

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION

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October 3, 2011
Start: 10:20 am
Recess: 2:15 pm

HELD AT: Committee Room
250 Broadway, 14th Floor

B E F O R E:

DANIEL DROMM
Chairperson

COUNCIL MEMBERS:

Daniel Dromm
Christine C. Quinn
Charles Barron
Mathieu Eugene
Ydanis A. Rodriguez
Jumaane D. Williams
Melissa Mark-Viverito
Elizabeth Crowley
Brad Lander
Letitia James
Robert Jackson
Rosie Mendez
Diana Reyna
Daniel J. Halloran

A P P E A R A N C E S (CONTINUED)

John Feinblatt
Chief Advisor to the Mayor
For Police and Strategic Planning

Robert M. Morgenthau
Former Manhattan District Attorney

Msgr. Kevin Sullivan
Executive Director of Catholic Charities
Archdiocese of New York

Javier Valdes
Deputy Director
Make the Road New York

Sam Solomon
Immigration Justice Clinic
Benjamin N. Cardozo School of Law

Peter Markowitz
Associate Clinical Professor of Law
Benjamin N. Cardozo School of Law

Jose
(via conference call)

Luis
(via conference call)

Lisa Schreibersdorf
Director
Brooklyn Defender Services

JoJo Annobil
Attorney in Charge
Immigration Law Unit
Legal Aid Society

A P P E A R A N C E S (CONTINUED)

Jennifer Friedman
Supervising Immigration Attorney
Bronx Defenders

Jan H. Brown
Former Chair
American Immigration Lawyers Association

Lili Salmeron
Community Advocate
Northern Manhattan Coalition for Immigrant Rights

Jacqueline Esposito
Director of Immigration Advocacy
New York Immigration Coalition

Jessica Jane Orozco
Director of Immigration and Civic Engagement
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Rev. Dr. Omar Almonte
Pastor
Central Baptist Church

Ermela Singh
Staff Attorney
Family Law and Domestic Violence Unit
Legal Services New York City

Sr. Elizabeth Butler

Eugene J. Glicksman
Co-Chair
Immigration and Nationality Committee
New York County Lawyers Association

A P P E A R A N C E S (CONTINUED)

Alina Das
Criminal Courts Committee
New York City Bar Association

Nancy Morawetz
Professor
New York University School of Law

Michelle Fei
Co-Director
Immigrant Defense Project

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2 CHAIRPERSON DROMM: Good morning,
3 everyone, we're going to officially start. I'd
4 like to start off by acknowledging my colleagues
5 who are here. First, I'd like to acknowledge
6 Speaker Christine Quinn, Council Member Melissa
7 Mark-Viverito, Council Member Charles Barron and
8 Council Member Ydanis Rodriguez.

9 Good morning. This morning, the
10 Committee on Immigration will consider
11 Introductory Bill No. 656, a Local Law to amend
12 the Administrative Code of the City of New York in
13 relation to persons not to be detained.

14 I would first like to thank Council
15 Member Melissa Mark-Viverito, the lead sponsor of
16 this bill, for introducing this very important
17 piece of legislation. I would also like to thank
18 Speaker Quinn for her continued interest in and
19 longstanding dedication to the issue that we will
20 be discussing today.

21 As the chair of the Committee on
22 Immigration and as the Council Member that
23 represents one of the largest immigrant
24 communities in the city, today's hearing on
25 Introductory Bill No. 656 is of particular

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2 importance to me. Especially since the Department
3 of Corrections current involvement with ICE has
4 contributed to the deportation of the largest
5 number of immigrants in our nation's history, and
6 resulted in family members being separated from
7 their loved ones and sent to detention centers,
8 often out of state, far away from their legal
9 counsel, families and other support networks.

10 The United States Immigration and
11 Customs Enforcement, commonly referred to as ICE,
12 partners with local law enforcement agencies,
13 including our own Department of Correction, to
14 carry out the Criminal Alien program. The purpose
15 of the Criminal Alien program is to identify and
16 detain criminal non-citizens for the purpose of
17 potential deportation.

18 In accordance with this
19 partnership, the Department of Correction allows
20 ICE to maintain a trailer on Rikers Island,
21 provides ICE with access to certain computerized
22 information, and honors civil immigration
23 detainers issued by ICE.

24 This system could work to the
25 benefit of New Yorkers if the focus was solely on

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2 the detention and removal of criminals. But all
3 too often, because no system is perfect, it
4 results in the detention and removal of
5 individuals who have not been convicted of a
6 crime, individuals who are still presumed
7 innocent, individuals who have been wrongly
8 convicted of a crime and even victims of crimes.

9 Since I have been chair of this
10 committee, I have heard stories from my
11 constituents, advocates and legal practitioners
12 about the individuals who have been, in their
13 eyes, wrongfully detained by ICE.

14 The relationship between ICE and
15 the Department of Correction has resulted in the
16 deportation of thousands of immigrant New Yorkers,
17 the separation of families and the removal of
18 individuals who are breadwinners and primary
19 caretakers in the their families and major
20 contributors in our communities.

21 The purpose of Introductory Bill
22 No. 656 is to ensure that the Department of
23 Correction's cooperation with ICE be solely for
24 the detention and removal of criminals. If
25 enacted, bill no. 656 would limit the Department

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2 of Correction's cooperation with ICE by creating a
3 category of persons not to be detained. This bill
4 would prohibit DOC from holding an individual
5 beyond the time when he would otherwise be
6 released from DOC's custody; notifying federal
7 immigration authorities of such individual's
8 release, provided that such individual has never
9 been convicted of a misdemeanor or felony; is not
10 a defendant in a pending criminal case in any
11 jurisdiction; has no outstanding warrants; is not
12 and has not previously been subject to a final
13 order or removal and is not identified as a
14 confirmed match in the terrorist screening
15 database. If enacted, this bill would further
16 require DOC to complete an annual report of the
17 actions taken on immigrants in custody, to be
18 posted on its website.

19 I would like to thank everyone for
20 coming to this morning's hearing. I would like to
21 thank everyone in advance for their testimony.

22 I would like to remind my
23 colleagues on the dais with me this morning that
24 we have a lot of testimony to get through today,
25 so please be mindful of the time that you use to

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2 ask questions and to make your comments. With
3 that, I would like to give Council Member Melissa
4 Mark-Viverito, the lead sponsor of Intro 656, the
5 opportunity to speak. Thank you.

6 COUNCIL MEMBER MARK-VIVERITO:

7 Thank you very much, Chair Dromm. I want to thank
8 everyone that is here this morning. This is truly
9 a historic day for us as we take one more step
10 towards making Intro 656 a reality in the City of
11 New York, and the importance of it for all the
12 reasons outlined by my colleague, Council Member
13 Dromm, about what this bill will do.

14 I want to take a moment to thank
15 Speaker Quinn, who has shown great leadership on
16 this issue. I also want to thank Council Member
17 Dan Dromm, who chairs this committee, also as co-
18 lead sponsor on this bill, and who is such an
19 immigrant rights advocate, for the leadership that
20 they have shown, and of course, all the advocates,
21 particularly Make the Road New York and the
22 Cardozo School of Law, who really brought this
23 issue to us here in the Council.

24 The message throughout this process
25 has been clear. In a city that truly values its

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2 immigrant communities, it is clear that we can no
3 longer allow immigration agents to have unfettered
4 access to inmates at Rikers Island.

5 While the Criminal Alien program,
6 which is the basis for the relationship between
7 the Department of Corrections and ICE, claims to
8 place public safety first and focus on the most
9 dangerous criminals, the numbers tell a different
10 story. Of the Rikers' inmates who had a detainer
11 placed on them by ICE, around 50 percent had no
12 previous criminal convictions, and only roughly 20
13 percent had a misdemeanor as their highest charge.
14 These are not the hardened criminals that the
15 Criminal Alien program was meant to target.

16 Still, every year, hundreds and
17 even thousands of New Yorkers are separated from
18 their families and communities for extended
19 periods of time, and in some cases, permanently.
20 This is wrong, but it has persisted due to the
21 collaboration between Department of Corrections
22 and ICE.

23 Intro 656, which I have sponsored
24 with Speaker Quinn and Council Member Dromm, would
25 fundamentally change that relationship by

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2 prohibiting the use of city resources to hold
3 individuals on detainers that do not pose a real
4 threat to public safety. I believe that the
5 changes that we've seen at the federal level, by
6 the Obama administration, really kind of
7 strengthens this argument and this case that we're
8 making here today.

9 The process that got us to where we
10 are today has been a long one. We took great care
11 to craft a piece of legislation that will balance
12 the safety of our communities with the need to
13 reform the city's participation in our nation's
14 broken immigration system. I really believe
15 strongly that once we do enact and pass this
16 legislation, we will be making history, but also
17 it is our hope that we will inspire other
18 municipalities to make this move as well.

19 I also do want to take a moment to
20 thank the Bloomberg administration, Mr. Feinblatt
21 particularly and Department of Corrections
22 Commissioner Schirio for understanding the
23 importance of this legislation and joining us in
24 its support. Particularly, also we know that
25 Mayor Bloomberg has stood strong at the national

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2 level, talking about the need for immigration
3 reform. So it is good that New York City will
4 once again be paving the way and validating that
5 message through this legislation.

6 I look forward to the
7 commissioner's testimony and thank the chair for
8 holding this hearing and for serving as a co-lead
9 sponsor on this piece of legislation.

10 CHAIRPERSON DROMM: Thank you,
11 Council Member Mark-Viverito. I'd like to say
12 that we've been joined by Council Member Elizabeth
13 Crowley, Council Member Jumaane Williams, and
14 Council Member Mathieu Eugene as well. Now, I'd
15 like to turn it over to the speaker, Speaker
16 Quinn, to say a few words.

17 SPEAKER QUINN: Thank you very
18 much. Good morning everyone. I want to thank
19 Danny Dromm, the chair of our Immigration
20 Committee, Council Member Melissa Mark-Viverito,
21 the lead sponsor of the bill that we are hearing
22 today. I also want to thank all of their staff
23 people, the legislative staff of the City Council,
24 particularly Alix Pustilnik and Rob Newman and the
25 other staff to the committees for their work in

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2 this legislation and preparing for today's
3 hearing.

4 I also want to thank Chair Liz
5 Crowley. She and Danny Dromm held an oversight
6 hearing last winter, and that oversight hearing,
7 in my opinion, was critical to getting information
8 on the record that has helped us to move to the
9 point we are at today.

10 I also want to acknowledge and
11 really thank the efforts of the other Council
12 Members. This piece of legislation has 38
13 sponsors. I saw Melissa--with one Republican--
14 see, bipartisan. I saw Melissa knocking on doors.
15 You would have thought she was selling candy bars
16 for something the way she was getting those names
17 on the bill. So thank you guys for all your
18 support.

19 I also really want to thank former
20 Manhattan District Attorney Bob Morgenthau, who
21 has been a leading voice in this area. When folks
22 raised questions about whether this piece of
23 legislation would erode public safety, all I had
24 to say was "how would Bob Morgenthau ever support
25 anything that would do that" and it quieted them

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2 down. So thank you so much, Mr. District
3 Attorney. I'm proud to say that read into the
4 record today will be testimony from our present
5 Manhattan District Attorney Cy Vance, in support
6 of the bill.

7 I want to echo Melissa's thanks of
8 the many immigrants' rights advocates and members
9 of the public, particularly people who have had
10 family members had detainers put against them, who
11 came and told their story, which is a risky and
12 dangerous thing for them to do, and demonstrated a
13 belief in American justice system and courage that
14 I think we are applauding today through moving
15 this bill forward.

16 I also want to thank Make the Road
17 New York, Peter Markowitz and everyone at Cardozo,
18 Catholic Charities and the other organizations who
19 are here today to support the bill.

20 I also want to thank our Department
21 of Corrections Commissioner Dora Schriro and her
22 staff. Even when we were not in agreement on the
23 bill, there was complete professional dialogue
24 going on, including providing us information
25 regarding the Department's cooperation with the

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2 United States Immigration and Customs Enforcement,
3 ICE. That professional dialogue is what I believe
4 has moved us to the point today where we, in a
5 moment, will hear from our criminal justice
6 coordinator, whom I also want to thank, and hear
7 the administration's support of the bill.

8 I just want to underscore my thanks
9 to the Administration and the advocacy community,
10 all of remaining at the table together in
11 dialogue. That's what's moved us to the point of
12 agreement today. I think it not only is an
13 important agreement, because it will send a
14 message to the country that this is a piece of
15 legislation supported by the entirety of the
16 government of the City of New York, just not part
17 of the government. I also think it is a great
18 example of how professional, dignified, respectful
19 dialogue and negotiation can move positive, even
20 at times controversial legislation forward.

21 We're here today, obviously, to
22 talk about the Criminal Alien program. The
23 purpose of the Criminal Alien program, as
24 identified by the federal government is to
25 identify criminal non-citizens who are

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2 incarcerated within federal, state and local
3 facilities, to ensure that they are not released
4 into the community, by securing a final order of
5 removal prior to the termination of their
6 sentence.

7 Based on information from the
8 Department of Corrections, 13,295 foreign born
9 persons were admitted into Department of
10 Corrections facilities in 2010. ICE placed
11 detainers on 3,155 of those inmates, and
12 subsequently took custody of 2,552 of those
13 inmates for potential deportation.

14 Keep those numbers in mind when you
15 hear this next percentage. Of the inmates that
16 were discharged from Department of Corrections to
17 the custody of ICE in 2010, 49.5 percent of them
18 had no prior criminal conviction.

19 I understand the goal of ICE and
20 Department of Corrections' cooperation. That goal
21 is the protection of the public by identifying,
22 detaining and deporting individuals who pose a
23 danger to the public safety of the community as
24 evidenced by their criminal history. The numbers
25 I have said make it clear, however, that the

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2 Criminal Alien program in New York City has led to
3 the detention and removal of some criminals, but
4 it has also led to the detention and removal of
5 many, many thousands of individuals who do not
6 have a criminal record in the present or in the
7 past and therefore no case can be made that they
8 are a threat now to the public safety.

9 So what goal of keeping the public
10 safe is accomplished by deporting these thousands
11 of individuals, destabilizing their families and
12 creating a rift between the immigrant community
13 and the Police Department of New York City. There
14 is no public safety goal that is met. That is why
15 this practice in its present form, quite simply,
16 must end. That is what moving this legislation
17 forward will do.

18 So I want to thank everyone who has
19 brought us the facts we needed to get this
20 legislation in order. I want to say when the
21 facts were presented to me first, I was a bit
22 incredulous. I couldn't believe this was
23 happening in New York City. That people who had
24 not done anything were being deported.

25 I want to thank everyone who has

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2 worked on drafting the legislation, and everyone
3 who has worked to bring us to the point of such
4 great support today.

5 When we pass this legislation,
6 before the end of this calendar year, and Mayor
7 Bloomberg signs it, we will be the first city in
8 the United States to legislatively take action
9 limiting ICE's deportation of its citizens. And I
10 hope that sends a message across this state and
11 across this country that localities, states,
12 cities, counties have the right to protect their
13 own citizens from intrusive federal action. That
14 is what we will do with this bill. And I want to
15 thank everyone who has worked so long and hard on
16 it. Thank you, Mr. Chair.

17 CHAIRPERSON DROMM: Thank you very
18 much, Madame Speaker. What I'd like to do now is
19 go directly to the Administration to hear
20 testimony from Mr. John Feinblatt, who is the
21 Chief Advisor to the Mayor for Policy and
22 Strategic Planning. Thank you very much for
23 coming in.

24 JOHN FEINBLATT: Good morning,
25 Speaker Quinn, Chair Dromm, who was nice enough to

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2 host me in his district just last week, Council
3 Members of the Immigration Committee and other
4 Council Members. I am here to testify today
5 concerning the detention of foreign-born inmates
6 by the New York City Department of Correction and
7 the nature of the City's cooperation with the
8 federal agency commonly known as the Immigration
9 and Customs Enforcement, or ICE.

10 This is a complex issue, so I want
11 to start off by extending my thank yous. Thank
12 you to the Speaker, to the Chair of the committee,
13 to Council Member Mark-Viverito, to
14 representatives from the City's immigrant
15 communities, to Bob Morgenthau and to the advocacy
16 community for us all working together to reach an
17 understanding about this practice. As the Speaker
18 said, I think that this is a real testament to
19 everybody rolling up their sleeves, working
20 together and trying to see this from many
21 perspectives and coming to, I think, a conclusion
22 that we all feel is positive for the city.

23 Our goal has always been and always
24 it to protect public safety and maintain national
25 security, while ensuring that New York remains the

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2 most immigrant-friendly city in the nation. I'm
3 delighted to say that I think we have all found
4 the right balance.

5 In addressing this issue, the
6 question that we felt we had to answer was how do
7 we continue to work with ICE to protect public
8 safety and national security, while keeping New
9 York the most welcoming city in the world? Simply
10 not cooperating with ICE we didn't think was an
11 option. Our cooperation with law enforcement is
12 vital, and helps keep the city streets safe of
13 criminals, gang members and terrorists. At the
14 same time, however, we needed to consider
15 individuals who came through Rikers, but with
16 their cases dismissed and no record of criminal
17 activity or other apparent threat seemed to pose
18 little or no risk to the community.

19 The agreement we have reached
20 manages to strike this balance by honoring
21 requests by ICE for holds in cases of public
22 safety and national security, while protecting
23 those who have never been convicted of a
24 misdemeanor or felony; are not defendants in a
25 pending criminal case; have no outstanding

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2 criminal warrants and have not absconded from an
3 order of removal hearing; are not identified as
4 participants in an organized gangs; are not and
5 have never been subject to a final order of
6 removal; and finally have not been identified as a
7 possible match in the terrorist screening
8 database.

9 In addition to protecting public
10 safety, this agreement recognizes the importance
11 of our longstanding relationships with other
12 jurisdictions, including Federal law enforcement,
13 in maintaining a safe City. The Federal
14 government this summer clarified, as the Council
15 Member noted, its own priorities for immigration
16 enforcement, focusing on those who are a risk to
17 public safety or national security, those who have
18 committed crimes or are subject to warrants, gang
19 members, and those who have committed egregious
20 violations of immigration law such as illegal
21 reentry after removal. I feel confident that our
22 agreement is largely in-line with those new
23 enforcement priorities. And I feel confident that
24 this not just honors our commitments to public
25 safety but also honors the remarkable

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2 contributions of the immigrant community to New
3 York City.

4 As I said, this was a complex
5 issue, so again, I just want to close by thanking
6 the Speaker and Council Member for their work in
7 crafting this new arrangement. I also want to
8 recognize City Department of Correction
9 Commissioner Dora Schriro who has been
10 instrumental in reaching this agreement and will
11 obviously be vital to its implementation.
12 Together, I think we have found a thoughtful and
13 we've found an appropriate solution, one that can
14 set an important precedent for the country. I
15 look forward to continuing to work with the
16 Council to finalize the language and to
17 operationalize it once it is passed. Thank you
18 very much.

19 CHAIRPERSON DROMM: Thank you very
20 much, Mr. Feinblatt. I agree that this is one
21 that's going to set an important precedent for the
22 country. I'd like to thank you and the Mayor for
23 his stand on immigration issues. It's been very
24 admirable.

25 I have a few questions to ask in

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2 regard to the implementation of the law. I was
3 wondering if you could take us step by step
4 through how you envision implementing the
5 legislation and would you need MOUs with ICE or
6 other agencies?

7 JOHN FEINBLATT: Commissioner

8 Schriro has already given a considerable amount of
9 thought to implementation. I think that there's
10 probably more thought to be given still, but I
11 think we have a good sense of how to proceed.

12 I think first, as we have shared
13 with you, we want to work on finalizing the
14 language with you so that these determinations are
15 completely objective and don't require any long
16 investigations, so that these decisions can be
17 made extremely quickly. So I think that's the
18 first thing that has to be done.

19 I think that we have identified the
20 databases that we need to get the information. As
21 you know, some of the considerations in the bill
22 are ones that we have not looked at before. We've
23 identified the databases. Most of them are
24 available through e-justice and we are in
25 discussions with the state about how to access the

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2 information. We will, obviously, train employees
3 at the Department of Corrections about the new
4 procedures, using the customary ways that we do
5 that for any changes.

6 As you know, Commissioner Schriro,
7 earlier in her tenure, actually did make some very
8 significant changes about the roles of ICE at
9 Rikers Island. I think we all were very pleased
10 with those. So I think that she has a good
11 framework for how to communicate those changes.

12 We may have to modify some of our
13 MOUs that are currently in place concerning access
14 to the NCIC federal database, but we think that
15 those are easy to do. We will work, obviously,
16 with the Defense Bar to make sure that they're
17 aware of the changes.

18 As I've testified before in other
19 committees, as part of the most recent RFP with
20 the Defense Bar, we actually provided them with
21 additional funds so that they would be in a better
22 position to advise immigrants of the collateral
23 consequences of their involvement with the
24 criminal justice system, and particularly with
25 conviction. So we will work with the Defense Bar

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2 as well to make it clear that they are aware of
3 these new procedures, and obviously with the
4 panel, because they also represent a significant
5 number of defendants in the criminal justice
6 system. I think those are sort of a bird's eye
7 view of the steps that we think we need to take.

8 CHAIRPERSON DROMM: So, did you say
9 how you would communicate with ICE regarding these
10 changes and how these changes will be implemented
11 and the relationship that the city will now have
12 with ICE?

