 20.8% had a felony and 20.6% had a misdemeanor as their highest prior conviction. Of the inmates discharged to ICE from City jails during that time period, 18% had been previously convicted of a felony, 22.3% had had a misdemeanor conviction as their highest prior conviction, and 49.5% had no prior convictions. In both 2009 and 2010, roughly half of the people at Rikers on whom ICE issued detainers had no criminal convictions. The Council finds this is at odds with ICE's stated goal for the CAP program, which is to"screen inmates and place detainers on criminal aliens to process them for removal before they are released to the general public."

In light of the fact that a significant percentage of the individuals at Rikers in 2009 and 2010 on whom ICE issued detainers through CAP appear not, in fact, to have any criminal record, the Council finds it is appropriate to take action to protect certain individuals from discharge to ICE from City jails. The Council finds that the current level of cooperation between law enforcement and ICE facilitates the deportation of as many immigrants as possible, without regard to their criminal records or whether or not they actually pose a threat to society.

The Council further finds that because cooperation between DOC and ICE is smoothing and expediting the deportation process, such cooperation is eroding trust between immigrants and local law enforcement. Such mistrust may make immigrant crime victims less willing to come forward and make the communities of New York City less safe. In particular, immigrant victims of domestic violence and trafficking must feel safe in reporting acts of domestic violence and trafficking to government authorities. The Council notes that such victims often do not feel safe contacting authorities because of their fears of retaliation by abusers and traffickers who may attempt to use criminal justice systems to have them detained and deported, subjecting these victims to harm upon return to their home countries and leaving these victims' children in the hands of abusers and traffickers.

For all of these reasons, the Council finds that cooperation between DOC and ICE cannot be supported by the Council and should not be supported by tax-payer dollars. New York City -- home to millions of immigrants -- should not be a willing participant in a program that separates thousands of immigrant families each year without a concomitant benefit to public safety. It is therefore the intent of the Council to limit the cooperation between DOC and ICE by creating a category of persons who shall not be detained.

§2. Chapter 1 of Title 9 of the administrative code of the city of New York is amended by adding a new section 9-131 to read as follows:

§ 9-131. Persons not to be detained. a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Civil immigration detainer" shall mean any request from federal immigration authorities pursuant to 8 C.F.R. 287.7 for notification of an individual's release or to maintain custody of an individual.

2. "Convicted of a crime" shall mean a final judgment of guilt entered on a misdemeanor or felony charge. Persons adjudicated as youthful offenders, pursuant to section 720.10(6) of the Criminal

Procedure Law, or juvenile delinquents, pursuant to section 301.2(1) of the Family Court Act, shall not be considered convicted of a crime.

3. "Department" shall mean the New York city department of correction and shall include all personnel, officers, employees or persons otherwise paid by or acting as agents of the department.

4. "Department resources" shall mean any department facility, space, buildings, land, equipment, personnel or funds.

5. "Federal immigration authorities" shall mean any employees, officers or agents of the United States immigration and customs enforcement agency or any division thereof or any other department of homeland security personnel who are charged with enforcement of the civil provisions of the immigration and nationality act.

6. "Pending criminal case" shall mean a case in the criminal or Supreme Courts of New York, or the Federal Courts for any district of New York, or any court of competent jurisdiction in the United States, excluding a family court, where judgment has not been entered and where a misdemeanor or felony charge is pending. Any individual whose case is disposed of with (i) an adjournment in contemplation of dismissal pursuant to section 170.55 or 170.56 of the Criminal Procedure Law or; (ii) a conditional discharge pursuant to section 410.10 of the Criminal Procedure Law shall not be deemed a defendant in a pending criminal case.

7. "Terrorist screening database" shall mean the central database, created pursuant to Homeland Security Presidential Directive 6, of individuals who are known or reasonably suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, maintained by the federal bureau of investigation's terrorist screening center.

b. Prohibition on use of department resources. The department shall not use any department resources to honor a civil immigration detainer by: (1) holding an individual beyond

the time when such individual would otherwise be released from the department's custody or (2) notifying federal immigration authorities of such individual's release, provided that such individual (i) has never been convicted of a misdemeanor or felony; (ii) is not a defendant in a pending criminal case; (iii) has no outstanding warrants; (iv) is not and has not previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1; and (v) is not identified as a confirmed match in the terrorist screening database.

c. No conferral of authority. Nothing in this section shall be construed to confer any authority on any entity to hold individuals on civil immigration detainers beyond the authority, if any, that currently exists.

d. No conflict with existing law. This local law supersedes all conflicting City policies, ordinances, rules, procedures, and practices. Nothing in this local law shall be construed to prohibit any city agency from cooperating with federal immigration authorities when required under federal law. Nothing in this local law shall be interpreted or applied so as to create any power, duty or obligation in conflict with any federal or state law.

e. Reporting. Beginning no later than September 30th of the year of enactment of the local law that added this section and on or before September 30th of each year thereafter, the department shall post a report on the department website that includes the following information for the preceding 12 month period: (1) the number of individuals held pursuant to civil immigration detainers; (2) the number of individuals transferred to immigration pursuant to civil immigration detainers; (3) the number of individuals transferred to immigration pursuant to civil immigration detainers who had at least one felony conviction; (4) the number of individuals transferred to immigration pursuant to civil immigration detainers who had at least one misdemeanor conviction but no felony convictions; (5) the number of individuals transferred to

immigration pursuant to civil immigration detainers who had no criminal convictions; (6) the number of individuals transferred to immigration pursuant to civil immigration detainers who had no criminal convictions and against whom all criminal charges were subsequently dismissed; (7) the amount of State Criminal Alien Assistance funding requested and received from the federal government; and (8) the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section.