13 JOHN FEINBLATT: Well, as you know,
14 we have--I think we will base it in the same way
15 that we did the other changes. You know
16 Commissioner Schriro put some very important
17 changes in place earlier in her tenure with the
18 city, from requiring ICE to wear uniforms to
19 making sure that they didn't have unfettered
20 access to the facilities at Rikers Island, to
21 advising defendants that ICE wanted to talk to
22 that they didn't have to talk to them, advising
23 them that they had the ability to get to a lawyer
24 before they talked to them. So we have a history
25 of making pretty significant changes in our

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relationship to ICE and we will model these new changes after the ways that we've implemented other changes.

As you know, we don't have a formal written agreement with ICE, but we will make these changes. I think Schriro was very effective the last time in making the changes and I think we will model these to those. As I said, there will be some need to modify our MOUs with ICE about the database, but we're already working on that. ICE is aware of the proposed legislation already.

CHAIRPERSON DROMM: How long do you think it will take to fully implement this?

JOHN FEINBLATT: I have spoken with Commissioner Schriro about this and while I'm not sure she wants me to give out a hard and fast number, her thought was--

SPEAKER QUINN: [interposing]
Getting her on the phone.

JOHN FEINBLATT: Right, exactly. I think she thought within 120 days of passage.

SPEAKER QUINN: Oh, that's good.

JOHN FEINBLATT: That was her hope.
I think we have to all sort of buckle down and

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2 make sure, but we want to do this as promptly as
3 possible. Don't hold me to it; else I'm going to
4 get my head taken off.

5 CHAIRPERSON DROMM: All right,
6 thank you. I'd like to turn it over to my
7 colleague Melissa Mark-Viverito.

8 COUNCIL MEMBER MARK-VIVERITO:
9 Thank you, Chair Dromm. Again, Mr. Feinblatt,
10 thank you very much for all your hard work on it.
11 I remember our initial meetings, so it's been
12 great that we are at this point.

13 Just in terms of just following
14 along some of the line of questioning that Chair
15 Dromm was indicating. Is there an idea, as part
16 of those conversations with the Commissioner, of
17 maybe having one person oversee this process? At
18 least while it's getting off the ground, making
19 sure compliance with the law is happening?

20 JOHN FEINBLATT: I have spoken to
21 her about this. I think that she feels confident
22 that the chain of command can handle this. The
23 warden, as you know, is responsible for intake and
24 release and that's the person who will be directly
25 responsible for the day-to-day work. The deputy

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2 chiefs for security will supervise the warden and
3 will ensure the law is absolutely carried out.
4 Further, the Deputy Commissioner--and I think this
5 is probably some of what you're thinking--the
6 Deputy Commissioner for Integrity monitors the
7 department's compliance with its directives and
8 will provide additional oversight.

9 And as is the case with any
10 allegation of noncompliance with the law and/or
11 DOC policy, it will be investigated and
12 appropriate discipline and training will be
13 imposed. I think that what we will do is
14 certainly if there are any complaints about the
15 implementation, we will make sure that DOC
16 constituent service units are prepared to handle
17 any complaints.

18 So I think that that's probably the
19 smartest way to go about it, as I've outlined it,
20 as I say, Commissioner Schriro has started to give
21 some very serious thought to this. That, I think,
22 reflects her current thinking.

23 COUNCIL MEMBER MARK-VIVERITO: That
24 was going to be my next question, so you just
25 answered it. So basically, in terms of

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2 noncompliance of what's enacted and in terms of
3 oversight, you're saying that all of that would
4 fall under the deputy commissioner for integrity,
5 for the most part.

6 JOHN FEINBLATT: Yes. As you
7 probably know, we have a constituent services unit
8 that's there to issue complaints. In addition,
9 obviously, the legislation contemplates some
10 reporting back to the Council, which I think is
11 important, so we can all see how the
12 implementation is going.

13 I think that in the coming weeks,
14 Commissioner Schriro will continue to think about
15 how to perfect this and make sure that the
16 implementation is brisk. But that reflects her
17 current thinking.

18 COUNCIL MEMBER MARK-VIVERITO:
19 Thank you for that, just two more quick questions.
20 You did allude to this when you were talking a
21 little bit about once you have to begin
22 implementing that for the most part you have
23 databases in place that kind of pull this
24 information but that you do have to do some extra
25 work in that area. Could you just speak a little

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2 bit more about that kind of technological or what
3 upgrades or what work would have to be done to get
4 up to speed? I'm glad to hear it would be within-
5 -obviously not going to hold her to it--but you're
6 striving to make it be in full compliance within
7 120 days. That's very encouraging. Thank you for
8 that.

9 JOHN FEINBLATT: So, if you break
10 down the different pieces of information the
11 department is going to have to access, I mean
12 obviously first it begins with convictions in the
13 past or in the instant case and criminal warrants.
14 That is relatively easy information to access and
15 information that we already do access. So that
16 poses no additional issues.

17 Most of the information, but not
18 all is available in the FBI's National Crime
19 Information Center's databases. We customarily do
20 query that through E-Justice, which is a portal
21 used to access that information. We may need to
22 modify our MOU with the federal government, either
23 the Department of Justice or the Department of
24 Homeland Security to be able to access the
25 terrorist watch list and to access what's called

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2 the immigrant violator's list and the gang
3 database.

4 And so we've already started
5 discussions about how to do that. We don't think
6 that those are complex things. Those are easily
7 accessible. We just haven't used those before at
8 the Department of Corrections. Other law
9 enforcement agencies do access that. But those
10 discussions, we've already begun ahead of time.
11 So we don't see that this is going to slow up the
12 process.

13 The one area that we're looking at
14 very closely is as the legislation contemplates
15 there are certain egregious violations of
16 immigration law, like coming back after a final
17 order of deportation. We have to make sure that
18 the NCIC database actually accurately does that.
19 If it doesn't, we can access that information
20 directly through an MOU with ICE. So we're
21 looking at that right now to make sure that it's
22 complete.

23 But I want to reiterate, I think
24 that the most important thing for us, in terms of
25 both the final bill language and our access is

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2 that it's very precise about what information that
3 we'll look at. We don't want judgment calls. We
4 don't want to be involved in any investigation of
5 this. We want to be very specific about what
6 information we're going to look at and make sure
7 that these determinations can be done very, very
8 quickly so that there's no delay whatsoever.

9 So we have a little bit more work
10 to do, but we know exactly what databases to look
11 at. As I say, I think for three pieces, the
12 information will be very easy to modify and one
13 we're looking to make sure that the information
14 that's contained in NCIC is accurate. If not
15 accurate and up to date enough, we know where to
16 get that information.

17 COUNCIL MEMBER MARK-VIVERITO:

18 Thank you. Then just the last question, if you
19 could just speak a little bit to how you feel that
20 this legislation kind of fits into the Bloomberg
21 administration's overall agenda when it comes to
22 immigrants, immigrant communities and immigrant
23 contributions.

24 JOHN FEINBLATT: Well, I think that
25 there isn't any question about it that what we

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2 tried to do here, and I think that everybody who
3 has worked on this has been successful at is
4 trying to balance the need for public safety with
5 the desire to continue to make this city the most
6 welcoming city to immigrants in the nation.

7 No New Yorker, whether they're
8 foreign born or born in this country, whether
9 they're here legally or here illegally, wants to
10 compromise public safety. A safe city is what
11 benefits all New Yorkers, no matter where you come
12 from, how recently you've been here or how you got
13 here. So that always has to be paramount. I
14 think the Council agrees with that and has
15 recognized that.

16 At the same time, we think that
17 this legislation is important because it builds on
18 our commitment to be a city that welcomes
19 immigrants. Forty-percent of our population is
20 foreign born. I think that this certainly builds
21 on the Executive Order 41, which has ensured for
22 probably what's been estimated as 500,000
23 undocumented, EO 41 has made sure that
24 undocumented New Yorkers can continue to get city
25 services freely without fear that they will be

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2 asked about their immigration status and has
3 ensured, we believe, that witnesses or victims of
4 crime can go to the police without fear that they
5 will be asked about their immigration status. So
6 I think that this is building on that tradition
7 which I think we're all very proud of. I think it
8 helps make sure that this continues to be a city
9 that welcomes immigrants and promises them a city
10 that's going to be safe.

11 COUNCIL MEMBER MARK-VIVERITO:

12 Thank you very much. For all those reasons,
13 obviously critical, and I think just the last
14 thing I would say is that when we speak about
15 policies and practices that are happening and
16 which sometimes we're subjected as well, I think
17 the human element and the humanity is lost in it.
18 I think that we have seen how some of these
19 practices and policies just are unconscionable. I
20 think the message we're sending when we enact this
21 legislation is, as the Speaker said in her opening
22 statement, that we as municipalities have the
23 right to protect our citizens but also to kind of
24 define in this case what the relationship is
25 between federal agencies and our local agencies,

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2 and that we will not allow city resources to be
3 used by our city agencies to go after people that
4 basically was not the true intent of the program.
5 So, with that, thank you, again, Mr. Feinblatt,
6 very much for your testimony.

7 CHAIRPERSON DROMM: Thank you. I'd
8 like to say we've been joined by Council Member
9 Brad Lander. I'd like to turn it over to Speaker
10 Quinn for questions.

11 SPEAKER QUINN: Thank you very
12 much. I just want to just add some more thanks.
13 I had mentioned before our legislative director
14 Rob Newman and our deputy legislative director
15 Alix Pustilnik. I also want to thank the counsel
16 to the Immigration Communicate Julene Beckford,
17 and Jennifer Montalvo, the policy analyst to the
18 committee, and also Lauren Axelrod from our
19 general counsel's office and Damien Butvick of the
20 legislative division as well for all of their
21 work. So, thank you guys very much. As Melissa
22 mentioned other meetings, this has been a lot of
23 work and a lot more meetings than probably Danny,
24 Melissa and I even know about. So thank you guys
25 very much.

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2 Mr. Feinblatt, you mentioned before
3 the issue of dealing with the Bar Associations,
4 the Indigent Bar, the Defense Bar. Can you talk a
5 little bit more about what you think that work
6 will look like and how it will work? Obviously,
7 the bill is only going to work if immigrant
8 detainees understand the law, because the system
9 has been what it's been for--how many years now
10 has this been the case? Right, so for two decades
11 something's been going on that was very
12 problematic, probably put a tremendous amount of
13 fear into immigrant detainees. Even though
14 they're told they don't have to talk to ICE, it's
15 like kind of you do. You know what I mean?

16 So how are we going to get the
17 information out to immigrant detainees so they
18 understand it? And in addition to outlining your
19 thinking--I know you don't have final plans yet on
20 how you'll deal with the Bar Associations--will
21 the administration commit to some notification
22 process to inmates about the substance of the law?

23 I know Commissioner Schriro has
24 been very good about other notification, signage.
25 I know that's an area where she actually could

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2 give us a lot of guidance. So one, how will you
3 deal with the Defense Bars? Two: could you commit
4 to something like that?

5 JOHN FEINBLATT: I think that
6 starting with the Indigent Defense Bar, during the
7 last RFP process that we did for indigent defense,
8 and this was prior to the Supreme Court decision
9 in Badea [phonetic], we actually made a decision
10 that we wanted the defender organizations to have
11 better access to immigrant advice for their
12 clients. So we actually required and made funding
13 available that they all be in a position--so this
14 would include Legal Aid as well as the other
15 provider organizations--that they advise clients
16 of the collateral consequences of a conviction.
17 This would be one of them.

18 We are now actually trying to
19 augment that funding even more because we think
20 that the--

21 SPEAKER QUINN: [interposing]
22 Exactly how is that augmentation happening?

23 JOHN FEINBLATT: We believe that
24 they're--

25 SPEAKER QUINN: [interposing] No,

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no, no, no, how is the augmentation of the funding happening?

JOHN FEINBLATT: Because we believe that there are some additional funds that we can capture--

SPEAKER QUINN: [interposing] Which are?

JOHN FEINBLATT: --from the state.

SPEAKER QUINN: Which are?

JOHN FEINBLATT: I don't remember the exact title.

SPEAKER QUINN: By when?

JOHN FEINBLATT: Well, we've applied for it and I believe we will get it.

SPEAKER QUINN: And they would go into? I don't mean to make this--

JOHN FEINBLATT: [interposing] They would go into indigent defense providers. Again--

SPEAKER QUINN: [interposing] No, no, that wasn't my question. Would they go into exactly each contract that's out there now in proportionality to what they got before, or would there be a new RFP?

JOHN FEINBLATT: No, there's no

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requirement for a new RFP.

SPEAKER QUINN: So you would just--

JOHN FEINBLATT: I think that we can just allocate it.

SPEAKER QUINN: Okay. So then take us through that. That's great. We love more money. We love it when it's not our money. Then take us through how that relates to this.

JOHN FEINBLATT: Well, because I think what that does is it enhances the capacity of the Legal Aid Society and the other providers of indigent defense services to have specialists on their staff who can advise clients and advise lawyers dealing with those clients of the collateral consequences of crime, of a conviction.

SPEAKER QUINN: I'm sorry. I'm a little confused.

JOHN FEINBLATT: Sure.

SPEAKER QUINN: Not being a lawyer, so I might not be following fully. Things are better now, right, when this law goes into effect, if you're an immigrant detainee than before. So I mean I guess it's up to Legal Aid, they'll do whatever they want, but why you would have to hire

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more people to do that, but that's a different question.

JOHN FEINBLATT: Because there are lots of consequences to a criminal conviction.

SPEAKER QUINN: Just let me finish my question.

JOHN FEINBLATT: Sure.

SPEAKER QUINN: My question was actually not what Legal Aid would do, it's what the administration will do, working with Legal Aid and the other indigent defenders. This may be exactly how Legal Aid would spend their money. Again, I'm not a lawyer, so that's entirely up to them. But my question is more what are you guys going to do, as it relates to the Indigent Bar? Although this money is a great announcement, it was applied for, I would think, prior to last week when we had come to the conclusion of agreement on the bill. So it isn't really relevant to this bill since you had applied to it before. So what specifically are you going to do now that you're in support of the bill as it relates to the Indigent Bar?

JOHN FEINBLATT: Well, obviously

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what we're going to do is advise them of this agreement.

SPEAKER QUINN: Right. So does that mean like are you, in theory, going to have-- I'm making this up--like quarterly meetings with them to discuss how it's going, get their feedback? Are you going to ask them to keep a log of things that go well, things that go poorly? Are we going to ask the court to send us paperwork? Is there something beyond the reporting to the Council? I guess I'm just trying to figure out how formal it'll be.

JOHN FEINBLATT: I don't have a plan.

SPEAKER QUINN: Okay. Could we make one?

JOHN FEINBLATT: Yeah, I think that we can.

SPEAKER QUINN: Great.

JOHN FEINBLATT: But I think I will take a little bit of issue, yes, you're correct. We applied for the money before. But the most important thing is that Legal Aid Society and the other providers have the most expert capacity--

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SPEAKER QUINN: [interposing] Sure.

JOHN FEINBLATT: --to advise clients of what happens if those clients take a plea that results in a criminal conviction. There are many collateral consequences. This was one of them. So the more that the frontline lawyers, who the clients trust the most and rely on for information have the capacity to do that, that's what's going to protect rights. That's the most effective thing that we can do to continue to make sure that they have a capacity.

Most jurisdictions, and particularly before the Supreme Court case that required this to some extent, have never invested in making sure that people who are assigned to deal with somebody's criminal matters also have the capacity to deal with their immigration matters. We have insisted that both of those things go together, because we know that they are inextricably tied to one another.

The frontline is our best insurance for immigrants, who are in the criminal justice system, that they know their rights, and know the consequences of a criminal conviction.

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2 SPEAKER QUINN: Obviously, I have
3 the utmost respect for Legal Aid and other Defense
4 Bar members and indigent defenders, and I think
5 they are critical. That said, and I guess I just
6 want to underscore this point, and we can follow
7 up on what the particular plans would be and then
8 go back to the question about signage or
9 information, et cetera.

10 The Legal Aid lawyer or the defense
11 lawyer is one person who has an incredibly
12 critical relationship with the detainee. That
13 said, the detainee comes across many other people
14 in the course of their arrest and time on Rikers
15 who are not members of Legal Aid, who are in fact
16 employees of the City of New York and the court
17 system. I think you're absolutely right to say
18 there's a great opportunity, kind of a great
19 coming of events together that we'll get this
20 extra money and we'll have this law and that's
21 going to work great and we should talk to Legal
22 Aid. But we should also think a little bit about
23 how we can use our employees better to send the
24 message which would also then go to the
25 notification.

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2 So we'll follow up on kind of
3 planning as it relates to what exactly we're going
4 to do with the Indigent Bar, but what about the
5 idea of some type of notification process from DOC
6 employees or the appropriate city employees? I
7 know the Commissioner has been good in this area.

8 JOHN FEINBLATT: The Commissioner
9 has been very good--

10 SPEAKER QUINN: [interposing] Very.

11 JOHN FEINBLATT: --in this area and
12 from the beginning did this. I want to say, you
13 know sometimes we are all sort of skeptical of
14 what's the value of putting up a sign--

15 SPEAKER QUINN: [interposing] Oh,
16 I'm huge for a sign.

17 JOHN FEINBLATT: --what's the
18 value--

19 SPEAKER QUINN: [interposing] I
20 love a sign. My whole career has been about
21 signs. I can take you through city buildings that
22 have Chris Quinn signs. We love a sign. And a
23 pamphlet in multi-languages on top of a sign can
24 solve almost everything.

25 JOHN FEINBLATT: Well, then this

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stat will--

SPEAKER QUINN: [interposing] Love
a sign.

JOHN FEINBLATT: This stat will
warm your heart, Speaker.

SPEAKER QUINN: Yes.

JOHN FEINBLATT: Because, in fact,
about half of the people that ICE requests to
speak to decline--

SPEAKER QUINN: [interposing]
Right.

JOHN FEINBLATT: --that invitation.
So, I think that that goes to the fact that the
signage and the advising inmates that they don't
have to speak to ICE if they don't want to has
actually been quite effective.

SPEAKER QUINN: Great.

JOHN FEINBLATT: My hat completely
off to Commissioner Schriro.

SPEAKER QUINN: So we'll just
update those.

JOHN FEINBLATT: And we will update
that information.

SPEAKER QUINN: She's also done

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great signage around transgender issues.

JOHN FEINBLATT: Right.

SPEAKER QUINN: I mean this is really an area where she's done terrific.

JOHN FEINBLATT: So I think it works.

SPEAKER QUINN: Great.

JOHN FEINBLATT: The good news is it works.

SPEAKER QUINN: Great.

JOHN FEINBLATT: And obviously, this will be part of that.

SPEAKER QUINN: Great. Thank you very much. I just want to kind of echo the thanks from other members and others just about you and the commissioner and all of your staff and Deputy Mayor Wilson and others, and Deputy Mayor Holloway, just staying involved and engaged. We very, very much appreciate that. So, thank you guys.

JOHN FEINBLATT: Ditto.

CHAIRPERSON DROMM: Thank you very much, Speaker Quinn. I'd like to say that we've been joined by Council Member Robert Jackson.

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2 Now, I'd like to turn the questioning over to
3 Council Member Barron.

4 COUNCIL MEMBER BARRON: Thank you
5 very much. You know, laws do change behavior but
6 not attitudes. I'm concerned that what kind of
7 attitude toward undocumented immigrants was in
8 place for 20 years and then we get an epiphany and
9 now we have a quote/unquote precedent setting law
10 that's going to change behavior. So I'm really
11 concerned, and I know it's hard to deal with
12 attitudes, but it's the attitude of the law
13 enforcement and the enactment of this legislation
14 and people having the right attitude about
15 undocumented immigrants.

16 When I hear the term often by some
17 and even this called criminal alien, and when I
18 hear the term illegal alien, you know you think of
19 some unlawful space cadet that was dropped, you
20 know, on earth and is occupying some space. There
21 are 2.9 immigrants in New York City, 43 percent of
22 our workforce and they bring in \$215 billion and
23 they contribute to the intellectual, cultural
24 capacity of our city, yet the attitudes toward
25 immigrants, to me, has been horrific.

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2 I don't think any piece of
3 legislation changes attitudes. So I'm really
4 concerned about enactment, enforcement and a
5 seriousness towards implementing this bill. I
6 don't know if you have the magic to change
7 attitudes. If you do, I wish you would do it
8 immediately. But I want to just hear more of you
9 talk about how this lasted, this wrong behavior
10 lasted for so long. What was people's attitudes
11 towards undocumented immigrants that it would last
12 so long?

13 JOHN FEINBLATT: The practices that
14 we're discussing today I think are at least 20
15 years old. Nobody can--

16 COUNCIL MEMBER BARRON:
17 [interposing] Right.

18 JOHN FEINBLATT: --pinpoint the
19 exact date, but say 20 years old. I don't know
20 that I can answer for that historic. I think that
21 we all evolve and just like the Council started to
22 focus on this issue for the first time in the past
23 year or so--

24 COUNCIL MEMBER BARRON:
25 [interposing] Don't try to shift it on the

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Council.

JOHN FEINBLATT: I'm not.

COUNCIL MEMBER BARRON: Keep it on
you.

JOHN FEINBLATT: So did we. And
so--

COUNCIL MEMBER BARRON:
[interposing] But keep it on you.