§3. This local law shall take effect ninety days after it shall have become a law, except that the commissioner of correction shall, prior to such effective date, take such actions as are necessary to implement the provisions of this law.

LGA/ASP
LS# 1519
7.20.11
4:00 p.m.

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DOC Entanglement with ICE: Stories from Affected New Yorkers

Problem	Solution
DOC's current practice makes everyone less safe because some community members, including victims and witnesses, are afraid to cooperate with police.	Enacting this bill would promote public safety by assuring immigrants that contact with the police will not lead to immigration detention.

The Affected New Yorker

Arnold is a 16-year-old boy from Mexico who witnessed a shooting between rival gangs. In a moment of panic, he ran to protect himself, leaving behind his school bag at the scene. Police found his backpack and swiftly arrested him. The DA agreed that the charges should be dropped because Arnold identified the shooter and several other participants in the gang violence. This qualified him for a special crime victim's visa for having assisted a police investigation. However, before he was released, an immigration detainer was placed on him. As a result, he was detained for four months on Rikers Island, at the City's expense, while his lawyers applied for a visa for him and negotiated with ICE to lift the hold. He was only recently released. Without effective legal representation – only 40% of immigrant detainees have counsel at all – Arnold would surely have been handed over to ICE.

Dangerously, the lesson learned for many immigrants is to avoid any contact with the police, even if they can assist in protecting their communities, because even a wrongful arrest can lead to deportation. This is also common among victims of domestic violence who want police assistance but will not call for fear that contact with the police is connected with the federal deportation system.

Problem	Solution
DOC's current policy funnels New Yorkers – even if they are acquitted and have no criminal record – into deplorable immigration detention facilities in Texas, Louisiana, and elsewhere, where they have inadequate access to legal and medical help.	Enacting this bill would ensure that New Yorkers with no criminal records who are acquitted or have their charges dropped are not transferred into ICE custody and handed over into the broken federal immigration detention and deportation system.

The Affected New Yorker

Luis, a twenty-one year old college student, was transferred from Rikers to an immigration detention center in Texas where he was held for more than four months as a result of DOC's current policy. Luis has lived in New York City with his family since he fled Mexico at the age of 9 after both his father and uncle were killed. In 2007, Luis was wrongfully arrested and charged with a crime he did not commit. He spent nearly a year and a half on Rikers Island in pre-trial custody facing violent felony charges, before all the charges were eventually dropped. Despite the fact that he was cleared of the charges and that Luis has never committed any crime, he was held by DOC on a civil immigration detainer and then transferred to an immigration detention center in Texas, where he was deprived of access to his family and his community. While his family was eventually able to raise bond and get him released, he remains in deportation proceedings awaiting an uncertain outcome. The immigration enforcement program that identified Luis for deportation is advertised as targeting "criminal aliens," but instead regularly results in the deportation of thousands of those like Luis who were wrongfully arrested and charged.

Luis recently obtained his General Equivalency Degree and is now enrolled as a full-time student at the Borough of Manhattan Community College but lives every day under the threat of deportation because of DOC's policy.

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Frequently Asked Questions Regarding NYC Entanglement with ICE

1. What is the current immigration policy of the NYC Department of Corrections?

At ICE's request and at the City's expense, DOC holds 3,000 to 4,000 New Yorkers each year on civil immigration detainers, which are requests from the federal government for local jails to hold inmates beyond their release dates so that ICE can come pick them up. Currently, DOC does not exercise any discretion when deciding whether to devote City resources to subsidize federal civil immigration investigations. As a result, New York asylum seekers, victims of human trafficking, long term permanent residents, juveniles, the elderly and infirm, persons seeking protection under the Violence Against Women Act, and individuals with no criminal records – even people who have the charges against them dropped or are found not guilty at trial – are routinely sent by DOC into immigration detention. Moreover, DOC allows ICE unfettered access to both its detention facilities and detainee databases. DOC also provides ICE with rent-free space on Rikers Island where they are allowed to operate a mobile investigation unit. DOC is under no legal obligation to do any of this.

2. Why is DOC's current policy a problem for all New Yorkers?

The current DOC policy is a serious problem for all New Yorkers for three reasons:

1) **It destroys New York families.** Nearly forty percent of New Yorkers are immigrants. For every New Yorker funneled by DOC into the black hole of immigration detention, there is a broken New York family left behind. Beyond the emotional trauma, these families often lose their primary breadwinner and too often become dependent on social safety net services, paid for by all New York residents.
2) **It undermines public safety.** DOC's policy makes immigrants afraid to cooperate with police. Domestic violence victims in particular are reluctant to call for vital police assistance or cooperate with investigations because of a fear that contact with the police may result in deportation for themselves or their loved ones.
3) **It squanders scarce City resources.** The federal government has been crystal clear that "ICE does not reimburse localities for detaining any individual" held on an immigration detainer. The cost to the city of holding inmates for ICE is in the tens of millions of dollars per year. In this difficult fiscal environment, every dollar going to subsidize the federal government's civil immigration enforcement activities is a dollar not spent keeping a fire house open or on some other critical local priority.

3. How does this bill protect public safety?

This bill begins to bring DOC policy in line with NYPD practice and the purpose of Executive Order 41 – which both foster community policing by prohibiting City actors from sharing certain information with ICE. The current DOC policy is in tension with those sensible approaches and leads many immigrant witnesses and victims of crime, particularly domestic violence crimes, to avoid police contact for fear of deportation. This bill mandates that the City not facilitate ICE

investigations and transfers if individuals have been cleared of criminal wrongdoing, thus maintaining vital community policing gains. When immigrants fear the police we are all less safe because crimes will go unreported and police investigations will be met with closed doors and silence.

4. How much does DOC's subsidization of ICE enforcement efforts cost the City?

DOC's current policy of subsidizing ICE's activities costs the City tens of millions of dollars a year. For years, the monetary costs of DOC's immigration policy have been grossly underestimated because officials have looked only at how detainers trigger an additional 48 hours of detention after a person would otherwise have been released from DOC custody. This calculus fails to account for the large majority of costs of DOC's current policy. The biggest additional cost arises because individuals, on average, remain in pre-trial DOC custody 73 days longer if they have an immigration detainer than they would if they had no detainer. This is because detainees who would otherwise pay bail and be released elect not to do so for fear of being shuttled into distant federal immigration detention facilities where they lack access to their families, adequate legal help and medical care, and other necessary resources. In addition, individuals who have immigration detainers are much less likely to be offered alternatives to incarceration, which would lead to earlier release times and which cost a fraction of the amount of DOC detention. The exact amount of the total cost to the city is unknown, but based on data reported by the DOC to the Independent Budget Office and data reported by the Mayor's Management Report for 2010, the cost ranges from approximately $20 million to more than $50 million a year.

5. What is Secure Communities?

Secure Communities is a massive new federal immigration enforcement program, designed to facilitate the deportation of all amenable non-citizens. It seeks to automate and expand ICE's current operations in DOC facilities, and could result in a massive increase in the number of detainers issued against New Yorkers. The fingerprints of every individual who is arrested will be checked against notoriously unreliable federal immigration databases. Although the program claims to target the most dangerous offenders, in reality an overwhelmingly majority of those deported are low-level offenders or non-criminals. Until recently it was believed that states', cities', and counties' participation in Secure Communities was voluntary, but the Obama Administration has suddenly had a change of heart and decided to try to force it on the entire country by 2013. It's still not clear whether states, cities, and counties will be able to opt out. If they are not, then detainer discretion becomes even more important.

6. Does the Council have the legal authority to enact this bill?

Yes. The federal government has made clear that immigration detainers are "requests" for local jails to hold inmates for them, not requirements, and that "assisting ICE in acquiring detainee information is not a legal requirement." Furthermore, the bill is in harmony with state law and policy, which does not require localities to subsidize ICE activities. Several other major cities – including Chicago, San Jose, San Francisco, and Santa Fe – already have or are considering policies to restrict local involvement with jail-based ICE enforcement initiatives. It is clear that the City Council would be acting within its authority in passing this legislation.

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How Other Jurisdictions Deal with ICE: Detainer Discretion and Non-Notification Policies Across the U.S.

Other jurisdictions across the country—both at the city and county levels—have already adopted policies to limit their entanglement in federal civil immigration enforcement activities in local jails.

Many of these jurisdictions have chosen not to notify ICE of the presence of some categories of arrestees. Other jurisdictions have taken a different route: they exercise discretion on which ICE detainer requests they will honor. Detainer discretion has become a particularly important consideration in recent months due to fears that ICE may soon force cities and counties to hand over information on all detainees under its harsh new Secure Communities program.

The bill currently before the New York City Council, Introduction No. 0656-2011, is a detainer discretion bill. If the bill is passed, the city's Department of Correction would no longer hand over into ICE custody New Yorkers who are not convicted of a crime. Innocent New Yorkers would no longer be funneled into the broken federal immigration system.

Jurisdictions with Detainer Discretion Policies:

- **(Chicago) Cook County, IL, ordinance**
  - "The Sheriff of Cook County shall decline ICE detainer requests unless there is a written agreement with the federal government by which all costs incurred by Cook County in complying with the ICE detainer shall be reimbursed."

- **San Francisco, CA**
  - Sheriff Michael Hennessy has agreed not to honor ICE detainers on individuals who enter his jails on misdemeanor charges. ICE detainers will continue to be honored for individuals on felony charges.

- **(San Jose) Santa Clara County, CA**
  - County Counsel's Office has recommended that the Board of Supervisors consider a policy to "honor only those civil immigration detainer requests relating to individuals who have been convicted of a serious or violent felony."
- **Santa Fe, NM, San Miguel County Detention Center, ICE Intake Policy**
  - "If the detainee does not meet the minimum standard for obtaining reimbursement from ICE for his/her additional detention (i.e., does not have a record of at least

one felony or two misdemeanor convictions), the ICE Detainer shall not be honored."

- **Taos County, NM, Taos County Adult Detention Center, ICE Policy**
  - Taos County Adult Detention Center will only honor ICE detainers for "undocumented criminal aliens" who "meet the minimum statutory criteria to obtain reimbursement." This means an individual "who has been convicted of at least one felony or two or misdemeanors."

Jurisdictions with Policies that Restrict Notifications to ICE:

- **(Chicago) Cook County, IL, ordinance**
  - "Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty."

- **Montgomery, MD, Memorandum from County Executive**
  - Montgomery County's policy is to report all individuals to immigration who are "arrested and charged" with "crimes of violence . . . or for wearing, carrying or transporting a handgun."

- **San Francisco, CA, Local Ordinance 12H**
  - San Francisco law prohibits the City from reporting anyone to immigration officials unless they are in custody after being booked for the alleged commission of a felony or have previously been convicted of a felony.

  - Additionally, San Francisco prohibits City law enforcement officers and employees from reporting information regarding the immigration status of a juvenile to immigration officials unless they are charged with certain violent felonies.

- **Cicero, IL, Police Dept. General Order 61-01-02**
  - The Cicero Police Department *requires* officers to notify immigration if a person is charged with a "felony, felony drug charge or any sex offense" and *permits* notification if a person is "documented as a gang member and . . . poses a danger to the community."

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The New York Times
http://www.nytimes.com/

September 30, 2011

In Change, Bloomberg Backs Obstacle to Deportation

By SAM DOLNICK

In a significant reversal, the Bloomberg administration said Friday that it would support a City Council bill that would hamper federal authorities' ability to detain, and eventually deport, foreign-born inmates on Rikers Island who are about to be released.