JOHN FEINBLATT: So we focused on
this all within I'd say the last year or so. Is
that accurate time wise? While we came at it I
think originally with some different sort of
viewpoints about it and probably put the emphasis
on different syllables, we all knew it was really
important to focus on it. I think that's the good
news. The good news is that we all knew it was
important and we all stuck with it. As the
Speaker said and Chairman Dromm has said and
others have said, that is why we're here today,
feeling like we've made a significant change.

COUNCIL MEMBER BARRON: Okay, I got
it. Will this legislation change the scope of
information that you share with ICE or what ICE
can do with the information or both?

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2 JOHN FEINBLATT: Well, the
3 information that ICE has is actually publicly
4 available information that is required to be
5 publicly available by state law. So we are
6 actually not providing any information beyond what
7 is required by state law.

8 COUNCIL MEMBER BARRON: What kind
9 of information is that?

10 JOHN FEINBLATT: It is information
11 that actually you can access on the website. On
12 DOC's website, and again this is required by state
13 law, it's information like admission date, date of
14 birth, place of birth, information like that. You
15 go on the website, it's there, it's required to be
16 there and that's the information that ICE gets.
17 What's different will be what ICE can do with the
18 information, because there are certain detainers
19 that people at Corrections will continue to honor
20 and there are certain detainers that they will
21 not.

22 So ICE can lodge the detainer but
23 essentially if somebody has no past record, if
24 somebody's record is the result of a juvenile
25 crime or a record that should be protected because

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2 they got YO status, or if it's somebody who just
3 came here and overstayed a visa, we will not honor
4 those detainers. So the change will be that we
5 will recognize some and not recognize others.

6 COUNCIL MEMBER BARRON: So in this
7 law, since we're saying 50 percent of the
8 immigrants had no priors, so none of the
9 information given to ICE will negatively impact
10 those immigrants? No information that you would
11 give to ICE?

12 JOHN FEINBLATT: We will not honor
13 detainers according to what's set out in the law.
14 So they--

15 COUNCIL MEMBER BARRON:
16 [interposing] So they can get the information but
17 if they apply for the--

18 JOHN FEINBLATT: --will get the
19 information--precisely.

20 COUNCIL MEMBER BARRON: --detainer
21 then you just will not honor what they--

22 JOHN FEINBLATT: They may apply for
23 the--exactly. They may lodge the detainer but
24 there will be no adverse consequences that we have
25 agreed that we will not honor them. And so the

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person would be discharged.

COUNCIL MEMBER BARRON: I think this is a good law and it's a step in the right direction. I still think we have a long way to go with attitude. We have a long way to go with enforcement and enactment. If we want to assure safety, you know, I'm sure people who have no priors are not a threat to the safety of our community. I know some crooks where they can set up a criminal citizen's project on Wall Street and get some of those crooks and leave us alone. Thank you.

CHAIRPERSON DROMM: Thank you, Council Member Barron. I'd just like to at some point say I may have to stand because my back has been thrown out. So if I stand, it's not an unusual reason why, during the hearing. I'd also just like to remind my colleagues to please keep the questions direct and adhere to a little time limit as well. Next, I'd like to ask Council Member Ydanis Rodriguez to ask questions.

COUNCIL MEMBER RODRIGUEZ: Thank you, Councilman, Chairman Danny Dromm. In your testimony, you say that the correctional facility-

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2 -I mean you say addressing this issue, the
3 question we had to answer is how do we continue
4 work with ICE? After this bill is taken to a vote
5 and this become the law, will ICE continue be
6 having presence at Rikers Island?

7 JOHN FEINBLATT: Yes.

8 COUNCIL MEMBER RODRIGUEZ: Why
9 should we?

10 JOHN FEINBLATT: Excuse me?

11 COUNCIL MEMBER RODRIGUEZ: Why
12 should we continue having?

13 JOHN FEINBLATT: Because the
14 legislation contemplates that certain detainers
15 will be honored if there is a risk to public
16 safety or national security. That's just a
17 generalization but I think a relatively accurate
18 one. In those cases, we will honor detainers
19 because it is in the interest of all New Yorkers,
20 immigrants, non-immigrants, undocumented,
21 documented, to keep the city safe. In cases where
22 there is no threat, we won't honor them.

23 COUNCIL MEMBER RODRIGUEZ: I think
24 that we agree I think that it is our interest to
25 keep our city and the nation safe. My question is

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2 how many thousands of innocent people has been
3 deported because ICE has been at Rikers Island?
4 My question is how do we include gang members as
5 one of those that they are a potential to be
6 approached by ICE when we have a law that say when
7 there's four or more teenagers committing a crime
8 or with a conduct a crime, they are subject to be
9 putting in jail. So they are a potential also to
10 be deported, right?

11 JOHN FEINBLATT: I'm not sure I
12 understood the question. The legislation
13 contemplates that in certain cases we will
14 continue to honor detainers and in certain we
15 won't. Essentially the guide is, is there a risk
16 to public safety or national security, and within
17 that there are certain categories that the
18 legislation articulates. We will use those
19 standards.

20 In terms of the gang issue, it is
21 information that is contained within a federal
22 database. It has nothing to do with local law.
23 It's in cases where people have either admitted to
24 being members of a gang or it has been
25 corroborated by other evidence. It is not just a

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2 casual conclusion that was reached by local law
3 enforcement.

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COUNCIL MEMBER RODRIGUEZ: One of
5 my former students, Eric Enfonte [phonetic], he's
6 deported because like ten years ago he joined one
7 of those gang group. And the old crime that he
8 committed, he did a robbery together, I think it
9 was a sweater that he stole from another group.
10 It is because he had stole that sweater, he'd been
11 deported without any previous record. So who will
12 determine at what level a teenager that has been
13 accused of being a gang member is subjected to
14 being deported?

15

JOHN FEINBLATT: We are going to
16 consult federal databases for information about
17 whether someone is on the terrorist watch list,
18 whether somebody has been previously deported and
19 then reentered illegally in this country, whether
20 somebody was absconded while they were waiting for
21 a hearing on final deportation, whether they are a
22 member of a gang. These are objective criteria.
23 We're no looking or asking anybody to do an
24 investigation of this. We are not drawing casual
25 conclusions. We will work with objective criteria

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2 so that we can ensure that these determinations
3 can be made quickly and that nobody spends any
4 time longer than they need to at Rikers.

5 And very specifically, because you
6 raised the issue of young people, we have agreed
7 with the Council that it's appropriate not to
8 count anybody who has a delinquency determination
9 from Family Court, and in addition, not to count
10 anybody who's got a YO, which stands for youthful
11 offender, which would affect young people who have
12 their cases resolved even in Criminal Court.

13 We've been very careful and agreed immediately
14 with the Council that it was very appropriate that
15 people under 19 that either have the protection of
16 sealing from Family Court or sealing from YO not
17 be included in this.

18 COUNCIL MEMBER RODRIGUEZ: I'm
19 happy with that clarification. When I saw that
20 you only say that gang members, I believe that
21 criminals, regardless of who they are, including
22 gang members, they should be deported. I believe
23 that for my concern was when I only saw gang
24 member, and I'm happy with that clarification.

25 I thank the Speaker and the Mayor.

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2 I believe it is a good move. I think that we're
3 moving in the right direction. I believe that the
4 immigration system is broken and I think that we
5 should move into a comprehensive immigration law.
6 However, I think that this is a good move for the
7 city. Thank you.

8 CHAIRPERSON DROMM: Thank you,
9 Council Member Rodriguez, and now, Council Member
10 Jumaane Williams.

11 COUNCIL MEMBER WILLIAMS: Thank
12 you, Chair Dromm. Thank you to the Speaker for
13 the support and the leadership you've shown, and
14 my colleague Melissa Mark-Viverito. Thank you,
15 Mr. Feinblatt for the testimony. I am also
16 thankful for the administration for coming around
17 and supporting this.

18 Sometimes we celebrate a lot of
19 stuff that should have happened a long time ago.
20 So it just concerns me. I know we're talking
21 immigrants, immigrants, but we're also talking
22 about human beings and this has been no way to
23 treat human beings who provide many, many services
24 and is the primary reason why New York City runs,
25 as far as I'm concerned.

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2 I know legally there's something
3 called the fruit of the poisonous tree. So you
4 can't arrest someone for something and then find
5 out that that was a wrong arrest and then try to
6 find another reason to keep them, which seems to
7 be what's been happening for about 20 years. I'm
8 glad it's finally being addressed.

9 I did want to know some of the
10 misdemeanor charges. I have a concern about
11 marijuana arrests. I know everybody's probably
12 familiar with and now there's an MOU trying to
13 correct that. If someone is arrested for 25 grams
14 or less of marijuana, would they be considered to
15 be turned over for ICE?

16 JOHN FEINBLATT: I don't have the
17 precise statistics available for you, but the
18 overwhelming number of marijuana cases, involving
19 small amounts of possession, is adjourned in
20 contemplation of dismissal. And therefore, they
21 would not be included.

22 COUNCIL MEMBER WILLIAMS: Is there
23 any way we can get some statistics?

24 JOHN FEINBLATT: Yeah, this is
25 easily available. I think that overwhelming is

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2 probably accurate, but we can provide those
3 statistics on the court outcomes. Most of these
4 cases are either dismissed, which means they
5 wouldn't be included, they're adjourned in
6 contemplation of dismissal, which means that they
7 wouldn't be included, or they're reduced to
8 violations, which means that they wouldn't be
9 included. So it's fair to--

10 COUNCIL MEMBER WILLIAMS:

11 [interposing] And also, just on your
12 interpretation of how the law is going to be
13 administered, after this law passes and if they
14 haven't gone to ACD and they were found guilty,
15 what would happen?

16 JOHN FEINBLATT: If they were found
17 guilty of a misdemeanor, which, again, I would say
18 is the exception, not the rule; under the current
19 legislation it would be included. But it is the
20 exception and not the rule. It's usually the case
21 where if they are convicted of a misdemeanor, it's
22 usually because there's a prior record and that
23 prior record actually would cause them to be
24 included not actually that instant offense.

25 COUNCIL MEMBER WILLIAMS: Okay. I

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2 do have some concern because, as we know, most of
3 the arrests for the marijuana are people who have
4 some melanin in their skin. My belief is that
5 that categorization will fit a lot of the people
6 who are being turned over to ICE. So I do have
7 some concern. I would like to make sure,
8 particularly in light of the commissioner's
9 charges now that certain people shouldn't be
10 arrested, I'm not sure how that's going to play
11 out for the uniformed police but I do have a
12 concern about that.

13 Also, I do have a concern, which
14 you answered, with the gang members because it's
15 very subjective. And I don't know what criteria
16 they use. Some of the criteria I've heard
17 sometimes absurd, so I'm very concerned about
18 that.

19 Hopefully when 656 becomes a law,
20 how will the Department of Correction educate the
21 public? I think you talked about it briefly but
22 is there a plan to educate the public at large
23 about the changes?

24 JOHN FEINBLATT: Well, generally
25 what we do about policy changes for the public is

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2 that we have a website and we post these policy
3 changes on the website. We find that to be the
4 most efficient way of educating the public. In
5 addition, we have a handbook for all inmates, and
6 this would be part of that handbook. We also have
7 a newsletter that DOC produces and these changes
8 would be articulated in that newsletter. And of
9 course, as we discussed when the Speaker was
10 questioning, Dora Schriro, our Commissioner, seems
11 to be just as much a fan of posters as the Speaker
12 is, so I think that the two of them will make
13 music together on this issue.

14 COUNCIL MEMBER WILLIAMS: Thank
15 you. I don't want to pre-judge, but my
16 observation would be that the population that I'm
17 hoping gets this probably won't be going on the
18 website and may not be getting the newsletters and
19 pamphlets that normally get out. Is there
20 anything that you have that tries to reach out to
21 the hard to reach population, maybe some of the
22 newspapers, putting ads in those, areas that
23 people may actually read naturally?

24 JOHN FEINBLATT: I will certainly
25 discuss that with Commissioner Schriro, who I

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2 think is very concerned about this issue, based on
3 her past actions with ICE. And I think she will
4 take your comments very seriously.

5 COUNCIL MEMBER WILLIAMS: Mr.
6 Chair? Mr. Chair?

7 CHAIRPERSON DROMM: Sorry.

8 COUNCIL MEMBER WILLIAMS: It's
9 okay. I just want to make sure that we follow up
10 on that because I'd like to see some of the
11 immigrant trades be followed up on and press will
12 be putting information about these changes. In my
13 community, particularly, Creole is spoken, and I
14 know a lot of other places, Chinese, Spanish, we
15 want to make sure it gets to those and I hope they
16 really do take those seriously.

17 Then my last question, will you
18 appoint someone to track data and maintain the
19 website on statistics of how this is going?

20 JOHN FEINBLATT: The legislation
21 actually contemplates us reporting data and we
22 will take that very seriously.

23 COUNCIL MEMBER WILLIAMS: Thanks
24 again for supporting the bill and your testimony.
25 Pardon, I have to leave for another hearing, but

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2 it's definitely something that interests me as a
3 first generation Brooklynite--my parents are from
4 the Caribbean--and as having a population in my
5 district one of the highest of immigrant
6 populations. Thank you.

7 CHAIRPERSON DROMM: Thank you.

8 We've been joined by Council Member Tish James and
9 I'm going to turn it over to Council Member Eugene
10 to ask some questions.

11 COUNCIL MEMBER EUGENE: Thank you
12 very much, Mr. Chair. Thank you also to all of
13 you who are taking part in this very important
14 hearing. This is an issue very important for New
15 York City and for so many immigrants. As you
16 know, myself, I'm an immigrant and also I'm proud
17 and privileged to have one of the district which
18 is home for so many immigrant.

19 And I commend the administration
20 and the chair also. One of the challenges of
21 immigrant in New York City and also in the United
22 States is the lack of information and knowledge to
23 navigate through the system to stand for their
24 rights and the rights of the family. What do you
25 have in place to help not only the inmates but

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2 also their family members to learn exactly what
3 they should do to benefit from this legislation?

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JOHN FEINBLATT: I think that
Commissioner Schriro makes a pretty significant
attempt to make this information as available as
possible. It's why she posts this on the web.
It's why she uses pamphlets, why she uses
newsletters. I think she's very sensitive to the
fact that an inmate's family is really the sort of
key to communicating beyond Rikers. I think that
knowing how she has handled these issues in the
past that I think that she will take this very
seriously.

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I will advise her specifically of
your point about making sure that family members
know. It's certainly why we think it's important
that the defense counsel knows, because often a
family member contacts the defense counsel first
or vice versa. Those are the avenues that we
generally use. But I think that your point about
family members is a smart one and I will certainly
let her know that we should seriously focus on
that.

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COUNCIL MEMBER EUGENE: I think

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2 using pamphlet and using the newsletter and
3 newspapers, they are very good. But let me tell
4 you, being an immigrant and also because I'm
5 fortunate to be the first Haitian American to be
6 elected as a City Council Member in New York,
7 imagine that a lot of Haitian people that don't
8 speak English, how many come to my office every
9 single day, and also Spanish people, you know, to
10 find out about where the family members are and to
11 know their families members are on the list to be
12 deported. They don't know where they are. Some
13 of the time, they are not even in New York City.
14 They don't know what to do. When they come to the
15 office, we don't have too much to help them.

16 Are you planning to work with the
17 City Council members who represent districts where
18 there are a lot of immigrants? In addition to
19 that, I want to mention also the community-based
20 organizations, the churches; they could be a very
21 good asset for you, for the administration. I
22 think that would be a good idea to reach out to
23 them and make them part of this effort that you
24 are going to do, to inform the immigrants and to
25 inform their parents. Are you planning also to--

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do you think that it is a good idea to make them part of your efforts to reach out to the community?

JOHN FEINBLATT: I think that certainly Commissioner Schriro will look at that. I would say that all of us who are involved in this, including the Administration and the Council all have a job to do in informing constituents of the changes here. We would be delighted to work with the Council on that.

COUNCIL MEMBER EUGENE: Language barrier also is one of the biggest challenges for certain immigrants, you know those who don't speak English properly; whose English is not the first language. What do you have in place also to ensure that those who don't speak English fluently know what they have to do and be informed of the legislation?

JOHN FEINBLATT: You know, I know that Commissioner Schriro's materials are multi-language. I can't tell you how many languages precisely, but I know that she's completely attuned to this issue of language barriers not being a bar to getting the information one needs.

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2 I know that we certainly insist that indigent
3 defense organizations are multilingual and we try
4 to be as sensitive to this issue as we possibly
5 can. The more that people are informed,
6 understand their rights, the better it is for all
7 of us. The Commissioner takes this seriously.
8 But again, I will make sure she is aware of the
9 issues that you're raising.

10 CHAIRPERSON DROMM: I just want to
11 say--

12 JOHN FEINBLATT: [interposing] I
13 think that DOC forms actually currently are in
14 eight languages. So I would suspect I can be
15 pretty confident that any changes that result from
16 this bill will also be translated into eight
17 languages. If you want to know which languages,
18 we'll be glad to provide that information. I
19 don't know it off the top of my head.

20 COUNCIL MEMBER EUGENE: Do you
21 think that the presence of ICE of Rikers Island
22 improve the public safety?

23 JOHN FEINBLATT: I think that there
24 are certain people who are threats to public
25 safety and those are the ones we're trying to

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focus on in this legislation. That's what this legislation is about.

COUNCIL MEMBER EUGENE: No, I'm not talking about the legislation; I'm talking about the presence of ICE inside Rikers Island. Do you believe that the presence of ICE improves the public safety? Give me some statistics if you can please.

CHAIRPERSON DROMM: Council Member, that's going to have to be the last question.

COUNCIL MEMBER EUGENE: Thank you. This is last one.

JOHN FEINBLATT: I'm not sure how to answer that. I think that if there are people who come to the attention of ICE or that ICE focuses on who actually have criminal records that it is important for them to be able to focus on that group and that helps maintain public safety. I think that people who are not threats to public safety or national security what this legislation contemplates is that we would not honor those detainers.

I think in terms of their physical presence at Rikers, Commissioner Schriro has done

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2 a substantial amount in the past several years to
3 actually have them abide by clearer procedures,
4 which I think was very important. I've enumerated
5 some of those before: wearing uniforms, wearing
6 visible IDs, not having free access to the entire
7 facility, and most importantly, advising inmates
8 of their inmate of their right to either have a
9 lawyer when they talk to ICE or decline an
10 interview altogether. The fact that 50 percent of
11 the people do not speak to ICE even when ICE
12 requests that they speak to them is a pretty good
13 testament to the fact that the efforts that the
14 Commissioner has put into place seem to be
15 effective.

16 COUNCIL MEMBER EUGENE: Thank you
17 very much, sir. Thank you for the testimony.
18 Thank you, Mr. Chair.

19 CHAIRPERSON DROMM: Thank you.
20 Before I bring up our next panel, Council Member
21 James has some questions. I just want to remind
22 everyone to keep their questions to three minutes.

23 COUNCIL MEMBER JAMES: Thank you.
24 First, let me congratulate you on the shift in
25 your position with regards to this policy which is

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2 major. Let me also congratulate the
3 administration basically changing their position
4 with respect to marijuana arrests. Hopefully I'll
5 congratulate you soon on stop-and-frisk, but
6 that's a work in progress.

7 I really want to talk to you
8 particularly about deportations in general. Under
9 the former administration of President Bush and
10 this administration we have deported more
11 individuals in this history of this country. It
12 is very disconcerting to me. I do know that
13 recently President Barack Obama recently signed an
14 Executive Order recently providing some
15 discretion, prosecutorial discretion with respect
16 to deportations.

17 My question is, is this
18 administration learning more about those changes
19 to prosecutorial discretion and that Executive
20 Order signed by President Obama which would
21 prevent the deportation of individuals who have
22 been in this country who are undocumented who have
23 been in this country for a long period of time,
24 who unfortunately are not on the terrorist--not
25 within the terrorist database or on the terrorist

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2 database, I should say, do not have a criminal
3 record and unfortunately have not been involved in
4 the criminal justice system but nonetheless find
5 themselves being torn away from their families
6 simply because they do not have papers but have
7 been upstanding residents and have lived in this
8 country for a long period of time.

9 It happened to my staff member who
10 worked for me and, as you know, was in this
11 country for over 40 years, committed a very non-
12 serious, nonviolent relatively minor violation
13 almost 30 years ago and had a knock in his door in
14 the middle of the night and was torn away from his
15 family and was put on the deportation list. But
16 through the efforts of my office and others, we
17 were able to exercise some discretion and allow
18 him to stay in this country. But that's not the
19 case for thousands and thousands of individuals of
20 New Yorkers.

21 I believe that what President
22 Barack Obama did was correct. I understand that
23 this legislation was consistent in moving in that
24 direction. I wanted to know if the administration
25 is reviewing the Executive Order and trying to

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address that here in this city.

JOHN FEINBLATT: First, let me comment on the issue that you raised of shifting positions. I think we've all shifted positions. I think that if we were to go back a year and sort of look where we all began on this, we all began in a very different spot than we are here today. I include the administration and I include the Council as well and I include some of the advocacy community as well.

So I think what's been so good about this process is that we've all focused very hard on this issue. I think the legislation that we contemplate passing represents a shift for all of us. The Administration has taken a long look at this, listened to the Council. I think the Council has taken a hard look at this and listened to the Administration. I think what we should all be proud of is that we've done what you want government to do which is all move together to the place.

COUNCIL MEMBER JAMES: And I applaud you for that.