The decision is an important victory for the Council speaker, Christine C. Quinn, the sponsor of the bill, which is now almost certain to become law, and for immigrant advocates, who have long assailed the city's cooperation with immigration agents based at the prison.

Corrections Department officials routinely share lists of foreign-born inmates with immigration authorities, who then take custody of, detain and deport thousands of people who had been charged with misdemeanors and felonies. The arrangement is common across the country.

The bill would not end the practice, known as the criminal detainer program, in New York City. But it would prevent corrections officials from transferring inmates to federal custody, even immigrants in the United States illegally, if prosecutors declined to press charges against them, and if they had no convictions or outstanding warrants, had not previously been ordered deported and did not show up on the terrorist watch list.

As a result, the immigrants would be released if they were not defendants in criminal cases, regardless of whether federal officials wanted them deported.

"The criminal detainer program had become the immigrant dragnet program," Ms. Quinn said. "We don't support that."

Ms. Quinn, a likely mayoral candidate in 2013, said the bill could keep hundreds of people, perhaps as many as 1,000, from being deported every year.

In the past, Mayor Michael R. Bloomberg and his advisers have defended the city's cooperation with immigration officials as a matter of public safety. But after extensive negotiations with Ms. Quinn's office, the administration decided to support the bill.

"Our goal is always to protect public safety and maintain national security, while ensuring New York remains the most immigrant-friendly city in the nation," said John Feinblatt, the mayor's chief policy adviser. "This strikes the right balance."

Luis Martinez, a spokesman for Immigration and Customs Enforcement, declined to comment on the legislation.

Mr. Bloomberg's decision comes as the Obama administration has placed a priority on deporting noncitizen criminals who pose a threat to the public, while focusing less on illegal immigrants who do not pose a threat.

Supporters of more restrictive immigration laws have criticized the Council bill as a get-out-of-jail-free card for illegal immigrants. Jessica Vaughan of the Center for Immigration Studies in Washington has said it amounts to "playing Russian roulette with public safety."

Councilwoman Melissa Mark-Viverito, a Democrat who represents East Harlem and a co-sponsor of the bill, dismissed that charge, saying the measure would affect only "people who do not pose a risk to safety and security."

Ms. Mark-Viverito also said that curtailing the program would save the city a significant amount of money, possibly tens of millions of dollars.

Ms. Quinn and Ms. Mark-Viverito had planned a rally on Sunday at an Upper Manhattan church to draw support for the legislation. The rally now will most likely be more of a celebration, Ms. Quinn's office said.

The City Council will hold a hearing on the issue on Monday, when Robert M. Morgenthau, the former longtime Manhattan district attorney, is expected to testify in support of the bill. The Council is expected to vote on it before the end of the year.

Advocates for immigrants hailed the mayor's decision as an important step toward protecting the rights of foreign-born New Yorkers.

"There's really an evolving consensus about the corrosive impact of an aggressive deportation strategy," said Andrew Friedman of Make the Road New York. "This is a clear statement that it is bad for New York in so many ways to facilitate the deportation of New Yorkers."

August 1, 2011

Council Bill Would Curb Assistance by Rikers to Immigration Officials

By SAM DOLNICK

Rikers Island officials have long compiled lists of foreign-born inmates who end up in their custody. They routinely give this information to federal immigration officials, who have their own office at the jail. Deportations often follow.

With the city's assistance, immigration authorities annually detain and deport thousands of inmates charged with a range of offenses, from misdemeanors for theft to felony drug dealing.

But now the City Council speaker, Christine C. Quinn, wants to curtail this practice by permitting the jail to cooperate with the federal immigration authorities only in limited circumstances.

Ms. Quinn is proposing legislation, to be introduced this month, that could touch off tensions over immigrant rights between the City Council and Mayor Michael R. Bloomberg, who has defended the program in the past.

"On Rikers, there is a dragnet as it relates to every foreign-born person," Ms. Quinn said. "Stop needlessly and excessively deporting people."

Ms. Quinn, a Manhattan Democrat who is a candidate for mayor in 2013, added that she had deep support on the City Council, saying, "I could pass this bill and override a veto."

Opponents said the bill would improperly tie the hands of immigration officers, threatening public safety and weakening federal law.

The role of states and localities in immigration enforcement is a highly contentious issue across

the United States. Some jurisdictions assert that the federal government has not done enough and have tightened their own laws. Others have characterized the federal response as overbearing, and refused to help Immigration and Customs Enforcement.

In June, Gov. Andrew M. Cuomo suspended New York's participation in a key federal program, called Secure Communities, that makes it easier for immigration authorities to access the fingerprints of everyone booked into a local jail and to begin deportation proceedings against noncitizens.

The program at Rikers, which also operates in jails across the country, is supposed to be aimed at criminals who have committed serious offenses.

Federal authorities at Rikers place holds, or "detainers," on noncitizen inmates they want to deport. The detainers let the city jail hold inmates for 48 hours after their scheduled release, so they can be transferred to immigration custody.

Mr. Bloomberg has defended the arrangement, calling it a public safety measure. Administration officials declined to comment on the proposed bill, saying they had not yet seen it.

Proponents of tough immigration laws said the City Council was impinging on federal jurisdiction.

"It's a bad idea, unequivocally," said Jessica Vaughan, director of policy studies at the Center for Immigration Studies in Washington, which favors reduced immigration. "They are essentially playing Russian roulette with public safety and putting people at risk needlessly, all because of the politics of immigration."

Daniel J. Halloran, a Republican councilman from Queens, said he was skeptical of the bill's legality. "You're legislating in the realm of the federal government," he said. "Do we even have the authority to do this?"

Ms. Quinn and other supporters of the legislation, including Robert M. Morgenthau, the former Manhattan district attorney, contend that the practice largely sweeps up inmates without criminal records — for example, people who are arrested and sent to Rikers but then have charges dropped.

In 2009, about 50 percent of the inmates flagged by federal authorities had no prior conviction, and about 20 percent had a misdemeanor as their highest prior conviction, according to statistics compiled by the City Council.

The legislation, co-sponsored by Melissa Mark-Viverito, a Democrat who represents East Harlem, and Daniel Dromm, a Democrat who represents Jackson Heights, Queens, would not end the program entirely.

It would instead forbid prison officials to hold for an extra 48 hours immigrants who were not defendants in pending criminal cases, had no prior convictions or outstanding warrants, had not been ordered deported previously and did not show up on the terrorist watch list.

That means that immigrants, even if they were here illegally, would be released if prosecutors declined to press charges against them, no matter if federal officials wanted them deported.

Luis Martinez, a spokesman for Immigration and Customs Enforcement, declined to comment on the legislation, but said the agency "will continue to pursue its mandate to protect public safety by aggressively seeking out foreign-born criminals before they can be released back into the public."

But Andrew Friedman, co-executive director of Make the Road New York, part of a coalition that worked on the bill, called the federal policy misguided.

"It's a tremendous step forward for the city to say clearly to the feds, 'We're not willing to undermine our relationship with New Yorkers in order to facilitate unjust deportations.' " he said.

This article has been revised to reflect the following correction:

Correction: August 3, 2011

A picture caption on Tuesday with an article about a bill to curb the deportations of immigrants at Rikers Island who are referred to federal authorities misstated the relationship between Amita Lopez and an immigrant who was deported. The immigrant was Ms. Lopez's roommate and close friend — not her husband.

The feds' deportation crimes

BE OUR GUEST

BY ROBERT MORGENTHAU

When I was district attorney, facing a flood of new arrests every day, I learned the critical importance of prosecutorial discretion. Given limited resources, it is essential to focus on the most serious cases, exercise leniency toward those who deserve it and dismiss unprovable cases at the earliest possible stage.

Federal immigration officials also face a flood of new cases. But recent data suggest that they are not exercising their discretion wisely or effectively.

Figures from U.S. Immigration and Customs Enforcement (ICE) disclose that the federal government cannot effectively prosecute even 4% of its potential caseload annually. Long ago, the government should have made sensitive policy decisions about when and against whom to seek deportation, and made sure those decisions were carried out.

Regrettably, on too many occasions, the government's exercise of discretion has been little short of folly. I vividly recall President Richard Nixon's unrelenting efforts to deport a man he believed to be a threat to America: John Lennon.

Recent administrations have attempted to be more rational. For more than a decade, the Homeland Security Department has published sound criteria for the exercise of discretion in removal cases. But then, too often, those principles have simply been ignored.

ICE Director John Morton issued a memorandum this year instructing all ICE employees to follow these principles in enforcing immigration laws. Priority one would be to focus enforcement efforts on deporting undocumented immigrants who pose a danger to national security, or a risk to public safety. And where cases did not merit prosecution, the director instructed his agents to dismiss them promptly.

It was a great directive – if only it had been followed. Now, more than six months later, the statistics show that the backlog of cases has only gotten worse, and the focus of prosecution even less rational.

A study by a research center based at Syracuse University discloses that by the end of July, the backlog of pending cases before our immigration courts had reached an all-time high – more than a quarter of a million cases, an increase of 3.7% over the backlog just three months earlier. The average length that a pending case has been awaiting review is now a staggering 490 days. For no sane reason I can imagine, Armenians face even bleaker odds: Their cases have been pending, on average, nearly twice as long – 923 days.

One immigration attorney in Los Angeles recalls getting an adjournment date in one of his cases. "What year, judge?" he asked.

All this might be less vexing if immigration officials had been executing the ICE director's supposed top priority, focusing on public safety. But most disturbing of all, the figures show just the opposite is true.

Of ICE's massive docket, only 8.3% consisted of "criminal cases" – persons charged with criminal activities or actions adverse to national security or aiding terrorism. That's *down* from 9.1% the year before. Clearly, the staff did not get the message on the executive policy.

The bulk of the immigrants they're going after pose no danger to society

And even the dwindling percentage of "criminal cases" includes too many that simply do not merit prosecution. Thirty-four percent of those persons arraigned in New York City Criminal Court eventually have their cases dismissed. Those defendants should simply be allowed to continue with their lives. But New York correction officials routinely refer detainees reporting non-U.S. places of birth to 15 ICE inspectors stationed at Rikers Island.

As a result, many defendants find that posting bail or winning their criminal case has left them in an even worse predicament: facing an immigration detainer and potential deportation.

When discretion is not exercised thoughtfully, the law ceases to be an instrument of justice. When immigrants cannot rely upon rational enforcement of our deportation laws, they become afraid to report a crime or to file an income tax form, lest they come to the attention of ICE. A victim of domestic violence may hesitate to report the father of her children to authorities if she believes the next step will be his mandatory deportation.

What is to be done? We need not wring our hands searching for solutions.

The Homeland Security Department has already published a small library of well-reasoned policy papers stating exactly what must be done. All that is needed is the political will to do it.

Morgenthau, former Manhattan district attorney, is of counsel at Wachtell, Lipton, Rosen & Katz.