JOHN FEINBLATT: So I think we've

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2 all done a great job and we should all feel good
3 that we've all done some shifting here on all
4 sides of the issue.

5 As far as the changes in the
6 administration of Obama, as you know, I mean you
7 know as well as I do, ICE Director Morton has made
8 some significant changes. I believe he has issued
9 memos in March of this year and then again
10 followed them up in June of this year, then
11 Secretary Napolitano, in a letter of Congress, I
12 believe in August of this year, all started to try
13 to focus on--refocus the enforcement efforts of
14 the administration on those who pose a risk to
15 public safety or national security, those who've
16 committed crimes or subject to warrants, those
17 who are members of gangs and those who have
18 committed egregious violations of immigrant laws,
19 generally ones after deportation orders or during
20 deportation orders.

21 I think that the legislation that
22 we're contemplating and discussing today reflects
23 largely those shifts as well. I think that we've
24 all, in assessing the right way to move on this
25 legislation, have all been very conscious of the

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2 fact that the Obama administration seems to be
3 refocusing its enforcement efforts. I think that
4 we are largely in sync with those.

5 COUNCIL MEMBER JAMES: To the
6 extent that there are any areas of the law that
7 this bill does not cover, again, I would hope that
8 the administration would reach out to the community
9 at large and assist individuals and empowering
10 them and making them more knowledgeable of the
11 changes from the Obama administration as well as
12 this law as well. Again, I look forward to
13 working with you as we move forward in stemming
14 the tide of stop-and-frisk abuses in the City of
15 New York. That will be your trifecta. Thank you.

16 CHAIRPERSON DROMM: Thank you very
17 much. I would like to thank the administration
18 and Mr. Feinblatt for coming in today. We
19 appreciate all of your efforts in this measure.
20 Thank you.

21 JOHN FEINBLATT: Thank you. Again,
22 I think that what we've done here together is
23 showing a really good example of when you work
24 together and listen to each other how we can all
25 produce something that will benefit all New

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Yorkers.

CHAIRPERSON DROMM: Agreed. Thank you. I'd like to call up our next panel, which will be Robert M. Morgenthau, District Attorney, and Monsignor Kevin Sullivan from the Archdiocese of New York.

[Pause]

CHAIRPERSON DROMM: Yes, Council Member Mark-Viverito?

COUNCIL MEMBER MARK-VIVERITO:

Before Mr. Feinblatt leaves and as we get the next panel, just a point of information, and not to say that we should take full credit, but after we introduced this legislation, which we've been working on for close to a year and a half now, it was after this was introduced in August that Obama's administration came out with the changes to their policy. Which is not to say that we influenced that, but it's just to say that we've been having those conversations for a while and that it really kind of links up with regards to what is happening at a national level, and that Congressman Gutierrez, who is an incredible advocate on this issue and who was here over the

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2 weekend, and the advocates really should take a
3 lot of credit for that shift at the federal level.

4 CHAIRPERSON DROMM: Thank you.

5 We'll start with Mr. Morgenthau.

6 ROBERT M. MORGENTHAU: Thank you,
7 Mr. Chairman, and members of the Council for
8 giving me this opportunity to be with you.

9 I want to just mention one thing at
10 the outset. The Director of Enforcement for ICE
11 put out a statement back in February or March,
12 appearing to ameliorate the standards for
13 deportation and that was repeated in July. But
14 those were only two of several statements that
15 have been made over the years. The problem is
16 that people on the staff don't carry out those
17 directives.

18 Prior to that directive, only 8.3
19 percent of the cases pending in Immigration Court,
20 where incidentally the average time is 500 days
21 and more than a quarter of a million cases
22 pending, only 8.3 percent of those cases involve
23 criminal cases or threats to national security.
24 Four months after that statement was issued, 9.1
25 percent. So there's very little change in what's

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2 happening. What's being said and what's being
3 done are very, very different.

4 I want to thank the committee for
5 the opportunity to appear here today. I want to
6 give my wholehearted support for the proposed law
7 restricting City Corrections referrals to federal
8 immigration authorities. And I wish also to
9 commend you for holding these hearings. As
10 Justice Brandeis said that sunlight is the best
11 disinfectant and if we want to straighten things
12 out there's nothing like putting sunlight on it
13 and that's what you're doing.

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

18 The rhetoric of immigration policy
19 emphasizes the need to protect citizens against
20 violent criminals, drug dealers and terrorists.
21 The rhetoric of immigration policy promises to
22 exercise with care and compassion the awesome
23 powers to detain and to deport. But the reality
24 of immigration policy is too often a system
25 distorted beyond reason.

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

10 As it operates in our city jails,
11 the Criminal Alien Program too often confirms the
12 most cynical stereotypes of immigration policy.
13 Everyone who lists a foreign place of birth is
14 reported to immigration authorities.

15 A majority of these persons don't
16 come even close to matching the profiles of
17 dangerous criminals described in the program's
18 enabling legislation. Many of them are charged
19 with petty crimes, many have no criminal records
20 at all, and indeed many of them will eventually be
21 acquitted.

22 But once they are referred to
23 immigration, it is too late. If someone has
24 overstayed a visa, or is believed to have
25 committed some other technical violation of

1
2 immigration law, they may be subject to
3 deportation proceedings.

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

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

19 And make no mistake, the majority
20 of the New Yorkers whose lives are documented in
21 these files pose no threat whatsoever to the
22 safety of this City. The most recent figures show
23 that on the federal docket only 8.3 percent of the
24 cases involve people charged with crime or as a
25 threat to national security, only 8.3 percent.

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That's after the new directives are out.

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 those involving 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

1
2 retired from public service, I pledged to make
3 immigration reform an important part of my private
4 law practice.

5 Quite simply, the administration of
6 our immigration laws must be in accordance with
7 our most fundamental principles of justice. In
8 many instances, this means only that the
9 government should obey its own principles and
10 polices. That it should do what it says and say
11 what it does.

12 Today, the City claims that in
13 administering the Criminal Alien Program it is
14 acting pursuant to its obligations under federal
15 law. But in fact it is acting far more rashly.
16 The federal legislation that established the
17 Criminal Alien Program defines the term "criminal
18 alien." That term as defined includes serious
19 offenders and terrorists. Nothing in the Act
20 requires the City to turn over, wholesale, files
21 on every inmate who reports a non-US place of
22 business. I realize now that this problem is
23 being addressed, but I want to emphasize that it's
24 not a simple one and it's going to take
25 everybody's best efforts to change a policy that

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is deeply embedded.

You know what the law provides.
I'm not going to repeat that.

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.

Recently, I have tried to convey some of my concerns about immigration policy in a series of opinion pieces that I've written for the Daily News and the Wall Street Journal, and I hope they'll be incorporated. 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.

CHAIRPERSON DROMM: Thank you, Mr. Morgenthau. Thank you for coming in today. Now, I'd like to turn it over to Monsignor Sullivan from Catholic Charities, Archdiocese of New York.

MSGR. KEVIN SULLIVAN: Thank you.

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2 You have my written testimony. In the interest of
3 time, I will just highlight a few points from
4 that. First, I want to thank you, Council Member
5 Dromm, for holding this hearing. Council Member
6 Mark-Viverito, thank you so much for introducing
7 this and the other Council Members. This is
8 really an important leadership moment for New York
9 City.

10 It's my privilege to be here with
11 Mr. Morgenthau whom I've had the privilege to work
12 with on immigration matters for a number of years.
13 It has always been a privilege because when
14 organizations can work together with our law
15 enforcement, people, immigrants benefit,
16 communities benefit. When there is distrust, when
17 there is overreaching, then all of us suffer.

18 You are to be congratulated for
19 putting forth this piece of legislation which
20 constrains and puts in the right order what should
21 be done by federal immigration people and what
22 should be done by Correction people. Thank you
23 for this piece of legislation. We support it
24 wholeheartedly.

25 Catholic Charities this year will

1
2 answer more than 30,000 phone calls from
3 immigrants in every part of New York City and New
4 York State in 18 different languages, requesting
5 good and accurate information.

6 Our ability to now tell them this
7 piece of information is something you can count on
8 us to do to make sure that the word gets out that
9 there is another way in which those who are not a
10 danger to us in this society are being helped by
11 New York City to live their lives in the way that
12 they do to help this city be the great city that
13 it is, to continue to be an immigrant friendly
14 city.

15 This piece of legislation basically
16 is a lot of common sense. But in our world,
17 common sense isn't all that common. So,
18 congratulations for doing this.

19 The one point that I would like to
20 make, which is absolutely critical, and why this
21 is such an important piece of legislation is that
22 many of us in this room, many of us around here
23 feel that the immigration system is broken and we
24 need comprehensive immigration reform. Some of
25 us, maybe with a little bit of frustration, don't

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2 see on the horizon in Washington, comprehension
3 immigration coming soon.

4 However, there are incredible
5 numbers of things that can get done on a level of
6 municipality, on the state, on the federal level,
7 from an administrative and a legislative point of
8 view that can incredibly help immigrants. We
9 don't have to wait for comprehensive immigration
10 reform to deal with things that will make our
11 community safer, which will make them better,
12 which will make the lives of our immigrants
13 better. This sets an inspiration that there are
14 other things that can be done. We don't have to
15 wait. We should have our rallies, we should have
16 our advocacies but there's hard work to be done.

17 The second part of that is we've
18 got to figure out how we make this work when
19 people have different opinions about things. The
20 fact this piece of legislation may not do
21 everything that all of us would like it to do, but
22 it does come together in a way that says that as a
23 community when we have different opinions, we can
24 work it out so that different opinions are
25 respected, and at the end of the day our community

1
2 is safer, people's lives are better, we're a more
3 just and we're a more compassionate city.

4 This piece of legislation moves us
5 in this direction. There are other things that we
6 can do in that direction about immigration matters
7 and about other matters too. Thank you for your
8 leadership. I am pleased to support this piece of
9 legislation. Thank you.

10 CHAIRPERSON DROMM: Thank you,
11 Monsignor. Thank you for all you do and for all
12 the work that Catholic Charities does for our
13 immigrants as well. I am going to turn it
14 directly over to Council Member Robert Jackson,
15 who has some questions to ask.

16 COUNCIL MEMBER JACKSON: Thank you,
17 Mr. Chair. First, let me thank the witnesses, the
18 Catholic Charities and the former DA, the Dean of
19 the DA Delegation for coming in and giving
20 testimony on this very, very important issue.
21 Obviously, both the Catholic Charities stature as
22 an organization and especially representing the
23 Catholic Church and Mr. Morgenthau, your history
24 as the District Attorney for Manhattan, and also
25 representing district attorneys, obviously in my

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2 opinion, you're well known not only around the
3 country but the entire world. And obviously
4 coming out and speaking on this extremely
5 important issue that affects hundreds of thousands
6 of individuals, millions in New York City and more
7 specifically the several thousand that are sent to
8 immigration centers from New York City.

9 So I guess my question to you, both
10 of you, having Catholic Charities and having the
11 former District Attorney of Manhattan to come here
12 giving testimony and saying yes, let's have a
13 common sense approach, let's stop these type of
14 draconian acts, and criminals, yes, murders, yes,
15 but the majority are almost--I think 97 percent of
16 the people are there that should not be referred.
17 What type of message is that going to be sent by
18 you coming here giving testimony to the various
19 organizations and DAs around the country? Since
20 my understanding is that New York City will be the
21 first city in order to pass a law in order to
22 improve the lives of the people that we represent.
23 So, if you can comment on that, I would appreciate
24 that.

25 ROBERT M. MORGENTHAU: I just want

1
2 to say that there's no organization that has done
3 more to help immigrants than Catholic Charities
4 under Monsignor Sullivan's leadership. I mean,
5 barely a day would go by when somebody from my
6 office wasn't speaking to somebody in Monsignor
7 Sullivan's organization. They've done a terrific
8 job.

9 I mean I think that to get this
10 issue out in the public domain, and that's what
11 you're doing; I think the legislation is
12 important. I think the fact that the city is now
13 going to cooperate is important, much more
14 important than anything I could have done. I
15 think you've shown real leadership here and I
16 congratulate you.

17 MSGR. KEVIN SULLIVAN: Before it
18 was said, this is an issue also about attitude. I
19 probably may have a little bit of a different
20 take. This is a city that is friendly to
21 immigrants. There are pockets of us who at times
22 aren't. There may be some of our neighbors on the
23 other side of the Hudson and before you get to
24 California who might not be as favorable to
25 immigrants. But this is an immigrant friendly

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city.

But we have to figure out how we do it better, how some of the laws and rules we have are enforced in a way that immigrants' rights are protected. Our hotline will answer questions. We'll provide that information. Our churches do forums on that. This is another way to say, listen, we're not in favor of illegal immigration, we're not, but we're in favor of human dignity. People who are in our midst, whether they have documents, whether they don't have documents, need to be treated with dignity and respect.

If they're criminals: goodbye. But if you're not, let's figure out a way that you can be a part of our city, make the contribution that you have in the past, continue to make that so that we're even a greater city than we are now.

COUNCIL MEMBER JACKSON: I was at the church on 107th Street yesterday with our Speaker Christine Quinn and our colleague Melissa Mark-Viverito and other colleagues at the national--

MSGR. KEVIN SULLIVAN:

[interposing] Council Member Jackson, I just have

1
2 to say why didn't you stop up the block to my
3 church at 121st Street? You were at our neighbor
4 down the block.

5 COUNCIL MEMBER JACKSON: I will get
6 there.

7 MSGR. KEVIN SULLIVAN: Okay.

8 COUNCIL MEMBER JACKSON: What I
9 need to say is that it's important. I co-chair
10 the New York City Council's Black, Latino and
11 Asian Caucus. We applaud all of you and
12 especially Make the Road New York and Cardozo Law
13 School project for coming out and advocating and
14 using us, more specifically my colleague Melissa
15 Mark-Viverito said it plainly yesterday. They
16 came to her as a point person in order to run with
17 this. And you did it. I'm so happy and I'm proud
18 of you, my colleague, I'm proud of us and everyone
19 involved in moving forward, even though it took
20 some time. But as Jonathan Mintz said, almost all
21 of us were not at the same place now as we were a
22 year earlier and that's extremely important. So I
23 thank you my colleague and the Speaker and
24 everyone else for taking the lead on this. Thank
25 you. Thank you, Mr. Chair.

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CHAIRPERSON DROMM: Thank you.

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Council Member Mark-Viverito?

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COUNCIL MEMBER MARK-VIVERITO:

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Thank you, Chair Dromm and thank you, Council

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Member Jackson for that. I just wanted to take a

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moment in particular, Mr. Morgenthau to thank you

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so much. Because, as the Speaker had indicated,

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you've been a consistent voice on this issue, in

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terms of the op-eds that you've written, the voice

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that you've expressed, and your voice was very

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important in this debate.

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So are right at a very good point

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where, again, my hope is that we will see other

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municipalities across this country enact similar

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legislation that we continue to put pressure on

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the need at the federal level for immigration

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reform comprehensively. We're losing the forest

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for the trees here in terms of really the lives

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that we're impacting.

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Monsignor, thank you so much for

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what you do each and every day to really help our

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immigrant families and those that are contributing

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and the backbone of a lot of our local economies

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and our national economy.

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2 Just one quick question, Mr.
3 Morgenthau, if you could speak a little bit about
4 from your perspective of what do you think this
5 proposed legislation, the impact it might have on
6 local district attorneys, at least here in New
7 York, if any.

8 ROBERT M. MORGENTHAU: I think
9 it'll be helpful. I would be surprised if it
10 weren't. I think it's great that the city has
11 changed it and they've changed it pretty
12 radically. I think that'll encourage more people
13 to come on board.

14 See, there are two competing
15 pressures on the Homeland Security people in
16 Washington. One is the people that want as many
17 people deported as possible. The other is saying
18 let's be reasonable and let's not deport people
19 that committed no crime.

20 So I think what's going on is that
21 they're making statements--and incidentally those
22 two this year followed four others that had been
23 made in other years but basically the same message
24 about discretion and being reasonable and so on.

25 So I think what's going on

1
2 consciously or subconsciously is that they're
3 making statements which say we're going to be
4 reasonable, on the other hand they're going to
5 deport as many people as they can to show the
6 hardliners they're doing their job. And to deport
7 a lot of people, they've got to deport a lot of
8 people who failed to leave when the visa was up
9 and so on.

10 I mean, over 50 percent of the
11 people being deported have committed no crime. So
12 I think that's the reaction that the people on the
13 top are making the right statements but down below
14 either they've got a lousy administration or the
15 people down below are not getting the message.

16 COUNCIL MEMBER MARK-VIVERITO:

17 Close to two million people have been deported in
18 the past two and a half years. It's a real shame.
19 The last thing I would just say is that in terms
20 of what you alluded to also about having the Mayor
21 and the Administration come on board is critical,
22 because although we did have the number of
23 colleagues sign on to override a veto, if the
24 administration doesn't embrace legislation, then
25 it's a problem in terms of enacting it. So the

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2 fact that we are united now sends a very powerful
3 message from the City of New York. Again,
4 hopefully it'll be replicated throughout this
5 country. Thank you very much.

6 CHAIRPERSON DROMM: Thank you. I'm
7 going to turn it over to Council Member Ydanis
8 Rodriguez.

9 COUNCIL MEMBER RODRIGUEZ: Thank
10 you both. I think that this is important move to
11 thousands of family in New York City that they
12 have seen a family member be deported because of
13 how the immigration system work. This is
14 important that we passing this bill. But as a DA
15 for so many years, someone that makes so much
16 contribution, do you think that at one point we
17 can function well, protect the safety of the city
18 without having ICE inside Rikers Island?

19 ROBERT M. MORGENTHAU: Absolutely.

20 COUNCIL MEMBER RODRIGUEZ: Do we
21 need ICE in Rikers Island?

22 ROBERT M. MORGENTHAU: ICE is not
23 needed. I mean if somebody is convicted of a
24 felony or if they're on a list of being a threat
25 to national security, that information will be

1 transferred to ICE. They don't need them at
2 Rikers Island getting lists of everybody who was
3 born outside the United States. I see absolutely
4 no need for ICE to be present at Rikers Island.
5 Do you, Father?

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7 MSGR. KEVIN SULLIVAN: I don't, but
8 that's your business.

9 COUNCIL MEMBER RODRIGUEZ: Thank
10 you.

11 CHAIRPERSON DROMM: We've been
12 joined by Council Member Diana Reyna and she also
13 has questions. Thank you.

14 COUNCIL MEMBER REYNA: Thank you so
15 much, Mr. Chair. Congratulations to my colleague
16 Melissa Mark-Viverito. On behalf of my community
17 and many immigrant communities in the City of New
18 York this is quite the astounding moment for so
19 many families who have already suffered so much,
20 to be able to have this alleviation of not having
21 to be targeted unfairly.

22 I wanted to just take a moment to
23 ask you, Mr. Morgenthau, in your experience as a
24 district attorney and enforcing and prosecuting
25 what is the law, is there anything at the state

1
2 level that our state government can do to
3 complement our efforts here in the City of New
4 York?

5 ROBERT M. MORGENTHAU: See one of
6 the problems at the state level is that the county
7 jails are run by the sheriffs. They get
8 compensated for aliens that they have in their
9 jail system. So there's an incentive in some
10 counties to pick up people on technicalities, keep
11 them in jail and then get money for doing that. I
12 think the state could put out a directive limiting
13 the authority of sheriffs to incarcerate people
14 who have committed no crime.

15 COUNCIL MEMBER REYNA: As always,
16 your wisdom lends itself to this action not just
17 ending here but being able to pursue what would be
18 complementary actions at all levels of government
19 to be able to protect with dignity the population
20 of those who come to this country to work hard and
21 to be differentiated from criminal activity.

22 Thank you very much, Mr. Morgenthau, Monsignor.

23 ROBERT M. MORGENTHAU: Thank you.

24 MSGR. KEVIN SULLIVAN: Thank you.

25 CHAIRPERSON DROMM: Thank you very

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much. I'm going to allow Council Member James to ask a few questions.

COUNCIL MEMBER JAMES: Mr. Morgenthau, thank you, obviously, for your clear voice, as a former intern in your office many moons ago. My question to you is the cost to taxpayers as a result of this policy, is it fair that this has cost taxpayers millions and millions and millions of dollars at a time when we're cutting the safety net in the City of New York?

ROBERT M. MORGENTHAU: I think it is fair. I've been trying very hard to come up with some dollar figures. There's this organization, not-for-profit, Syracuse University has done some very useful studies. I've asked the co-head of that, Professor Long, if she could come up with an estimate of how much it cost to keep undocumented aliens, who have committed no crime, in custody. She said that's a very difficult problem. I said if it was easy I wouldn't be asking you. But anyway, I think people are working on that but I don't have any answers.

COUNCIL MEMBER JAMES: But clearly I guess it would be fair to say that it would be a

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2 significant amount and an amount that obviously
3 could go towards much needed social services in
4 the City of New York.

5 ROBERT M. MORGENTHAU: Absolutely.

6 COUNCIL MEMBER JAMES: Thank you,
7 Mr. Morgenthau, and thank you for your leadership.
8 Thank you for all that you have done.

9 CHAIRPERSON DROMM: We've also been
10 joined by Councilman Dan Halloran, who also has
11 questions.

12 COUNCIL MEMBER HALLORAN: Good to
13 see both of you gentlemen here today. District
14 Attorney Morgenthau, it was a pleasure having been
15 in the courts with your ADAs in many cases as a
16 criminal defense attorney. I worked in the Queens
17 DA's office but enjoyed practicing very much in
18 the courts because your ADAs have always been so
19 professional, your office has always been so
20 responsive. We miss you.