Saquemos a ICE de Rikers Island

CHRISTINE C QUINN Y MELISSA MARK-VIVERITO

Luis es un estudiante de 21 años de origen mexicano. En el 2007, fue arrestado y acusado de un crimen violento que no cometió. Aunque los cargos fueron aclarados y Luis no tenía historia criminal, el Departamento de Correcciones (DOC, por sus siglas en inglés) lo mantuvo encarcelado bajo una orden de detención (llamado "detainer") y luego fue transferido a un centro de detenciones en Texas. Aunque eventualmente lo dejaron regresar a Nueva York, Luis perdió más de dos años de su vida y el resultado de su caso de inmigración aún está incierto.

Las historias como la de Luis son demasiado comunes en las comunidades inmigrantes a través de la ciudad de Nueva York. Por eso nosotras hemos presentado una propuesta de ley en el Concejo Municipal que cambiará la manera en la que el DOC colabora con la Oficina de Inmigración y Aduanas (ICE).

DOC actualmente participa en un programa de ICE llamado "Criminal Alien Program" (CAP), el propósito del cual es identificar a los criminales no ciudadanos quienes se encuentran en las cárceles federales, estatales y municipales y ponerles órdenes finales de deportación antes de que se acaben sus sentencias.

CAP no ha logrado ese dicho propósito. En vez de enfocarse en criminales peligrosos, CAP ha resultado en la detención y deportación de neoyorquinos indocumentados quienes no tienen ningún record criminal. En el 2009 y el 2010, aproximadamente la mitad de los presos en Rikers, bajo una orden de detención nunca habían sido declarado culpables de un crimen.

El propósito del proyecto de ley del Concejo Municipal es limitar la cooperación entre DOC y ICE para que el verdadero enfoque sea la detención y deportación de los criminales que perjudiquen la seguridad pública. Creemos que esta legislación mejorará la confianza que siente los neoyorquinos inmigrantes hacia la policía local, ya que muchos inmigrantes son menos dispuestos a reportar crímenes a la policía por miedo a la deportación. Además, esta legislación ayudará a mantener a más familias inmigrantes unidas.

¿Cree que delincuentes no violentos deberían de ser deportados a sus países de origen? Díganos en

opinion@eldiariony.com

A nivel federal, la administración del Presidente Obama se está moviendo cada día más hacia un cambio en las regulaciones para dejar de enfocar en la deportación de delincuentes no violentos. Estos cambios le dan validez a los esfuerzos del Concejo Municipal para reformar cómo las leyes de inmigración se están llevando a cabo a nivel local.

Los inmigrantes siguen siendo la columna vertebral de esta ciudad. Esperamos que esta legislación reduzca el número de deportaciones y que presente un estándar nuevo otros municipios que están en busca de una resolución justa para los inmigrantes encarcelados por delitos menores.

CHRISTINE C. QUINN
es la portavoz del Concejo Municipal de Nueva York.

MELISSA MARK-VIVERITO
es concejal por East Harlem, el Sur del Bronx y parte del Alto Manhattan.

NEW YORK CITY COUNCIL
TESTIMONY FROM JOHN FEINBLATT, CHIEF ADVISOR TO THE MAYOR FOR POLICY AND STRATEGIC PLANNING
Committee on Immigration
October 3, 2011

Good morning, Speaker Quinn, Chair Dromm, and Council Members of the Immigration Committee. I am here to testify today concerning the detention of foreign-born inmates by the New York City Department of Correction (Department) and the nature of the City's cooperation with the federal agency, Immigration and Customs Enforcement, commonly known as ICE. This is a complex issue, so I want to start off by thanking the Speaker, Council Member Mark-Viverito, the Chair and Committee members, and representatives from the City's immigrant communities for working hard with us to reach an agreement. Our goal is always to protect public safety and maintain national security, while ensuring New York remains the most immigrant-friendly city in the nation. This strikes the right balance.

In addressing this issue, the question we had to answer was - how do we continue to work with ICE to protect public safety and national security, while keeping New York the most welcoming city in the world? Simply not cooperating with ICE was not an option – our cooperation with law enforcement is vital, and helps keep the city streets safe of criminals, gang members and terrorists. At the same time, we needed to consider individuals who came through Rikers, but – with their cases dismissed and no record of criminal activity or other apparent threat – seemed to pose little risk to the community.

The agreement we have reached manages to strike this balance by honoring requests by ICE for holds in cases of public safety and national security, while protecting those who: 1) have

never been convicted of a misdemeanor or felony; 2) are not defendants in a pending criminal case; 3) have no outstanding criminal warrants and have not absconded from an order of removal hearing; 4) are not identified as participants in an organized criminal gang; 5) are not and have never been subject to a final order of removal; and finally 6) have not been identified as a possible match in the terrorist screening database.

In addition to protecting public safety, this agreement recognizes the importance of our longstanding relationships with other jurisdictions—including Federal law enforcement—in maintaining a safe City. The Federal government this summer clarified its own priorities for immigration enforcement, focusing on those who are a risk to public safety or national security, those who have committed crimes or are subject to warrants, gang members, and those who have committed egregious violations of immigration law such as illegal reentry after removal. I feel confident that our agreement is largely in-line with the new enforcement priorities.

As I said, this was a complex issue, so I want to thank again the Speaker and council members for their work in crafting this new arrangement. I also want to recognize New York City Department of Correction Commissioner Dora Schriro who has been instrumental in reaching this agreement and will be vital to its implementation. Together, I think we have found a thoughtful and appropriate solution, and one that can set an important precedent for the country. I look forward to continuing to work with the Council to finalize a bill to address this important issue.

Sauti Yetu
CENTER FOR AFRICAN WOMEN AND FAMILIES
Giving Voice To Our Potential

Presentation of Zeinab Eyega, Executive Director
Sauti Yetu Center for African Women and Families, Inc.

Submitted to: New York City Council, October 3, 2011

Oversight Hearing: Int. No. 656: a local law to amend the administrative code of the City of New York, in relation to persons not to be detained.

Committees: Immigration

Chair: Daniel Dromm

I thank the New York City Council for providing this opportunity to the public to share its concerns. My name is Zeinab Eyega and I am the founder and Executive Director of Sauti Yetu Center for African Women and Families. Sauti Yetu, whose name means"Our Voice"in Swahili, is a community-based nonprofit organization dedicated to mobilizing African immigrant women to improve the quality of their lives, strengthen their families, and develop their communities. Sauti Yetu's direct services, public education and advocacy promote immigrant girls' safe transitions into adulthood, curbs violence in the family, and gives poor and low income immigrant women access to life skills and leadership opportunities. We serve families throughout New York City's five boroughs in our offices in the Bronx and on Staten Island.

Impact of Secure Communities Policy:

Today, I would like to speak about the impact of the *Secure Communities Policy* on our immigrant communities in the City of New York. Under *Secure Communities*, the FBI database is able to communicate with the Immigration and Custom's Enforcement (ICE) immigration database. If these communications reveal questions about an individual, ICE can then take enforcement actions. Serious problems occur when local law enforcement officials (a) arrest victims of violence, thereby exposing them to ICE's database through fingerprinting sent to the FBI, or (b) enter the fingerprints of an individual who was arrested or detained but not subsequently charged with a crime, thereby triggering scrutiny by ICE. Organizations across the country have raised serious concerns about *Secure Communities*, and other laws like it. According to these advocates, such policies threaten public safety and undermine community policing initiatives by eroding the trust of community members. They blur the lines between local law enforcement and immigration enforcement and encourage racial profiling, leading to arrests for minor offenses (such as traffic violations). When law enforcement does not help immigrants—instead exposing them to ICE--they fail in their duty to provide justice and protect the

safety of all individuals regardless of immigration status.

What is the impact on immigrant victims of violence?

Local law enforcement entanglement with ICE puts survivors of domestic violence (DV) and sexual assault (SA) at increased risk in situations such as:

- Dual arrests (arresting both perpetrator and victim), particularly when language is a barrier;
- Perpetrators calling the police on unfounded allegations in order to expose victims to ICE;
- Victims running the risk of getting arrested for driving without a license (when an abusive spouse who is a citizen or legal permanent resident has refused to legalize their immigration status);
- Local law enforcement entering victims' fingerprints into the FBI/ICE database because they (1) incorrectly think they must, (2) fail to adequately determine that the person is a victim, or (3) think being in the United States without documents is a crime (it is not) and fail to follow ICE prioritization standards;
- Other immigrant victims in the community becoming further isolated from law enforcement with increased fears of contacting the police or seeking help, thus allowing abusers to use the system and threats of deportation as a tools of abuse.

Recommendations:

- Meet with local law enforcement to discuss their understanding of *Secure Communities* and related laws that encourage collaboration with ICE in order to analyze how this understanding affects their obligations to provide community policing to all victims of crimes, regardless of immigration status. Build on existing relationships to ensure noncitizen victims of DV and SA are identified before being exposed to ICE, which must include bringing DV/SA advocates into the process as early as possible;
- Meet with local ICE office to discuss how they will implement their new policies designed to avoid detaining and deporting victims. Discuss how they will include advocates as an integral part of the system for identifying and providing services to noncitizen victims;
- Educate immigrants about how the system should work, their rights if they are arrested, services available to them, and potential ways to secure status for immigrant victims of DV, SA, and trafficking (e.g. VAWA Self-Petition, U-Visa, T-Visa, among others).

By raising awareness and helping individuals and communities seek justice, we can combat harmful practices, like violent crimes. Thank you again for the opportunity to comment on this critical issue.

We look forward to working together to end the perpetuation of domestic violence and sexual assault in our communities.

Sincerely,

Zeinab Eyega
Executive Director

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House of Representatives
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SENIOR WHIP

October 3, 2011

New York City Council Committee on Immigration
New York City Council Speaker Christine C. Quinn
New York City Council Member Melissa Mark-Viverito

Thank you for your kind invitation to submit a statement for the City Council hearing on Immigration Customs Enforcement's (ICE) presence and activities within New York City's Department of Corrections. This is an important hearing on a subject that I care deeply about and I am pleased that the Council is taking the time to explore this issue in greater depth. I regret that because of my responsibilities in Washington, I am unable to be there to address the Council in person.

The problem of the intersection of immigration enforcement with the local criminal justice system which has resulted in millions of immigrants being deported without due process is a matter that I have been working to resolve through federal legislation and other efforts. Among other actions, I introduced H.R. 250, the Child Citizen Protection Act, to help protect American families from these unfair policies. This legislation would protect American children and families by returning discretion to immigration judges in cases where removal of an immigrant is clearly contrary to the best interest of a United States citizen child. I have also publicly objected to the implementation, in New York State and nationally, of the Secure Communities program, a deportation dragnet which sows mistrust between immigrants and local law enforcement.

I am encouraged by the introduction of City Council bill no. 656 which would protect immigrants from deportation from Riker's Island. Specifically, this new bill would require that the Department of Corrections not honor detainers ICE has placed on immigrants whose charges are dismissed, do not have an outstanding warrant or who are not confirmed as a match on the terrorist screening database.

Immigrants are integral to our community, and especially in New York City where in some boroughs 40% of the population is foreign born. Immigrants inject new ideas and energy into our communities and revitalize our local economies. Our city becomes less safe when immigrants perceive that local law enforcement is linked to ICE. Immigrants are less likely to cooperate with local police when they are a witness or victim of a crime. Communities become fractured when family members are deported from their loved ones. Presently, our deportation program is flawed and until we have humane immigration reform all collaboration between local law enforcement and ICE should end. This City Council bill is a good first step towards that effort.