21 Just let me ask you a question,
22 your article in the Daily News, I took just one
23 small, I guess, disagreement with you. You
24 indicated that the true purpose of the immigration
25 laws are to protect us from dangerous criminals.

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2 ROBERT M. MORGENTHAU: And national
3 security.

4 COUNCIL MEMBER HALLORAN: And
5 national security, which are two very important
6 functions. I would agree with you. I think the
7 vast majority of the problems we're experiencing
8 are with the non-offenders or low level offenders
9 that are not a real threat.

10 But you do acknowledge that that's
11 not the only purpose of immigration law. Another
12 purpose of the immigration law is to set up the
13 means by which people can lawfully immigrate to
14 the United States. That is a separate issue which
15 the federal government really needs to start
16 having a dialogue on.

17 ROBERT M. MORGENTHAU: Absolutely.

18 COUNCIL MEMBER HALLORAN: But you
19 would agree with me as a prosecutor and as an
20 attorney, someone who swore to uphold the
21 Constitution and the laws of the United States
22 that there is a crime in fact being committed when
23 you enter the United States unlawfully anyway,
24 regardless of why your intention is, regardless,
25 you do acknowledge that it's a federal crime to be

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2 in the country without having provided the proper
3 documentation.

4 ROBERT M. MORGENTHAU: But that's
5 not the function of the local police or the local
6 prosecutor.

7 COUNCIL MEMBER HALLORAN:
8 Absolutely.

9 ROBERT M. MORGENTHAU: I think when
10 you get the local authorities involved in that, it
11 means that the immigrants are going to be afraid
12 to cooperate.

13 COUNCIL MEMBER HALLORAN: Exactly.
14 Diana Reyna and I were having a very long
15 discussion about this, and we agree, I believe, on
16 this issue. The local police should not be used
17 as tools in the immigration system. The problem
18 really lies elsewhere in the upper levels, in the
19 federal government not policing, so to speak, its
20 powers. I appreciate everything you did, and I
21 just wanted to congratulate you on staying on top
22 of this issue even after you've left office.

23 ROBERT M. MORGENTHAU: Thank you.

24 COUNCIL MEMBER HALLORAN: Somebody
25 needs to have a real dialogue about this, and

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2 hopefully people will start doing it, thanks to
3 the work of gentlemen like yourself. Thank you.
4 Nothing further, Mr. Chair.

5 CHAIRPERSON DROMM: Thank you,
6 Council Member. I'd like to thank both of our
7 guests and say thank you for coming in today. We
8 appreciate your testimony very much. Thank you.

9 MSGR. KEVIN SULLIVAN: Thank you.

10 ROBERT M. MORGENTHAU: Thank you.

11 CHAIRPERSON DROMM: Now I'd like to
12 call up Javier Valdes from Make the Road New York,
13 Sam Solomon from Cardozo Immigration Justice
14 Clinic, and Peter Markowitz.

15 [Pause]

16 CHAIRPERSON DROMM: Mr. Solomon
17 would you like to start?

18 SAM SOLOMON: I think actually Mr.
19 Valdes is going to start, if you don't mind.

20 CHAIRPERSON DROMM: Javier, sure.

21 JAVIER VALDES: Good morning, my
22 name is Javier Valdes and I'm the current deputy
23 director of Make the Road New York, the largest
24 immigrant-based community organization in the
25 City, with over 9,500 dues-paying members. I

1
2 first would like to thank particularly Speaker
3 Christine Quinn, Council Member Melissa Mark-
4 Viverito, Council Member Dromm and everybody in
5 the Committee on Immigration for allowing our
6 organization to testify at this important hearing
7 today.

8 I am joined today by other
9 community and faith based organizations,
10 particularly the New Sanctuary Coalition, and
11 Northern Manhattan Coalition for Immigrant Rights.
12 Public defender groups have been essential in this
13 fight, such as the Bronx Defenders, Neighborhood
14 Defender Services, Brooklyn Defender Services,
15 Immigration Defense Project and The Legal Aid
16 Society, and of course with the legal support of
17 great experts at New York University School of Law
18 and Benjamin Cardozo School of Law.

19 We are here today to support the
20 bill that is currently being proposed to the New
21 York City Council. This bill comes as a reaction
22 to a terrible problem: the indiscriminate
23 funneling of New Yorkers into a broken immigration
24 detention and deportation system. New York City,
25 where immigrants make up nearly 40 percent of the

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2 population, has historically been a leader on
3 immigration issues. But on this issue we are
4 trailing behind other major cities. Let's change
5 that. With this bill, we can begin to put an end
6 to a practice that tears away New York City
7 families and makes all of us less safe.

8 The most common way that New
9 Yorkers are landing in immigration detention is
10 through the Department of Corrections'
11 entanglement with the Department of Homeland
12 Security's Immigration and Customs Enforcement
13 bureau, known as ICE.

14 The Department of Corrections is
15 participating in ICE's immigration investigations
16 that give ICE access to DOC internal databases and
17 using DOC personnel to facilitate ICE
18 interrogation. ICE then issues something called
19 an immigration detainer against any DOC detainee
20 they think that they can deport. A detainer is a
21 request that DOC hold an individual, at DOC's own
22 expense, in order to facilitate their transfer
23 into federal immigration detention when they would
24 otherwise have been released.

25 Detainers are requests, they are

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2 not legal obligations. Notwithstanding our legal
3 authority to exercise discretion, current City
4 policy is to hold anyone and everyone subject to a
5 detainer for transfer into immigration custody.

6 Once these individuals land in ICE
7 custody, most of them, approximately two-thirds,
8 are sent far away to detention centers such as in
9 Texas, Louisiana, Alabama or elsewhere, where they
10 are isolated from their families and the resources
11 necessary to mount a defense.

12 Only a lucky few have access to
13 lawyers while 79 percent remain unrepresented
14 because immigrants have no right to an attorney in
15 deportation proceedings. Because the deck is
16 stacked against these New Yorkers, only 3 percent
17 of such individuals mount a successful defense to
18 their deportation.

19 The immigration detention system is
20 notoriously brutal with a deplorable record of
21 medical care, which has led to the deaths of many
22 immigrants across the country, including New
23 Yorkers. The severity of this situation was
24 exposed in DOC Commissioner Schriro's own report
25 analyzing the state of the ICE detention system,

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2 written while she worked at DHS. This is the
3 unfair system that our City is currently
4 subsidizing through DOC's detainer policy.

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

18 Second, it undermines public safety
19 by weakening our City's community policing efforts
20 and making immigrants fearful of contact with the
21 police. When immigrant New Yorkers begin to view
22 the City's criminal justice system as the gateway
23 to immigration detention and deportation, they
24 become fearful of the police. When any portion of
25 our community is afraid to come forward as

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2 witnesses and victims of crimes that makes all New
3 Yorkers less safe.

4 As you will hear in later
5 testimony, the impact on victims of domestic
6 violence is particularly severe. People are
7 forced to suffer in silence because they fear that
8 contacting the police is a direct pipeline to
9 deportation. When any New York residents are
10 afraid to cooperate with police, we are all less
11 safe.

12 Finally, .this policy squanders
13 scarce City resources. Our City spends inordinate
14 amounts of money every year handing over New
15 Yorkers to ICE. In a new report from the
16 Independent Budget Office, the Department of
17 Corrections reported that the marginal savings
18 from reducing the number of inmates at Rikers by
19 just 100 comes out to \$71.51 per inmate per day.

20 We also know that inmates with
21 immigration detainers spend an average of 73 extra
22 days in DOC custody compared to inmates without
23 detainers, because they may not want to pay bail
24 and be sent to ICE to begin their deportation
25 proceedings immediately.

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2 So the Department of Corrections is
3 spending more than \$5,200 per year that it
4 otherwise would not spend for each inmate with an
5 ICE detainer. With 3,000 to 4,000 detainers being
6 issued against people at Rikers Island each year,
7 we're talking about New York City taxpayers paying
8 as much as \$20 million per year to help deport New
9 Yorkers.

10 The federal government reimburses
11 us for a truly miniscule proportion of that
12 amount, and, furthermore, refuses to indemnify the
13 City for any liability that we incur if a detainee
14 falls ill or dies as a result of those extra days
15 spent in DOC custody.

16 In this difficult fiscal
17 environment, every dollar going to subsidize the
18 federal government's civil immigration enforcement
19 activities is a dollar not spent on other critical
20 local priorities. Firehouses stay closed and
21 libraries shut their doors because the City
22 chooses to help ICE sustain a fatally flawed
23 system, which leads only to broken families, less
24 safe streets, and money thrown away.

25 The bill before you today says that

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2 New York City will not be in the business of
3 assisting ICE to throw New Yorkers into this
4 broken system of immigration detention and
5 deportation. It represents a sensible and
6 balanced first step to preserving cooperative
7 relationships between police and immigrant
8 communities.

9 New York City has the legal
10 authority and the moral obligation not to
11 subsidize the unjust deportation of New Yorkers.
12 The City has the right to decide who is turned
13 over to ICE and who is not. When it comes to
14 incarceration policy, New York City's job is to
15 ensure public safety. With this legislation, we
16 can begin to make sure New York is in the public
17 safety business, not in the deportation business.

18 This bill helps ensures that the
19 fundamental rights of immigrant New Yorkers are
20 protected, public safety is ensured, and family
21 unity is maintained, while at the same time
22 effectively using our valuable city resources. We
23 have an opportunity today for New York City to be
24 a leader on this issue. And we're looking forward
25 to working with the Speaker and the Council to

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making this happen. Thank you for your time.

CHAIRPERSON DROMM: Thank you very much. I'd like to say we've been joined by Council Member Rosie Mendez. In the interest of time, I'm going to ask if you can summarize your testimony rather than read it all. It would be very much appreciated.

SAM SOLOMON: Sure, I'd be glad to. Thank you very much, Chairman Dromm and thank you very much to the Speaker and her office and especially to Councilwoman Melissa Mark-Viverito for her leadership on this legislation.

The first thing that I wanted to explain here is how this bill will function in practice. I'm going to do that by just explaining a little bit about one individual's case that we've seen. This is a true story. Let's call the individual Arthur. Arthur is a young gay man who lives in the city with his mother. He arrived here without documentation from Mexico several years ago, and that was because he 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

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2 the victim of a gay-bashing attack. He fought
3 back to defend himself and one of his attackers
4 was injured. The police arrived and he was
5 arrested.

6 What happens next, under the city's
7 current policy is that Arnold gets tossed into a
8 holding cell until he can be arraigned in front of
9 a judge. In his case, the judge agreed to set
10 bail, but like four out of five New Yorkers,
11 Arthur didn't have family members in the courtroom
12 at that time and he couldn't make bail. So off he
13 goes to Rikers.

14 Remember that Arthur has been
15 arrested for defending himself. He hasn't been
16 convicted of anything. He's innocent until proven
17 guilty. But because of our current policy, as
18 soon as he crosses the bridge to Rikers, federal
19 officers from ICE will learn that they have a new
20 foreign-born detainee to investigate.

21 There are 13,000 people like Arthur
22 every year, foreign-born New Yorkers, still under
23 the presumption of innocence, who get sent to
24 Rikers because they are remanded or they can't
25 make bail. Our DOC currently provides ICE with

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special access to its databases to help them identify those people.

So now that they know about Arthur, they're going to come investigate him. Whether or not Arthur consents to that interview, however, the ICE enforcement machine is now rolling with just one goal in mind: figure out whether there is any possible way they can deport him or any of the thousands of others like him.

ICE isn't interested in what New York City law enforcement has to say about him nor what New York judges have to 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's going to suffer persecution if he is deported. ICE just wants to know if there is any possible way they can deport Arthur. If they think the answer is yes then they exercise no discretion and they simply issue a detainer on him.

This is a crucial point. Once that

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2 detrainer is issued, New York City's current policy
3 is they will simply hand over to ICE whoever they
4 ask for, every single person, every single time.
5 In Arthur's case, he was put on trial. He argued
6 that he had acted in self-defense and a jury of
7 New Yorkers decided to acquit.

8 But our current policy says that we
9 don't care. It doesn't matter that Arthur has
10 been found not guilty and has no criminal record
11 whatsoever. When Arthur was supposed to be
12 released from Rikers, instead DOC handed him over
13 directly to ICE. DOC exercises zero discretion in
14 deciding whether Arnold is somebody who we, as New
15 Yorkers, believe should be separated from his
16 family, incarcerated potentially thousands of
17 miles away and very possibly ultimately banished
18 to a country that he left to flee persecution; all
19 of this because Arthur was the victim of a hate
20 crime in our city and he had to stay at Rikers
21 while he worked to prove he was not guilty.

22 It doesn't have to be this way.
23 There's no rule that DOC has to spend New York
24 City taxpayer dollars to deport New Yorkers like
25 Arthur. As Mr. Valdes explained, that's not how

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2 it works in Chicago. That's also not how it works
3 in Santa Fe or in the county. They don't treat
4 their community members like that. Nor do several
5 other major cities and counties across the United
6 States. And we don't have to either.

7 If we pass this legislation, what
8 we will be doing is saying that some of our fellow
9 New Yorkers in situations like Arthur's don't
10 deserve the fate that he has suffered. What the
11 bill says is that we will not simply hand over
12 everyone indiscriminately, without using any
13 discretion whatsoever.

14 What we will be saying is that
15 there are some people we won't hand over to ICE.
16 This kind of policy is known as detainer
17 discretion. That's what this bill will do. Thank
18 you very much for your time.

19 CHAIRPERSON DROMM: Thank you very
20 much. I'm going to turn it over to Council Member
21 Dan Halloran, who has a question.

22 COUNCIL MEMBER HALLORAN: This is a
23 very difficult area for me. I've been a criminal
24 defense attorney for ten years prior to coming to
25 the Council. So I had many run-ins with ICE on

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2 detainers. By the same token, the immigration
3 question keeps getting ducked by our federal
4 authorities and we wind up with problems. So my
5 first question would be certainly there is a
6 tremendous cost to the city in cooperating with
7 ICE. We know that.

8 Would ICE have any authority to
9 compel disclosure in the event that the city
10 unilaterally chose not to?

11 CHAIRPERSON DROMM: Mr. Markowitz,
12 would you state your name?

13 PETER MARKOWITZ: Absolutely.
14 Peter Markowitz, I'm a professor at Cardozo Law
15 School and I direct the Immigration Justice Clinic
16 and Mr. Solomon is a member.

17 So the question about compel
18 disclosure, I assume you mean compel to us hold
19 people in the way that this bill prevents.

20 COUNCIL MEMBER HALLORAN: Yes.

21 PETER MARKOWITZ: No, the answer is
22 definitely no. They wouldn't have any authority
23 to do that. I can give you kind of a parsing of
24 the legal regulation and why that doesn't compel
25 us to do that but there's a much simpler answer,

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2 which is that ICE has publicly and repeatedly
3 taken the position that we cannot and do not
4 compel localities to hold people on detainers.
5 And it has to be so because of the Tenth
6 Amendment. They can't force us to pay to
7 administer a federal program.

8 COUNCIL MEMBER HALLORAN: And
9 that's very important. The separation of powers
10 issue is something I think that we don't spend
11 enough time of and it's interesting how sometimes
12 the left and right wind up agreeing on very
13 strange places and this sometimes is one of them.

14 I would just like to address my
15 question to Make the Road now if I can. One of
16 the things that you criticized and this is where I
17 think we sort of have to draw a distinction. You
18 criticized the ICE detention center, the medical
19 care that's there, the time and conditions, the
20 failure--that there's a lack of lawyers available
21 because there's no right. Those are all federal
22 issues. None of those issues would be solved by
23 this bill or fixed by this bill. If Immigration
24 picked up somebody on the street, having nothing
25 to do with DOC, they would still go through that

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system.

I think it's important in having this dialogue that we actually start talking about the bigger picture issue, which is how that gets handled at the federal level. Do you feel that the way DOC has handled these prisoners is in some way substandard? Not Immigration, which takes them but rather when they're in our system that there are any of those concerns?

JAVIER VALDES: So, we can say that in the past we probably have never agreed on many things but I think we're in agreement now that the federal immigration system is broken and that the system federally is out of control and particularly in concern where immigrants are sent to Texas, Alabama and all those areas. So I think we're in agreement to that fact. So it's good to find sometimes places of compromise with you, Council Member.

COUNCIL MEMBER HALLORAN: That's the Libertarian Republican in me, not the regular Republican.

JAVIER VALDES: All right.

COUNCIL MEMBER: [off mic]

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2 COUNCIL MEMBER HALLORAN: I think
3 Ron Paul would disagree with you.

4 JAVIER VALDES: So, in that sense,
5 it is happening. I think what this legislation
6 does is continue to highlight why the federal
7 government needs to take action on the issue of
8 immigration. That's where I think the battle
9 needs to be taken next. But local municipalities
10 do have the right and the power to act locally on
11 certain issues. I think the City of New York has
12 found the right balance to act locally now.

13 As far as the health concerns
14 issues of people in detention in comparison to the
15 Department of Correction to people in immigration
16 facilities that most of the times are privately
17 run, it is totally different. I think the
18 Department of Corrections has higher standards
19 than we have seen from some private run facilities
20 outside of the state.

21 COUNCIL MEMBER HALLORAN: I
22 appreciate that, because it's important that we
23 draw that distinction, because I don't want anyone
24 to come in and say that DOC isn't doing a good job
25 in keeping our inmates safe. I mean, obviously

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2 it's a bad environment because it's a jail, but
3 they do a hell of a job and they're understaffed.
4 I wouldn't want anyone to walk away from the
5 hearing thinking otherwise.

6 Just one other question, with
7 regards to your Arthur hypothetical, which I guess
8 was a reality. Arthur, though, did have an avenue
9 if in fact his sexual orientation was at issue, in
10 terms of he could have applied for political
11 asylum based on that in entering the country
12 initially. I mean he would certainly have been
13 entitled to due process there. Just let's not say
14 that there isn't the possibility in foreclose it
15 of doing this in a more consistent with federal
16 law way of approaching an immigration situation.
17 Would you agree with me there, he could have
18 applied for political asylum?

19 PETER MARKOWITZ: We can't speak
20 specifically about Arthur but generally about the
21 issues.

22 SAM SOLOMON: Yeah, I think we
23 can't speak specifically about Arthur's situation
24 necessary, but I think generally you're right.
25 And in Arthur's case and in similar cases there

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2 might be other avenues as well. For instance,
3 there's a crime victims visa that certain people
4 can apply for.

5 COUNCIL MEMBER HALLORAN:

6 Absolutely.

7 SAM SOLOMON: There's a visa for
8 cooperation with police investigations.

9 COUNCIL MEMBER HALLORAN:

10 Witnesses, right, absolutely.

11 SAM SOLOMON: The problem I think
12 though is that these people are not being allowed
13 to wait to apply for those things. If they were,
14 they might have a more effective avenue.

15 COUNCIL MEMBER HALLORAN: Maybe
16 that is something we could do in terms of having
17 legal counsel available those issues in an
18 expedited manner. And of course we know that
19 Immigration moves as slow as snails so I don't
20 know that that's going to help, but it would be
21 something we could do possibly.

22 PETER MARKOWITZ: I would just add
23 that there are many situations where it really
24 can't be dealt with on the front end. There are
25 many types of relief that are only available as a

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2 defensive matter. I can't go too far into
3 Arthur's situation but I can tell you that he
4 actually did try to affirmatively apply and
5 because he was incarcerated and because ICE
6 wouldn't work with him as an incarcerated
7 individual, he was unable to do so affirmatively.
8 So even in that very case, they frustrated that
9 ability.

10 COUNCIL MEMBER HALLORAN: But
11 perhaps maybe an ounce of prevention, pound of
12 cure, if we could maybe get that message out to
13 our immigrant communities of all kinds that these
14 things are available to them before they have an
15 interaction with law enforcement, you save a lot
16 of this grief. That's all. Thank you, Mr. Chair.

17 CHAIRPERSON DROMM: Thank you very
18 much. I'd like to thank the panel for coming in.
19 I appreciate your time. The next panel that I'm
20 going to be calling--sorry, my counsel is going to
21 read the testimony of Cyrus Vance, the District
22 Attorney, New York City District Attorney.

23 JULENE BECKFORD: Testimony of
24 Cyrus R. Vance, Jr., New York County District
25 Attorney, before the Committee on Immigration.

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2 New York City is a city of
3 immigrants. The 2010 census found that 21.3
4 percent of reporting households included foreign-
5 born individuals; 28.5 percent of households spoke
6 a language other than English. When you consider
7 that immigrant-based households are more reluctant
8 to participate in the census than households in
9 general, it is clear that a sizeable portion of
10 our city consists of foreign born individuals and
11 families.

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

22 An essential element of the program
23 is outreach to aid victims and witnesses who fear
24 cooperating with law enforcement because of their
25 immigration status. The program aims to not only

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2 prosecute fraud committed against immigrants, but
3 also to educate the public through fraud
4 prevention presentations, so that they can
5 identify a scam when they see one.

6 The New York County District
7 Attorney's Office will not report a crime victim
8 or witness to immigration authorities for the
9 purpose of having deportation proceedings
10 commenced against that individual because we are
11 here to seek justice, regardless of the victim's
12 immigration status. In some cases, we even work
13 with crime victims to apply for a U-Visa.

14 U visas provide a temporary
15 immigration status to victims of certain
16 qualifying offenses, namely domestic violence and
17 other violent crimes, that can lead to obtaining a
18 green card or permanent resident card. For a
19 victim of domestic violence a U-Visa can allow
20 someone living here illegally who was promised
21 sponsorship by their abuser to make an independent
22 application for permanent resident status.

23 Much like the general population,
24 immigrants are by and large peaceful, hard-working
25 people who contribute to the diversity and

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2 character of our city's fabric. But again, much
3 like in the general population, there are some
4 individuals who break our laws and pose a threat
5 to the public safety. It is that group, those who
6 flout the penal law, who are rightly subject to
7 sanctions.

8 When it comes to undocumented
9 immigrant offenders, the system relies upon a
10 voluntary relationship between The New York City
11 Department of Corrections and the federal
12 Immigration and Customs Enforcement Criminal Alien
13 Program. ICE agents are present at Corrections
14 facilities, ICE and Corrections share information,
15 and Corrections honors ICE detainers. The system
16 breaks down when detainers are honored for people
17 who are never convicted of a crime.

18 Imagine this scenario: An
19 individual is arrested for an alleged crime. Upon
20 intake, Corrections asks all inmates for the
21 country of birth; every individual who states a
22 foreign country of birth has their vital
23 statistics sent to the ICE database, regardless of
24 their current immigration status. This impacts a
25 lot of people.

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2 Corrections identified 12,710
3 inmates as foreign-born in Fiscal Year 2009. ICE
4 then has the authority to issue a detainer, which
5 is a request, not a command, that local law
6 enforcement notify ICE prior to releasing an
7 individual from custody so that ICE can arrange to
8 take over custody. Interestingly, an individual
9 does not need to be here illegally in order for
10 ICE to place a detainer on them; there simply
11 needs to be a determination that they are
12 deportable. In Fiscal Year 2009, ICE placed
13 detainers on 3,506 inmates in New York City
14 Department of Corrections custody.

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

25 The group in question here is the

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

10 The proposal that is before us
11 today deals strictly with the New York City
12 Department of Corrections and its relationship
13 with ICE. It would prohibit Corrections from
14 using any department resources--defined as
15 department facility, space, buildings, land,
16 equipment, personnel or funds--to honor a civil
17 immigration detainer by either, A: holding an
18 individual beyond the time they would otherwise be
19 released, or B: notifying federal immigration
20 authorities about an individual's release.

21 This does not apply to individuals
22 with a conviction history for a felony or
23 misdemeanor, defendants in a pending criminal
24 case, confirmed matches to the terrorist database,
25 or individuals subject to a final order of removal

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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

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2 of my office's Immigrant Affairs Program. I
3 therefore fully support the passage of the
4 legislation as proposed.

5 CHAIRPERSON DROMM: Thank you very
6 much, Julene Beckford. I also want to take this
7 opportunity to thank Jennifer Montalvo, both of
8 you for your work on this piece of legislation.
9 Thank you both.

10 Now, I'd like to call Jose from the
11 Brooklyn Defender Services, who is going to
12 testify by conference call. Luis, who is also
13 testifying by conference, Lisa Schreibersdorf from
14 the Brooklyn Defender Services, JoJo Annobil from
15 the Legal Aid Society and Jennifer Friedman from
16 the Bronx Defenders come forward.

17 [Pause]

18 JOSE: Hello?

19 CHAIRPERSON DROMM: Hello, Jose?

20 JOSE: Yes.

21 CHAIRPERSON DROMM: Okay, very
22 good. So, Jose, we can hear you now. If you'd
23 like to begin your testimony, we would appreciate
24 it.

25 JOSE: Okay. Good afternoon.

1
2 Thank you for inviting me here today. I believe
3 no one should have suffered like I did. I want to
4 tell you my story because you are the city
5 officials and you have the power to protect people
6 like me.

7 When I was 11-years-old, I came to
8 the United States from Mexico. I am now 18. I
9 live in the same neighborhood, Brooklyn, for the
10 last seven years. Where I live, there are many
11 gangs. They often roll people on the street, beat
12 up. Because I have never joined a gang, I have
13 been beaten up by different gangs over the years.
14 I have been beaten up by members of a gang in
15 middle school. They beat me up and they stole
16 [background noise] cell phone.

17 When I started high school, gang
18 members continued to attack me. One time a gang
19 member hit me in the eye with a large tree branch.
20 My eye was bleeding and my vision is still blurry.
21 I told my mom about what was happening to me. We
22 wanted to move to a different neighborhood but my
23 mom told me that we didn't have enough money to
24 move.

25 Last year, I was walking down the

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2 street with a friend after school. As we got
3 closer to a corner, I saw rival gang members
4 arguing with each other. Suddenly, I heard gun
5 shots, saw someone with a gun. When I saw the
6 gun, I turned and ran away.

7 One bullet flew right by my head.
8 I heard it fly by my ear. Another bullet
9 shattered a car window next to me. A woman, who
10 was walking down the street, pushing a baby in a
11 stroller, got shot in the leg. I ran quickly to
12 get away.

13 At one point, while I was running
14 away, I dropped my backpack. The next day at
15 school, some known gang members came up to me and
16 said "if you talk to the police you know what's
17 going to happen." Later in the day, the police
18 came to my school because they found my backpack
19 near the shooting. They arrest me and I was sent
20 to Rikers Island.

21 A few days later, a detective came
22 to Rikers Island to speak with me. I fully
23 cooperate with the police in their investigation.
24 Once learning that I was a victim, the district
25 attorney offered to fully dismiss the charges

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2 against me. The district attorney signed a U-visa
3 certification on my behalf and my lawyers at
4 Brooklyn Defender Service work hard to apply for a
5 U-visa for me.

6 Even though I cooperate with the
7 police and the charges against me could have been
8 dismissed, I have to stay in jail because ICE
9 issued a detainer against me when I got to Rikers
10 Island. I have never been arrested before in my
11 life and these charges were going to be clearly
12 dismissed.

13 But I was afraid to resolve the
14 criminal case because once my criminal case was
15 over I would have been handed over to Immigration.
16 I could have been sent anywhere in the United
17 States, far from my family and lawyers and I would
18 have had to defend myself in a deportation
19 hearing.

20 If the proposal that we are talking
21 about here today were in effect at the time of my
22 arrest, the charges would have been dismissed
23 earlier; I would have been released from Rikers
24 Island to pursue my U-visa application. But
25 instead, I have to spend four horrible months on

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2 Rikers Island, fearing that I might be deported
3 because of the immigration detainer.

4 Meanwhile, my lawyers work on my U-
5 visa application and try to convince ICE to lift
6 the immigration hold. I missed the last four
7 months of high school and I couldn't graduate on
8 time. However, much worse than that, my time on
9 Rikers Island was a total nightmare. In jail, I
10 could not stop thinking about what happened. I
11 kept thinking about the gun and the bullets flying
12 by my head. I was having constant nightmares and
13 often woke screaming in the middle of the night.

14 The day after the shooting, the
15 gang members make threats to me and say they will
16 hurt me and my family if I spoke to the police. I
17 was also attacked and beaten up by gang members at
18 Rikers Island, including members of the gang
19 responsible for the shooting. While I was in
20 jail, my mom told me that she had received threats
21 from the gang members. My mom was scared of them.

22 When I heard about this, I was
23 terrified about what could happen to my family.
24 Moreover, when I learned that I could be deported
25 back to Mexico because of the immigration hold, I

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2 became very depressed. I felt unsafe in jail
3 where there were many gang members and I was very
4 worried about my family's safety.

5 I was so terrified for what they
6 could do to me and my family that I tried to kill
7 myself. I was transferred to the mental health
8 unit at Rikers Island and put under 24-hour
9 monitoring.

10 After four difficult months, my
11 lawyers were able to get the immigration hold
12 lifted. I have suffered a lot but now I am back
13 together with my family and I have been getting
14 help from my community. I am now finally back in
15 school and hope to graduate in the next year. I
16 have now received my U-visa, which means that I
17 could stay in this country and take steps towards
18 citizenship.

19 My lawyers worked very hard to
20 convince immigration to remove my detainer. But
21 it shouldn't be so difficult or take so long.
22 People like me should not be turned over to
23 immigration. You have the power to protect people
24 like me by changing these policies to make sure
25 that people are not held in jail unnecessary, and

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2 are not turned over to Immigration. My goal is to
3 help people in these situations, but it depends on
4 you to make my efforts worthwhile. Thank you for
5 listening to my story.

6 CHAIRPERSON DROMM: Thank you very
7 much, Jose, for that very powerful testimony.
8 Now, we're going to hear from Luis, who is also
9 going to testify by conference call. Luis?

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

13 I know why we need to get ICE out
14 of our jails because I was there. Four years ago,
15 I was a junior in high school studying art and
16 design, when the police arrested me for a crime I
17 had nothing to with. They took me to Rikers and
18 the next day they told me I had a legal visit.

19 When I got to the meeting, it was
20 Immigration Agents. I said I wasn't going to talk
21 to them but that didn't matter. I told them I was
22 innocent but they said guilty or innocent I was
23 getting deported.

24 I was in Rikers for 17 months and
25 there were witnesses that knew I had nothing to do

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2 with the crime, but they were scared to talk to
3 the police because they knew the police worked
4 with immigration and they might also be deported.

5 When my charges were finally
6 dropped and my case was dismissed, I wasn't
7 released to go back to my family and finish
8 school. I was sent straight to immigration
9 detention. I spent another four months in
10 detention in Texas, far from my friends and family
11 not knowing if I will ever see them again.

12 Now I am back in New York and going
13 to college but they are still trying to deport me.
14 I was brought here from Mexico when I was 8 years
15 old. My brother and sister were born here and are
16 citizens. America is the only country that I
17 know. If I am deported, I would be sent to a
18 country where I don't know anybody.

19 Inside I met so many people whose
20 families were here and had been here for many
21 years. They were being deported for little
22 things, like driving without a license and jumping
23 the train, and people like me who never committed
24 any crime.

25 New York is supposed to be a city

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2 of immigrants. But working with ICE in our jails,
3 we are devastating thousands of immigrant
4 families. We need to get ICE out of our jails.
5 We need to get them out now. Thank you very much.

6 CHAIRPERSON DROMM: Thank you,
7 Luis, for your testimony also. It was extremely
8 emotional and powerful. Now, I'd like to turn to
9 our other advocates over here. Should we start
10 over with Jennifer, is it? I'm sorry.

11 LISA SCHREIBERSDORF: Lisa
12 Schreibersdorf.

13 CHAIRPERSON DROMM: Lisa.

14 LISA SCHREIBERSDORF: Hi, Lisa
15 Schreibersdorf. I'm the director of Brooklyn
16 Defender Services. My office represented the
17 first speaker that you just heard from, Jose. You
18 have my written testimony, and obviously I'm in
19 support of the bill.

20 What I wanted to say, really, which
21 is important is that Jose is actually a success
22 story. The sad thing is that for one Jose that
23 we're able to get out in four months, which we are
24 thrilled to be able to do, there are thousands,
25 really hundreds of our own clients that we're not

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able to get out.

A year ago, another client of mine testified here. It took us three years to convince ICE to exercise whatever limited discretion that they might be willing to exercise to release here. She was a trafficking victim and we had established her right also to a visa.

So I think that dovetailing this with earlier questions, which I'll get back to you, that you asked Mr. Feinblatt, that this is an opportunity for those who really are advocating for people who are immigrants who have legal rights, who have the right to be here, might have good access to immigration remedies, to give us the chance to do that work for them. That's what we really want to do.

So, I'll get back to Defender Offices and the role of the defense office in this picture. My office is the second largest public defender office in New York City, after the Legal Aid Society. In the last RFP, we were granted the right to take some of our budget and use it to advise clients about immigration consequences. We're thrilled to be able to do that. But

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2 advising clients isn't enough. Advising clients
3 and advising lawyers isn't enough. What we need
4 are the resources--and we try to obtain those
5 resources in every way we can--to do things like
6 apply for these visas.

7 What's the point in telling
8 somebody you can be deported, and by the way, you
9 might be able to get political asylum but not be
10 able to help them do that? Those processes are
11 very, very difficult.

12 So on the positive side, we've been
13 able to get foundation funding and other types of
14 opportunities from law firms, fellows, all kinds
15 of services that help us do that, and that's how
16 we were able to get Jose a visa.

17 The state money that John Feinblatt
18 talked about earlier is from the Office of
19 Indigent Legal Services. It was just started last
20 year for New York State. They allocated \$1.2
21 million to New York City. I just want to say, on
22 the positive side, they asked the indigent defense
23 providers what we would want to do with that
24 money. We said we want to provide direct
25 immigration service, not just advice. So we're

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going to get one more staff attorney which helps fill out the services we can provide.

The point is that these detainers, if they're not lodged, that's great. Letting clients know, our clients that are in jail know-- by the way if you, you know, get a disorderly conduct or an ACD they can't hold you on immigration detainer. But that's only about 30 percent of it because the other 70 percent is--by the way, there are all kinds of reasons why somebody who has been here since they were a child might have a right to stay here: victims of crime, people whose parents are citizens. I mean there's a lot of opportunity to become legal.

It's very important that the City Council recognize that that's a really important part of this. Of course, the biggest part is not having the detainer.

I wanted to point that out and I also wanted to point out two concerns that I have. One is that I'd really like to know in the end what information ICE is going to use to determine and Corrections is going to use to determine whether somebody had prior convictions. Because

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2 notoriously the rap sheets that are provided by
3 the state are extremely inaccurate. Almost every
4 person that gets arrested has something on their
5 rap sheet that did not result in a conviction. So
6 I'd like to be assured in my own mind that
7 somebody who is going to be doing that will
8 actually look behind what's on the rap sheet and
9 really ascertain what happened.

10 I'm afraid that people will have
11 their detainers honored when they probably
12 shouldn't. So I would like to ask you in your
13 further conversation to be assured of where the
14 underlying conviction information is going to be
15 derived from. In addition, the FBI database is
16 also very inaccurate regarding New York State.

17 The other thing I'm worried about
18 is there doesn't seem to be a process to have been
19 built in for us as defense lawyers. Mr.
20 Feinblatt, I know they're going to try very hard
21 to be accurate. There's always going to be
22 somebody unfortunately being told they're going to
23 be given to ICE when in fact we believe they
24 shouldn't be. One of those times might be
25 somebody who has a remedy who maybe even doesn't

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2 fit within the exact confines of the statute or
3 who maybe does fit into the confines of the
4 statute but for some reason a mistake is being
5 made.

6 The most important thing that I
7 have discovered is that we don't have a procedure
8 to say this guy can get a U-visa. We should let
9 him out and not make him stay in for four months.
10 The DA will call, the judge will call. So there
11 should be some more formal process by which we can
12 call somebody who has a little bit of discretion
13 who can look behind just the black letter law of
14 the statute and also somebody we can talk to who,
15 if a mistake is being made, if we believe a
16 mistake is being made, and in addition, a place
17 where the clients can call.

18 Now, our clients can call us but a
19 lot of defendants are not represented by
20 institutional providers and who don't have access
21 to direct immigration representation. There
22 should be some sort of hotline. I'm sure the
23 immigrant--I'm forgetting their name--I'm sure
24 they'll be successful and many services are out
25 there. But it should be on the signage if you

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think a mistake is being made who you should call.

So those are my concerns.

Obviously, we are thrilled at the work that's been done to forward this legislation, that the Administration has agreed to it. I just want to point out that I think often with immigration and criminal justice policy, the policies are formed in enforcement. So when the City Council gets involved to direct the way enforcement is going to take place, it's a very positive thing, because it means that the people of the city are having an impact on the policy. It's not just through the Mayor's Office or through the Police Department. This is a very, very important step, in my opinion, to many, many unfairnesses that are taking place on a daily basis in our system. Thank you.

CHAIRPERSON DROMM: Thank you.

Before we start with the next testimony, I'll just ask the Sergeant, I think we have the ability to put the clock on. Do you have that now? We've got to hold people to the three-minute rule.

LISA SCHREIBERSDORF: I ruined it for everybody. Is that what you're saying?

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2 CHAIRPERSON DROMM: The remote was
3 lost, but I think it's been found. I'm not sure.
4 Anyway, let's start.

5 JENNIFER FRIEDMAN: So I'm the
6 unfortunate guinea pig with the clock.

7 CHAIRPERSON DROMM: Yeah, sorry
8 about that.

9 JENNIFER FRIEDMAN: That's okay.
10 My name is Jennifer Friedman. I am a supervising
11 immigration attorney from the Bronx Defenders. I
12 thank the City Council for the opportunity to
13 testify today.

14 The Bronx Defenders is a community-
15 based public defender service that provides
16 holistic criminal defense, family defense and
17 civil legal services, including immigration
18 services, to indigent people charged with crimes,
19 in the Bronx. Each year, the Bronx Defenders
20 provides free criminal and civil legal defense to
21 29,000 people accused of crimes in the Bronx,
22 about a third of whom are non-citizens.

23 We're thrilled to be here today to
24 testify in support of this bill, and want to thank
25 the committee for taking action and introducing

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legislation on this crucial issue.

The Department of Corrections' collaboration with ICE has had a severe impact on thousands of our clients, their families and the larger community that we serve. By passing this legislation, the City Council can take a crucial step towards protecting families and upholding New Yorkers' basic rights to the presumption of innocence and due process.

As a holistic public defender's office, the Bronx Defenders advocates not only for individual clients but for the entire community that we serve. The people who are arrested and become our clients are members of this community. They're people who are raising children, supporting their families, caring for their parents, working, paying taxes and helping their neighbors. When one member of the community is detained and deported, the loss is felt by many. And if he is detained and deported after all the criminal charges are dismissed, the sense of outrage in justice is shared widely.

Much like we know that an arrest is never just an arrest, a deportation is never just

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2 a deportation. The deportee will leave behind
3 families who may have--it will have a ripple
4 effect of consequences that may lead to eviction
5 from where they live, based on the loss of the
6 income from a primary breadwinner, maybe for some
7 public benefits. And if a child's sole caregiver
8 is deported, they may be forced into foster care.

9 The proposed legislation would
10 combat the devastating impact that a simple arrest
11 can have on our clients and our communities. It
12 imposes necessary limits on DOC's collaboration
13 with ICE by prohibiting the use of New York City's
14 resources to enforce detainers.

15 In our office, we see the road to
16 deportation begin to unfold with a simple arrest--
17 oh I just checked the clock--every day. Many of
18 these arrests are for minor offenses, like
19 unlicensed driving.

20 Esteban is an example of a client
21 who is currently in DOC custody. He is 21 years
22 old and he came to the U.S. from Mexico for a
23 better future. He doesn't have contact with his
24 parents and was raised by a grandmother who has
25 since passed away and he has no one left in

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2 Mexico. He has a sister who is in the country
3 lawfully with her husband. And since moving here,
4 he has had two children that are U.S. citizens, a
5 two year old and a two month old. Before he was
6 detained, he worked construction to support his
7 family.

8 In August, he was arrested for
9 alleged possession of a weapon, a box cutter he
10 was carrying for work. \$500 bail was set at
11 arraignment and because he didn't have anyone to
12 come pay it, he was sent to Rikers Island and a
13 detainer was issued. All criminal charges against
14 him are going to be resolved with a non-criminal
15 violation. However, without the passage of this
16 legislation, it will be too late for him and his
17 family.

18 One thing that I do want to point
19 out very quickly is the way that bail setting ends
20 up having an enormous impact on our community, in
21 a way that when bail is set, even at a very low
22 amount, like \$500, it can be an insurmountable
23 obstacle for our clients to pay. There's
24 inconsistency between boroughs and judges.

25 So I guess I will finish up there,

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2 just by saying that stories like Esteban's are not
3 uncommon. Every day in the Bronx we meet new
4 clients with detainers. And so we call on you to
5 stop the New York City's collaboration with ICE
6 and thank you for taking the time to hold these
7 hearings.

8 COUNCIL MEMBER: Thank you very
9 much. Council Member Dromm just stepped away.
10 He'll be back.

11 JOJO ANNOBIL: Thank you. Good
12 afternoon. My name is JoJo Annobil and I'm the
13 attorney in charge of the Immigration Law Unit of
14 the Legal Aid Society.

15 We want to applaud the New York
16 City Council for introducing the proposed
17 legislation. We also want to congratulate the
18 Council on the historic agreement with the Mayor
19 to move forward with this critical legislation.

20 The Legal Aid Society supports the
21 New York City Council's proposed amendment to the
22 Administrative Code. Our lawyers come into
23 contact with immigrants every day, either through
24 our criminal practice, immigration practice, our
25 domestic violence project. We see them at the

1
2 jails because we provide legal orientation at
3 these jails. We meet them all the time coming out
4 of Rikers. We are very cognizant of the problem
5 that we are facing today.

6 The Society has for many years
7 maintained that the cooperation between the New
8 York City Department of Correction and the United
9 States Immigration and Customs Enforcement is
10 inconsistent with the city's sensitivity to
11 immigration issues and tremendously impacts the
12 criminal justice system, New York City immigrants
13 and our communities.

14 The Department of Correction's
15 unlimited cooperation with ICE has for several
16 years tarnished the city's unblemished record on
17 immigration, because it lacks transparency,
18 interferes with law enforcement and public safety
19 and hurts immigrant communities and families. The
20 city's proposed amendment is therefore a
21 significant step in the right direction.