Again, thank you for giving me this opportunity to submit a statement on this issue of such importance to the safety and the protection of rights of New York City's residents.

Sincerely,

Jose E. Serrano
Member of Congress

JES: AF

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Luis testifying conference call

Address: _____

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card 9:37

I intend to appear and speak on Int. No. 656 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/3/2011

(PLEASE PRINT)

Name: ALINA DAS

Address: 245 Sullivan St., 5th fl. NY, NY 10012

I represent: New York City Bar Association

Address: 42 West 44th St. NY NY 10036

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card 9:38

I intend to appear and speak on Int. No. 656 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/3/11

(PLEASE PRINT)

Name: Peter Markowitz

Address: Cardozo Law 55 Fifth Ave, NY, NY

I represent: MRNY

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:39

I intend to appear and speak on Int. No. 656 Res. No. _____

☑ in favor ☐ in opposition

Date: Oct. 3, 2011

(PLEASE PRINT)

Name: Sam Solomon

Address: 15 East 11th St., Apt. 8F, NY, NY

I represent: Cardozo Immigration Justice Clinic

Address: 55 Fifth Ave. NY, NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:40

I intend to appear and speak on Int. No. 656 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/03/11

(PLEASE PRINT)

Name: MSGR. Kevin Sullivan

Address: 1011 First Ave. NY

I represent: Catholic Charities, Archdiocese of N.Y.

Address: 1011 First Ave NY N.Y.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:41

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jan H. Brown

Address: 1150 Av of the Americas

I represent: American Immigration Lawyers A'SSN

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:42

I intend to appear and speak on Int. No. _____ Res. No. _____
☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Nancy Morawetz

Address: 245 Sullivan Street, NY 10012

I represent: I am a professor at NYU School of Law

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:43

I intend to appear and speak on Int. No. 656 Res. No. _____
☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Ermela Singh

Address: SBLS, 105 Court St, Brooklyn NY

I represent: LSNYC

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:44

I intend to appear and speak on Int. No. 656 Res. No. _____
☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Eugene J. Glicksman

Address: 150 BWAY, Suite 513, NY, NY 10038

I represent: Immigration + Nationality Committee / NYC Bar Lawyers Assn

Address: 14 Vesey St, NY, NY 10007

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:45

I intend to appear and speak on Int. No. 656 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/3/11

(PLEASE PRINT)

Name: Jennifer Friedman.

Address: _____

I represent: The Bronx Defenders

Address: 860 Courtlandt Ave, Bronx NY 10451

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:46

I intend to appear and speak on Int. No. 656 Res. No. _____

☒ in favor ☐ in opposition

Date: 10-3-2011

(PLEASE PRINT)

Name: Jessica Jane Orozco, Esq.

Address: 55 Exchange Place, 5th fl, NY, NY 10019

I represent: Hispanic Federation

Address: →

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:47

I intend to appear and speak on Int. No. 656 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Jacqueline Esposito

Address: 137 W. 25th St NY NY 10001

I represent: New York Immigration Coalition

Address: Same

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:48

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Sr Elizabeth Butler

Address: 6301 Riverdale Avenue Bronx 10471

I represent: Sisters of Charity N.Y

Address: 6301 Riverdale Ave Bx 10471

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:49

I intend to appear and speak on Int. No. 656 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/3/2011

(PLEASE PRINT)

Name: Robert M. Morgenthau

Address: _____

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:50

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: JOHN FEINBLATT

Address: MAYOR'S CHIEF POLICY ADVISOR

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:51

I intend to appear and speak on Int. No. 656 Res. No. _____
☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Javier Valdes

Address: _____

I represent: Make the Road NY

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | [ ]

I intend to appear and speak on Int. No. _____ Res. No. _____
☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Dina Schaper

Address: 235 E 1st NYC 10003

I represent: Judson Church

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:53

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: 10/3/11

(PLEASE PRINT)

Name: Rev. Ramon Almonte

Address: _____

I represent: Iglesia Bautista Central R.C. NY

Address: 260 Knickerbocker Ave Brooklyn, NY 11237

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

9:54

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Mark Marsh

Address: 144-64 87th Ave, Jamaica, NY

I represent: NYC New Sanctuary Coalition

Address: Judson Memorial Church, Washington Sq

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

9:55

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 10/3/11

(PLEASE PRINT)

Name: Michelle Fei

Address: ~~Fax~~ 3 West 29th St #803, NY, NY 10001

I represent: Immigrant Defense Project

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

9:56

I intend to appear and speak on Int. No. 656 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: LISA SCHREIBERSDORF

Address: 177 Livingston St, BKLN

I represent: Brooklyn Defender Services

Address:

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 656 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/3/11

(PLEASE PRINT)

Name: Jose (via. conference call)

Address: Brooklyn Defender Services

I represent: 177 Livingston St. 5th Floor

Address: Brooklyn, NY 11201

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☑ in favor ☐ in opposition

Date: 10-3-2011

(PLEASE PRINT)

Name: Lili Salmeron - Northern Manhattan

Address: Coalition for Immig Rights

I represent: 665 W 182 NY NY 10033

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:35

I intend to appear and speak on Int. No. 656 Res. No. ____

☒ in favor ☐ in opposition

Date: ____

(PLEASE PRINT)

Name: IAN HEAD

Address: 6666 BROADWAY, 7TH FLR

I represent: CENTER FOR CONSTITUTIONAL RIGHTS

Address: ____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card | 9:35

I intend to appear and speak on Int. No. ____ Res. No. ____

☑ in favor ☐ in opposition

Date: 10/2/4

(PLEASE PRINT)

Name: Jojo Annobil

Address: ____

I represent: Legal Aid Society

Address: 199 Water St N.Y. NY 10038

Please complete this card and return to the Sergeant-at-Arms