22 As the primary defender of indigent
23 people prosecuted in the state court system, the
24 Legal Aid Society has firsthand knowledge of the
25 devastating impact of ICE detainers on immigrant

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2 families. Instead of resulting in the deportation
3 of immigrants convicted of serious felonies, more
4 often this cooperation results in the removal of
5 undocumented individuals with no criminal record
6 or lawful permanent residents with minor
7 convictions that other criminal defense lawyers
8 neglected to warn them about.

9 Our recent history demonstrates
10 that the bail set in a criminal proceeding and an
11 impoverished client's inability to post it is very
12 often more determinative of the client's fate than
13 the seriousness or the merit of the criminal case
14 for which he was arrested.

15 The continued looming presence of
16 ICE at Rikers Island works many other injustices
17 within the New York City criminal justice system.
18 The fear of getting an ICE warrant once they
19 arrive at Rikers Island pressures many immigrant
20 clients into making hasty and ill-advised plea
21 bargains at arraignments. Plea bargains in the
22 future will prevent many undocumented non-citizens
23 from lawful immigration status and many legal
24 residents from maintaining legal status or
25 obtaining relief from deportation.

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2 Furthermore, once an immigrant is
3 transferred from Rikers to immigration detention,
4 they face nearly insurmountable obstacles in
5 obtaining relief from deportation. Depending on
6 the jurisdiction, the interpretation of the
7 Immigration and Nationality Act provisions may be
8 harsher than the interpretation by the federal
9 Circuit Court that covers New York State.

10 The Council is taking an essential
11 step forward to end these egregious practices in
12 enacting this groundbreaking legislation. We look
13 forward to working with the Council to ensure that
14 the Department of Correction implements this
15 legislation to protect immigrants to the full
16 extent that the Council intends.

17 We also look forward to working
18 with the Council to continue to focus on the
19 special needs of immigrant survivors of domestic
20 violence, human trafficking and other crimes, who
21 are at particular risk of deportation when they
22 become entangled in the criminal justice system as
23 the result of the false charges and other conduct
24 by the abusers and exploiters. I thank you very
25 much for giving us an opportunity to be here

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today.

CHAIRPERSON DROMM: Maybe just to get a feel because some good issues were raised, especially in terms of the prior arrests and the rap sheets, et cetera. How could you envision maybe us working together with the administration, with the Mayor's side on making sure that these concerns are addressed?

LISA SCHREIBERSDORF: Good luck.

JENNIFER FRIEDMAN: Yeah.

LISA SCHREIBERSDORF: I think it's important to work with the commissioner of DOC to make sure that they are aware of the fact that those rap sheets are often mistaken and that they look for--I would say a certification of conviction from a court is the only absolutely reliable piece of information about somebody's conviction--from a court. So if they find something, they have to really look behind the rap sheet.

CHAIRPERSON DROMM: So is there actually a certificate of conviction?

LISA SCHREIBERSDORF: Yeah.

CHAIRPERSON DROMM: No?

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2 LISA SCHREIBERSDORF: But it's not
3 in Correction's custody when the prisoner is
4 there. The prisoner has a yellow card which goes
5 with them everywhere. So what happened on that
6 actual case, that case the information it'll have
7 will be accurate because they'll write it in
8 court. But if it's a prior conviction, the only
9 way to be sure that you're accurate is to get a
10 certificate of conviction from the actual court.

11 So it's concerning that they're
12 going to use websites, they're going to use rap
13 sheets. I think the idea would be to get people
14 in a room that really understand that and be
15 assured. You know, for example, bring defenders
16 in there.

17 CHAIRPERSON DROMM: Just off the
18 top of my head, I'm thinking there have also been
19 problems even with the terrorist list; mistakes
20 have been made on the terrorist list. So that's
21 what I'm thinking.

22 LISA SCHREIBERSDORF: My son is on
23 one of those lists for terrorists. He's 13.

24 JENNIFER FRIEDMAN: The only other
25 thing that I might suggest is trying to come up

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2 with a process by which when someone who is in the
3 system may--who, you know, up until this point
4 would qualify if he or she is found innocent or
5 all charges are dropped on this case and there are
6 charges on the rap sheet that don't have a
7 disposition reported, there might be a process by
8 which the work can be done uncovering what did
9 happen in those cases.

10 Because my experience is that when
11 there isn't a disposition listed on the rap sheet,
12 the most common reason for that is that all
13 charges were dismissed. And so it looks like it's
14 open where it really was a full acquittal or
15 dismissal. So there might be a process built in
16 where--we'd have to work on it, but we could use
17 the time before the actual case is resolved to
18 look into getting the necessary information.

19 CHAIRPERSON DROMM: Council Member
20 James?

21 COUNCIL MEMBER JAMES: That's the
22 thought process that I had as well. At the time
23 of arraignment, obviously there should be
24 something stamped on that yellow form that in fact
25 there's possible immigration consequences. And if

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2 there's any open cases on their rap sheet, at that
3 point either Legal Aid Society or Bronx, Brooklyn
4 Defender Service should get involved to preempt
5 the situation so you can avoid the individual
6 obviously being detained.

7 I mean it happens, and to be honest
8 with you, I don't have much faith in the
9 Department of Corrections because I know that
10 there's problems with warrants already where
11 warrants drop and oftentimes the cases have been
12 dismissed, resolved or whatever, and individuals
13 are detained. So I can see the same thing
14 happening here.

15 I think the best point of
16 intervention on the part of institutional
17 providers is at arraignment.

18 LISA SCHREIBERSDORF: Well, the
19 detainers don't drop until after arraignment.
20 That's the problem. I think, you know from my
21 perspective, if I had a client with a detainer and
22 I was trying to resolve the case, I might resolve
23 it in a way that I think is going to avoid
24 immigration being allowed to take him. The
25 detainer is still there. It's going to be there

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2 throughout the pendency of the case. It's just
3 that at the end, Corrections will not turn that
4 person over to ICE. So I might think that the
5 guy's not going to be turned over to ICE and it
6 might turn out that they might disagree and turn
7 him over. So there's no notification process in
8 there to say we are turning him over or we're not
9 turning him over.

10 COUNCIL MEMBER JAMES: So if a case
11 resolves in an ACD or a dismissal at the point of
12 arraignment, I think there should be some
13 requirement that they contact the counsel of
14 record if in fact the retainer is dropped after
15 the disposition of the case.

16 JENNIFER FRIEDMAN: I would also
17 just mention if we are looking to put the impetus
18 to do that kind of investigation on the defender
19 that is, first of all, not everyone is represented
20 by an institutional provider that has the
21 resources to look into that. So I think that is
22 going to end up in a sort of unequal result. So I
23 think that for that and maybe for some other
24 reasons it's probably best to also ask the
25 Department of Correction to take on that

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responsibility.

COUNCIL MEMBER JAMES: Let me just also chime in. In the past when we have had discussions with regards to IOI money from the City Council, I have consistently asked that it be direct legal services as opposed to just advice.

LISA SCHREIBERSDORF: Thank you for that support.

COUNCIL MEMBER JAMES: It doesn't make sense to me why in the past we've just given you funds simply for advising individuals. It should be direct representation.

LISA SCHREIBERSDORF: Thank you very much. We appreciate your support.

JOJO ANNOBIL: I think it's important that we flag this issue, because even on the rap sheets, sometimes you have indications that the person has had contact with immigration. I know for a fact, for example that in Queens, the DAs usually don't arraign people. They don't arraign immigrants until the either check with ICE, which I don't think is their function to do so. But it's very important to flag it and it's very important for us to work through it and find

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2 a very important way or a way to get around it or
3 to get ICE and DOC to be able to check and verify
4 that someone has a prior conviction, because it's
5 also very possible that that prior conviction has
6 been vacated.

7 CHAIRPERSON DROMM: Okay. Thank
8 you. I think that's about it for now. I'll call
9 the next panel.

10 JOJO ANNOBIL: Thank you.

11 CHAIRPERSON DROMM: The next panel
12 will be Jan Brown from American Immigration
13 Lawyers Association, Lili Salmeron from Northern
14 Manhattan Coalition for Immigrant Rights,
15 Jacqueline Esposito from New York Immigration
16 Coalition and Jessica Jane Orozco from the
17 Hispanic Federation.

18 [Pause]

19 JAN H. BROWN: Thank you, Mr.
20 Chairman.

21 CHAIRPERSON DROMM: Before you
22 start, I just want to say I have to hold everybody
23 to that three-minute rule again.

24 JAN H. BROWN: Okay. My name is
25 Jan Brown. I'm the former chair of the American

1
2 Immigration Lawyers Association, an organization
3 of immigration attorneys and law professors
4 nationally. We have over 11,000 members. New
5 York City is the largest chapter in the nation
6 with about 2,000 members. And as such, we are
7 very cognizant of immigration laws and the
8 politics that cause the ebbs and flows of
9 enforcement and benefits.

10 The bill before the Council is very
11 much in harmony with the Obama administration and
12 the written statements of Janet Napolitano, the
13 Secretary of Homeland Security, as well as with
14 John Morton, the head of ICE.

15 In terms of enforcing the concept
16 of prosecutorial discretion, I feel that as
17 Attorney General Morgenthau said, that ICE can use
18 some help in its discretion and this bill goes a
19 long way towards making their job easier by doing
20 the discretion for them in many cases.

21 I would also like to state that the
22 preamble to the bill does talk about people who
23 are a threat to the security and the welfare of
24 the city should be turned over to ICE and
25 essentially it defines that as somebody who has

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been convicted of a felony or a misdemeanor.

If the City Council wanted to, either in this bill or going forward, make a stronger statement to the nation, it could start talking about what that means. There used to be a concept called rehabilitation in the immigration law, which has been taken out many years ago. It is possible to not turn people over through a detainer if the city through a mechanism determines that a person has been rehabilitated-- the seriousness of the crime, the length of time ago that it happened.

There are many people who've become ministers in their church, who've become social workers, who've become very active exemplars of their community who may have had a conviction when they were 19 years old which under this bill would cause the detainer to have them transferred to ICE. I think that the city going forward can make a huge statement towards changing the system and going back to a more humane policy.

That being said, the bill as written is certainly a major step in the right direction. The American Immigration Lawyers

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Association strongly supports it. Thank you.

CHAIRPERSON DROMM: Thank you.

Next please?

LILI SALMERON: Good afternoon. My name is Lili Salmeron and I am a community advocate for the Northern Manhattan Coalition for Immigrant Rights.

We are a nonprofit organization that is based in Washington Heights and we have 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

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2 community. Our community in Washington Heights
3 and the Bronx has been devastated by the War on
4 the Drugs. Many of us in the room, or who were in
5 the room earlier, have worked to reform the
6 Rockefeller Drug Laws, as well as to address the
7 issue of NYPD stop-and-frisk practices and
8 marijuana arrest policies that target communities
9 of color.

10 However, the immigration system
11 does not acknowledge the possibility of
12 discriminatory patterns of policing in immigrant
13 communities. Thus, as a result of the war on
14 drugs, our community has been also been
15 disproportionately impacted by the punitive and
16 inflexible immigration laws passed by Congress in
17 1996. These laws further expanded the list of
18 crimes that triggered mandatory deportation for
19 non-citizens and severely restricted the ability
20 for the vast majority of immigrants to have a fair
21 day in court to fight their deportation. As a
22 result, we have seen the number of deportations
23 grow rapidly.

24 Hundreds of legal permanent
25 residents come to our office each year seeking

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2 guidance on whether they are in danger of being
3 deported if they decide to naturalize, renew their
4 green card, or travel out of the country.

5 Because of the combination of harsh
6 immigration laws and the history of crime
7 enforcement in our communities, we unfortunately
8 need to advise them that a past criminal
9 conviction on their record, many of them minor and
10 non-violent, would subject them to mandatory
11 deportation proceedings if they decided to
12 naturalize, renew their green card or travel out
13 of the country. And for most people, because of
14 the draconian immigration laws, they would have no
15 opportunity to challenge their deportation at all.

16 These are people who have made New
17 York their home, many of whom who have lived here
18 for decades, who have U.S. citizen spouses and
19 children, who contribute positively to their
20 communities, and who are 100 percent
21 rehabilitated.

22 Many people here have acknowledged
23 today that the immigration system is broken and
24 that we need to change the laws at the federal
25 level. So, at NMCIR we are deeply concerned about

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2 local law enforcement collaboration with ICE in
3 Rikers because it is dangerous and unjust to
4 funnel thousands of New Yorkers into a broken
5 immigration system.

6 Thus, what is safe and just for our
7 communities is to stop the entanglement between
8 the criminal justice system and immigration
9 enforcement. So we believe that this bill is an
10 important first step towards that goal. Thank
11 you.

12 CHAIRPERSON DROMM: Thank you.

13 JACQUELINE ESPOSITO: Thank you.

14 My name is Jacqueline Esposito and I am the
15 director of immigration advocacy at the New York
16 Immigration Coalition.

17 The NYIC is an umbrella policy and
18 advocacy organization for nearly 200 groups in New
19 York State that work with immigrants and refugees.
20 The NYIC aims to achieve a fairer and more just
21 society, which values the contributions of
22 immigrants and extends opportunity to all.

23 In my prior capacity, I was a Staff
24 Attorney at the Criminal Defense Division of the
25 Legal Aid Society here in Manhattan, where I

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2 witnessed firsthand the impact of the rapidly
3 expanding merger of immigration enforcement with
4 the criminal justice system. I thank you for the
5 opportunity to speak today about this legislation.
6 We believe it is an important first step toward
7 protecting the rights of immigrants because it
8 imposes some limits on the Department of
9 Corrections collaboration with U.S. ICE.

10 The merger of the civil immigration
11 system and criminal justice system is nowhere more
12 apparent than the Criminal Alien program. Under
13 the Criminal Alien Program, immigrant agents are
14 allowed to interview immigrants in DOC custody,
15 share DOC inmate database information with ICE,
16 and jail immigrants for up to 48 hours after their
17 scheduled release from custody.

18 Those subject to detainers include
19 undocumented immigrants, as well as lawful
20 permanent residents and even those with valid
21 claims for immigration relief.

22 Detainers directly impact an
23 individual's due process rights and can have
24 severe collateral consequences in a person's
25 criminal case. New York City also incurs

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2 significant costs as a result of prolonged
3 incarceration of immigrants who could have
4 otherwise been released from DOC custody.

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

8 ICE's indiscriminate issuance of
9 detainers has led to rapidly increasing numbers of
10 non-citizen defendants being subjected to
11 significantly longer periods of incarceration.
12 For example, a detainer often affects a non-
13 citizen's ability to be released on bail pending
14 criminal charges. When ICE issues A detainer,
15 courts sometimes consider the detainer an adverse
16 factor when determining a bail amount or whether
17 to set bail at all. This not only leads to
18 prolonged pre-trial detention but also
19 significantly interferes with a non-citizen
20 defendant's ability to defend against criminal
21 charges.

22 According to preliminary research
23 conducted by Justice Strategies, a non-profit
24 research organization, non-citizens in DOC custody
25 with an immigration detainer spend 73 days longer

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2 in detention, on average, than individuals not
3 subject to an immigration detainer facing similar
4 charges.

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

14 The use of detainers has led to
15 greater numbers of immigrants being held in DOC
16 custody for prolonged periods of time at great
17 expense. In 2009, an immigrant obtained a
18 \$145,000 settlement with the City of New York
19 after being held unlawfully for more than a month
20 on an immigration detainer.

21 Detainers are the keystone of
22 programs like CAP and Secure Communities, which
23 increasingly rely on collaboration between local
24 law enforcement and ICE. When immigration
25 enforcement agents collaborate with NYPD and DOC,

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2 immigrant communities become fearful that any kind
3 of interaction with the police will lead to
4 detention and deportation.

5 The proposed amendment to the
6 Administrative Code is a welcome first step in
7 addressing these challenges. Thank you.

8 CHAIRPERSON DROMM: Thank you.

9 JESSICA JANE OROZCO: Good
10 afternoon. My name is Jessica Orozco and I'm the
11 director of immigration and civic engagement for
12 the Hispanic Federation. I am testifying on behalf
13 of our President Lillian Rodriguez-Lopez.

14 I would like to thank Chairman
15 Daniel Dromm and the entire New York City
16 Council's Committee on Immigration for recognizing
17 the importance of this issue and affording me and
18 my fellow immigration advocates the opportunity to
19 express our views on the criminal detainer program
20 currently in effect between New York Department of
21 Corrections U.S. ICE.

22 As you may know, the Hispanic
23 Federation is one of the leading Latino
24 organizations in the nation and is dedicated to
25 promoting the social, political and economic well

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2 being of the Hispanic community. We achieve this
3 by working with 100 Latino non-profit member
4 agencies to provide much-needed community programs
5 and services, and advocating locally and
6 nationally with respect to the vital issues of
7 education, health, immigration, economic
8 empowerment, civic engagement and the environment.

9 HF unequivocally supports the
10 proposed City Council legislation that would limit
11 DOC's cooperation with ICE. We strongly believe
12 that this bill is firmly aligned, from a civil
13 rights, criminal justice, economic and public
14 safety standpoint, with the interests of our great
15 City.

16 The City Council's attention to
17 DOC's collaboration with ICE on federal
18 immigration enforcement comes at a critical time.
19 Over the past ten years, our nation's shortsighted
20 and damaging push for enforcement-only immigration
21 policies has created an environment of constant
22 fear in our immigrant communities.

23 Recently, the Obama administration
24 and ICE has tried to assuage that fear by stating
25 that the federal government's Criminal Alien

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2 Program and Secure Communities Program is only
3 focused on removing immigrants who pose a threat
4 to public safety and national security. However,
5 to date these words have fallen tragically short
6 of reality and these programs continue to drive
7 the federal government's enforcement focused
8 agenda of detection, detention and deportation.
9 In 2009 and 2010, approximately half of the
10 individuals detained by ICE from Rikers did not
11 have criminal records.

12 The esteemed body of the New York
13 City Council has come to recognize that the
14 current level of cooperation between law
15 enforcement and ICE leads to the detention and
16 deportation of individuals who have no prior
17 criminal convictions or pose any threat to
18 society. Accordingly, it has moved to correct
19 this injustice by pushing forward bill 656.

20 This bill will help to seriously
21 curtail New York City's participation in this
22 immigrant dragnet program and bring a sense of
23 relief to immigrants across our five boroughs. Of
24 major import is the fact that the bill will help
25 to reduce the number of individuals sent to

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2 detention centers. Many Latino immigrants have
3 reached out to the Hispanic Federation asking for
4 assistance in working through the Kafkaesque
5 detention process. They are lost, nervous and
6 scared when a loved one is taken into detention,
7 in which detainees have no right to phone calls to
8 contact family to update them on their situation.
9 In addition, these detainees are oftentimes
10 relocated to detention centers in other states
11 without any notification to family members or
12 lawyers.

13 Taking action to protect non-
14 criminal immigrants from being transferred to
15 federal detention will undoubtedly help keep
16 immigrant families together and save them from
17 unnecessary emotional and economic hardships. It
18 will also save the city a significant amount of
19 money and it is congruent with the new DHS policy
20 directive that states it is only focused on
21 detaining and deporting non-citizen criminals who
22 pose a threat to the public. Thank you again for
23 the opportunity to speak today.

24 CHAIRPERSON DROMM: Thank you all
25 for coming in. From what you're saying, I hear

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2 that actually our proposed legislation is actually
3 going to make for good policing. I share a number
4 of your concerns in terms of the discriminatory
5 patterns of policing in immigrant communities. I
6 see it quite often. I think that's something that
7 we should explore further. I also heard what you
8 had to say in terms of the rehabilitation and that
9 being taken into consideration. I think that's a
10 very important factor, and also, the merger of
11 immigration law enforcement with the criminal
12 justice system, which is essentially what we're
13 trying to avoid with the passing of this piece of
14 legislation. So thank you all for coming in.

15 I'd like to now call Reverend Ramon
16 Almonte from Iglesia Bautista Central, Donna
17 Schafer, Sister Elizabeth Butler, and Ermela
18 Singh.

19 [Pause]

20 CHAIRPERSON DROMM: So just to be
21 sure I got everybody, Reverend Ramon Almonte,
22 Donna Schafer, is she here? She had to leave.
23 Okay, thank you. All right, so we're ready to
24 start then. Reverend, would you like to start?

25 REV. DR. OMAR ALMONTE: Yes, thank

1
2 you. Hello, my name is Reverend Doctor Omar
3 Almonte. I'm the pastor of the Central Baptist
4 Church in Bushwick, Brooklyn.

5 Members of the City Council,
6 community leaders like Make the Road New York and
7 other allies in the struggle, I am thankful for
8 the opportunity to testify in support of this
9 legislation to limit the city's participation with
10 ICE in our local jails.

11 Every week in Bushwick in our
12 congregation and neighborhood we hear stories of
13 pain and injustice caused by our immigration
14 system. As a pastor, I am deeply aware that the
15 system at a national level is acting against the
16 fundamental teachings of the Bible: to love your
17 neighbor, to welcome the stranger in your midst.

18 And I am profoundly aware of the
19 role of the church in the struggle for justice for
20 all. As religious leaders we are called to stand
21 with our most vulnerable, and to support efforts
22 to protect-and empower them. That is why today I
23 have hope that together we can create a more just,
24 and more humane city.

25 As a pastor I teach using stories,

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2 and it is the stories that show us the reason why
3 we must pass this bill. I have heard of a man who
4 was arrested and accused of stealing a box of
5 chocolates. His charges were later dropped, but
6 because of ICE's presence in Rikers Island, he was
7 deported anyway. He had done nothing wrong.

8 There are many others like him in his position.

9 I also hear every day from my
10 congregation members: we are scared of the police,
11 we don't trust the government, they are not here
12 to help us. This is not a good situation. Our
13 elected leaders must take action to make this city
14 a place where our immigrants are not scared away
15 from government, where we hide from one another
16 and push a vulnerable group even farther into the
17 shadows. This legislation will do that. No
18 longer will someone who is innocent have to fear
19 speaking to the police about anything. Today, a
20 wrongful arrest often ends in deportation.

21 Lastly, in times when we have
22 little hope nationally, even despite the
23 President's recent announcement of changes in
24 deportation practices, this legislation shows us
25 that that we can take power into our hands at the

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2 local level. This year New York will send a
3 message to municipalities across the country to
4 stand up for your immigrants. Protect our
5 families. You have the power now. Thank you for
6 the opportunity to testify today.

7 CHAIRPERSON DROMM: Thank you.

8 Sister?

9 SR. ELIZABETH BUTLER: Sister

10 Elizabeth Butler. I have joined the New York New
11 Sanctuary Coalition a couple of years ago, and
12 more recently I have been introduced to the New
13 York City, the Immigration Coalition in defense of
14 immigrants. Everything you have heard before, I
15 would add on to.

16 I do have one little message of
17 hope for all of you. Recently, I had the
18 opportunity of seeing a DVD. It was called "From
19 Darkness into Light," and it gave the history of
20 an immigrant group. They were Ecuadorians and
21 terrible violence and hate crimes have been going
22 on for a couple of years and people were so
23 petrified. Nobody knew anything about it until
24 one of the finest young men was murdered.

25 Then the superintendent of police

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2 and the mayor, whose mother lived right next to
3 where this young man was murdered, they were just
4 so shocked by the secrecy and how these people,
5 how they were living and neither the police
6 department nor the mayor knew anything about any
7 one of them. They were completely in disguise.

8 But the response of that community
9 to this crime, a tremendous amount of credit given
10 to the police department; they went out and they
11 brought all the people in. The policemen spoke in
12 Spanish and they had women police and men police,
13 but particularly the mayor, he kept coming back
14 and back and back. Then the women, the mothers of
15 the children that were involved, and these were
16 children, you know well taken care of children
17 that didn't have--in order words, the perpetrators
18 and those that were most guilty were really pretty
19 well to do and they were against the other people
20 that were trying to make a little bit of money.

21 But the mothers they went into get
22 a big quilting and each mother made a different
23 quilt, and the mayor had them make murals. They
24 ended up with a tremendous celebration where
25 everybody was able to come out. I think that's

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2 what we all could hope for that that would happen
3 in our town as well.

4 CHAIRPERSON DROMM: Thank you,
5 Sister. Ms. Singh?

6 ERMELA SINGH: Thank you. Good
7 morning. My name is Ermela Singh and I'm a staff
8 attorney in the family law and domestic violence
9 unit at Legal Services New York City.

10 As a Staff Attorney, I represent
11 low-income, primarily immigrant survivors of
12 domestic violence on family law as well as
13 immigration matters.

14 First of all, I would like to thank
15 the Council Members for the opportunity to testify
16 at today's hearing regarding Resolution 656, which
17 Legal Services New York City strongly endorses. I
18 believe the passage of Resolution 656 could help
19 to lessen survivors' fear and mistrust of local
20 law enforcement that prevents them from reporting
21 the violence they face, as Resolution 656 seeks to
22 curb the unfettered cooperation between the
23 Department of Correction and ICE.

24 I would like to tell you about one
25 of my clients, to provide an example of the extent

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2 to which local law enforcement's cooperation with
3 ICE leads to suspicion of local law enforcement,
4 and is particularly harmful and dangerous to
5 survivors of domestic violence.

6 My client, who I will refer to as
7 Jane, is a survivor of horrific violence from her
8 former boyfriend, a U.S. citizen, with whom she
9 has a young child. During their relationship, my
10 client experienced severe sexual, physical, verbal
11 and emotional. Also, her abuser constantly made
12 threats to kill her, as well as to report her to
13 immigration authorities to have her deported, and
14 separated from her U.S. born child. Because of
15 the pattern of horrific abuse and threats,
16 particularly to have her deported and separated
17 from her child, my client was too fearful to
18 report the abuse. It was only through the
19 intervention of strangers who witnessed the abuse
20 and called the police that the abuser was finally
21 arrested.

22 As he had threatened, a few months
23 after his arrest, the abuser did try to get my
24 client deported and separated from her child by
25 having a member of his family file uncorroborated

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2 retaliatory charges against her. After seeing a
3 criminal court judge, who released her on her own
4 recognizance, Jane was then held by local law
5 enforcement, who advised her that she would be
6 turned over to ICE because of an immigration
7 detainer placed on her.

8 At the time that she was held by
9 local authorities, my client had no prior arrests
10 or convictions. There were no outstanding
11 warrants or previous orders of removal issued
12 against her. She certainly did not pose a threat
13 to the welfare and safety of the general public.
14 In Jane's case, she was one of the fortunate few
15 who did have legal representation.

16 I advocated with ICE on her behalf,
17 explaining the history of domestic violence,
18 providing documentation of the abuse, as well as
19 explaining that the allegations against her were
20 retaliatory. I also explained how her mental
21 health had been severely affected by the abuse,
22 and how further damaging it would be to her health
23 if ICE were to detain her. I explained that her
24 two-year old child needed her at home and the harm
25 it would cause her child if she could not be there

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for her.

Without changes to the current law, survivors of domestic violence will continue to be fearful and distrustful of the local law enforcement and unwilling to report violence against them.

Therefore, given all of these factors, Legal Services New York City 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.

CHAIRPERSON DROMM: Thank you to each of you also for coming in. Thank you for raising the issues that you've raised.

The issue of the reporting of crimes against our immigrant community is one of major concern to me. I represent Jackson Heights, Elmhurst, Corona, a little bit or Regal Park, Woodside, I have to get them all in, and Lefrak City, but I see on the street and I feel, physically feel the tension that exists in immigrant communities and their relationship with

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the police department that is already there.

So specifically with these issues of domestic violence and other things, the tendency not to report is so great. That's one of the things that we're hoping to begin to accomplish to do is to address that issue, have a better relationship between the immigrant community and police department.

In fact, when I was talking to a number of Council Members about this bill and trying to get them to sign on to it, it was one of the determining arguments that people who may not have always felt the way that we in the room here feel today, but that issue of making that relationship between the immigrant community and the police department would be better so that crimes like that could be reported.

I also just want to say thank you to the members of the faith community who have come out. Sister and Reverend Almonte as well, because I feel that you have a very special voice in the issue of immigration reform with your faith communities and to other communities as well. So I deeply appreciate your presence here with us

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here today. Thank you very much.

Our next panel is Eugene Glicksman,
Alina Das, Nancy Morawetz, and Michelle Fei.

[Pause]

CHAIRPERSON DROMM: Why don't we
start with you, Mr. Glicksman?

EUGENE J. GLICKSMAN: Thank you,
Chairman Dromm. I'm here today as the co-chair of
the Immigration and Nationality Committee of the
New York County Lawyers, Association, one of the
oldest and most inclusive Bar Associations in the
City of New York. At a time when other
associations would accept you unless you were
white, male and Christian, the New York County
Lawyer's Association welcome everybody as long as
they were an attorney and duly admitted to the Bar
in the City of New York. I'm proud to be here
today representing the Immigration Law Committee.

You have heard today stories, war
stories from all of us. You've heard from
immigrants. You've heard from those who
represented the immigrants. I'm not going to
bother, as you have asked, to read the testimony.
It'll be part of the record for today.

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2 I will highlight the point that our
3 committee fully endorses 656 as presented by the
4 Council, but with one reservation. That's under
5 Section 9-131(b). That section states that a
6 detainer would not be--someone would not be
7 released from the department's custody. And one
8 of the provisions there is that the person is not
9 a defendant in a pending criminal case. That goes
10 against everything that 656 has pushed for. It
11 goes against everything we have been looking at
12 here.

13 You can be charged with the
14 attempted assassination of the President, you could
15 be found guilty of littering. The mere fact that
16 somebody may be a defendant in a criminal action
17 doesn't mean they did anything wrong. To put
18 someone into the maw of the immigration
19 authorities, put them through that grinder, it's
20 like putting something into a shredder and then
21 trying to pull it out with it being intact.

22 Once they're into it, you're not
23 going to get them out. To put someone in merely
24 because they have been charged with the commission
25 of a crime doesn't mean they've actually committed

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2 the crime. I would say that until such time as an
3 actual conviction should take place, they should
4 not be reported to ICE. They should not be held,
5 even if there is a detainer lodged based on that.

6 Now, aside from my co-chairmanship
7 of the Committee of Immigration and Nationality
8 Law, I have a perspective that most people here
9 have not had, having been an immigration inspector
10 for the former INS years ago and then for the past
11 30 years after that working as an immigration
12 attorney helping people get their green cards and
13 become citizens in the U.S. as well as trying to
14 help them and keeping them from being deported,
15 with a fairly decent success rate.

16 The changes that were wrought by
17 Congress back in the 80s and 90s were disastrous.
18 Immigration judges became clerks, simply tallying
19 up different parts of a person's life, and if they
20 reached a certain level, they were deportable.
21 Discretion was done away with.

22 We're putting some of that back on
23 a local level. With any luck, maybe this can
24 filter upwards to the feds and they will get to
25 learn that there's something that has to do with

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humanity that must be applied on this.

My time is about to run out. I'm going to keep your agent from ringing the bell. Thank you.

CHAIRPERSON DROMM: Thank you very much. Next?

ALINA DAS: Thank you. My name is Alina Das and I'm a member of the Criminal Courts Committee of the New York City Bar Association. Our committee, along with the Immigration and Nationality Law Committee and the Corrections Committee of the City Bar has been looking at this issue of detainers for over a year.

Based on our conclusions and on behalf of the City Bar as a whole, I'm here to express the City Bar's support of this legislation as an important first step in curbing what we have found to be a dangerous and unjust policy of collaboration between DOC and ICE. But not only do we support this legislation as a first step, the City Bar would go even further to urge the City Council to adopt even more robust limitations on the detainer policy.

I'm just going to briefly summarize

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2 my remarks, which you have in the written
3 testimony. But I would note that that testimony
4 includes a copy of the letter that the City Bar
5 sent to the Honorable Christine Quinn in February
6 of this year, which outlines the ways in which we
7 would ask for a more robust set of limitations.

8 Before I address the reasoning, I
9 do want to make clear that our views represent a
10 broad cross section of the legal community. That
11 means that our committees not only have defense
12 attorneys and immigration attorneys but we also
13 have prosecutors, judges, law professors and
14 attorneys who work on this issue at all different
15 sides of the criminal justice system. So it's
16 based on our collective view that detainer
17 policies harm the criminal justice system as a
18 whole that we've come out in support of this
19 legislation and the further measures that I will
20 outline.

21 So that being said, let me just
22 quickly address the three main reasons that the
23 City Bar is in support of the legislation. The
24 first reason is that we think that this is very
25 timely. It's the right thing to do for New York

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2 and the right time to do it. As you've heard,
3 DOC's current policy of collaboration is the
4 single largest funnel for immigrant New Yorkers to
5 end up in the immigration detention and
6 deportation system. So we're talking about 3,000-
7 4,000 people each year who are separated from
8 their families and homes in the city and end up in
9 detention facilities in Louisiana and Texas to
10 fight out their cases without counsel, without
11 evidence or access to witnesses.

12 As a City Bar, we feel that this is
13 entirely inconsistent with the city's obligation
14 and interest in protecting the basic due process
15 rights of our residents. For that reason, we
16 oppose the detainer policy and support this
17 legislation as an important first step in curbing
18 this unjust practice.

19 Secondly, we support this
20 legislation because it would save valuable city
21 resources, which we've heard a lot about today.

22 Thirdly, we would support the
23 legislation because it is an important measure
24 necessary for public safety, because of the
25 chilling effect that collaboration between ICE and

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local law enforcement has.

But the reasons that we want to express differences here really go to one of the issues that my colleague just mentioned, which is that we feel like there's a real problem with pending criminal cases. That you do need to have a change to the policy because detainers do create a problem in order to get to the straightforward practical and just concern and resolutions that people all agree with, prosecutors, as well, in many of these cases.

Secondly, and my final point is that we want to make clear that all of the concerns that we've noted about due process, public safety and community trust apply not only to people with no past criminal convictions but also apply to people who do have a past criminal record.

Because the many lawful permanent residents, refugees and other immigrant New York State may have a past record but they're also eligible for waivers of deportation and they should be able to fight out those cases in New York City where they have access to their families

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and counsel.

So for those reasons, we would like the City Council to know of our support but also to strongly consider the recommendations we have for making the limitations on the detainer policy even more robust. Thank you.

CHAIRPERSON DROMM: Thank you.

NANCY MORAWETZ: Thank you very much. My name is Nancy Morawetz. I'm a professor at New York University School of Law. For the past 15 years, I've specialized on issues related to detention and deportation and particularly with respect to lawful permanent residents.

So in the past, New York has essentially had a "don't ask, just say yes" policy on detainers. I mean once the detainer is there, nobody looks behind it, nobody looks whether the basis of the detainer has any validity. The person with the detainer is simply handed over. Obviously, this legislation will go a long way towards limiting that. For that, I applaud the committee, as my colleagues have.

What I want to address is some of the New Yorkers who aren't helped by the

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2 legislation and in particular people who have a
3 past misdemeanor or a felony conviction. I think
4 it probably seems easy to cut them out, easy to
5 label those folks as people who should not be
6 covered by the legislation, but that is a very
7 serious mistake. It's particularly a mistake when
8 you look at what happens to people as they go into
9 the immigration system, because it's such a
10 fundamental lack of due process to be sent through
11 this system where people wind up on detainers that
12 it's just totally unfair for somebody even if they
13 have a past conviction.

14 So, for example, there was a story
15 in the New York Times a few years ago of a New
16 Yorker, Jerry Lemaine, a lawful permanent
17 resident, had come here at the age of 3 from
18 Haiti, from a country where, you know, one would
19 never want to go back to as a deportee, absolutely
20 horrendous conditions for people who are deported.

21 He was arrested on a small
22 marijuana issue. It was the kind of disposition
23 which would let him out of jail, no time in jail
24 at all, \$100 fine. But he was shackled, he was
25 taken into the system, he was shipped to Texas,

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2 which as you know is where two-thirds of the
3 people shipped out of New York are shipped far
4 away and they mostly go to Texas or Louisiana.

5 He was there for three years with
6 his family receiving bills of up to \$15,000 for
7 his legal representation because the judges there
8 insisted that the lawyer in New York fly down to
9 Texas for his hearing. You know, he ultimately
10 got the attention of a pro bono for him in New
11 York, a major New York law firm which was able to
12 take on his case. His case got in front of the
13 New York Times. He was released. It was three
14 years after he had gone into detention.

15 So here's somebody who wasn't asked
16 to serve a day in jail by the criminal system,
17 spent three years in immigration detention. It
18 would have been longer simply because he was
19 fighting his case. In fact, the charges against
20 him weren't valid. He was ultimately completely
21 cleared on the immigration side. He's now back
22 with his family, a family completely made up of
23 citizens and lawful permanent residents.

24 But he lost that time, New York
25 lost him, his family lost him during that and just

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2 because of a past misdemeanor conviction. I don't
3 think that line is one that the city should be
4 drawing when it comes to fundamental due process.
5 Thank you.

6 CHAIRPERSON DROMM: Thank you.

7 Next, Michelle?

8 MICHELLE FEI: Thank you. My name
9 is Michelle Fei. I'm co-director of the Immigrant
10 Defense Project, where we work to promote
11 fundamental fairness for immigrants who are
12 accused of and convicted of crimes. I just want
13 to thank you for this opportunity to speak today
14 and also applaud you for your endurance. I know
15 it's been a long day, and I definitely appreciate
16 your willingness to stay here with us.

17 So I guess I wanted to start off by
18 just talking a little bit about the national
19 context for both why this legislation is so
20 important and also what further work we can do
21 together on it, I'm hoping. Last Friday marked
22 the 15 year anniversary of the Illegal Immigration
23 Reform and Immigrant Responsibility Act, which is
24 one of the two draconian immigration laws that got
25 passed in 1996, that have really brought us to

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2 where we are today and that's mass detentions and
3 mass deportations, basically an end to second
4 chances and due process and millions of broken
5 families and communities.

6 We now have a regime of deportation
7 programs, such as CAP at Rikers Island and Secure
8 Communities that are designed to enforce these
9 harsh laws, which are largely based on our
10 collective condemnation of using the criminal
11 justice system to deport immigrants. This
12 continues our country's historical and sad trend,
13 I think, of targeting and scapegoating certain
14 groups of immigrants deemed unworthy to stay in
15 their community, for example through the war on
16 poverty, the war on drugs, the war on terror.

17 And so, as we all know, one of the
18 major scourges facing us now is Secure Communities
19 which threatens to blanket the entire country by
20 2013. IDP had helped lead efforts to get Governor
21 Cuomo to suspend Secure Communities here in New
22 York, which we continue to be really happy about.
23 But as we all know, the story of SCOM in this
24 country is a long tortured one, and the latest
25 developments include ICE now unilaterally

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2 withdrawing the agreements to enact SCOM that it
3 had worked so hard to get the states to sign onto
4 in the first place.

5 We're also at a point where
6 prosecutorial discretion is being touted as the
7 solution. It's true that it's probably one of the
8 better bits of news that we in the immigrant
9 rights movement have heard in a very long time.
10 We are glad that this announcement is going to
11 benefit and has already benefited some immigrants.
12 We also believe that we need to continue to fight
13 ICE to make sure that they continue to use this
14 power and that they continue to use it broadly.

15 At the same time, I think it's
16 important that we recognize that prosecutorial
17 discretion is only a band-aid measure and it
18 really functions, unfortunately, to divert
19 attention from the fundamental unjustness of our
20 deportation system and also obscures the realities
21 of our criminal injustice system in which the odds
22 are really stacked against low income of color and
23 immigrant communities.

24 It does nothing to stop the mass
25 funneling of immigrants into detention and

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2 deportation from our jails and prisons and police
3 stations. It continues to emphasize that certain
4 immigrants should deserve to stay in the U.S.
5 while others do not. It also fails to even reduce
6 the number of families that are destroyed by
7 deportation.

8 I think this legislation then is a
9 really important step in the right direction
10 because it tells ICE that we will not let them
11 completely trample over us and that we will fight
12 back and that we can and we do win. But I think
13 there is also a lot more that we need to do in
14 order to protect immigrants who do have
15 convictions. If we all agree that our deportation
16 system does not offer due process, it doesn't
17 offer due process for anybody. So innocent and
18 guilty people alike, people with deportation
19 orders and people without, I think all need to be
20 safe from this legislation.

21 I also think that one of the
22 important groups that had spearheaded so much of
23 the movement on this issue are domestic violence
24 survivors. I think it's important for us to also
25 see that domestic violence survivors are very

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2 often messy cases in which a lot of times they
3 have convictions for fighting back against their
4 abusers. There are a lot of cases in which
5 victims of human trafficking actually have
6 convictions for prostitution and even more serious
7 offenses. Those are all people, unfortunately,
8 who seem like they will not get covered under this
9 legislation. So those are just a few of the
10 issues that I hope that we can continue to work
11 with you all on to even broaden this protection
12 further. Thank you very much.

13 CHAIRPERSON DROMM: Thank you,
14 Michelle. Thank you all for your endurance. It's
15 my pleasure to be able to be here and to hear all
16 the testimony that's been provided. I applaud you
17 for staying and for being the last panel I think
18 that we have today. I have just some questions
19 about 9-131(b). Just walk me through that a
20 little bit more. So if somebody has charges
21 pending, ICE can drop a detainer on them and then
22 the same law would not apply to them while
23 they're...

24 EUGENE J. GLICKSMAN: According to
25 the language you have of 9-131 subdivision on B on

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2 prohibition of use of department resources. The
3 department shall not use any department resources
4 to honor a civil immigration detainer by holding
5 an individual beyond their time, or notifying
6 federal immigration authorities of such
7 individual's release provided that such
8 individual, subsection two, is not a defendant in
9 a pending criminal case.

10 So if somebody is a defendant in a
11 pending case, DOC has carte blanche to let ICE
12 know they exist. They may not be on the radar
13 screen right now. But according to this, you're
14 going to put them on the bull's eye. Does the
15 city want to be responsible for breaking up
16 families? Does the city want to be responsible
17 for putting someone through the wringer of
18 immigration proceedings that ordinarily and other
19 under circumstance they wouldn't be touched?

20 CHAIRPERSON DROMM: I'm a little
21 bit confused because I thought that in terms of
22 our legislation, ICE already knows who these
23 defendants are, and wouldn't they then be afforded
24 the same privilege at the termination of their
25 trial or their case than not to--if they were

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2 found innocent, not to be sent to a deportation
3 camp, to a detainee camp?

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EUGENE J. GLICKSMAN: With all due
5 respect, sir, you don't have a good fix on the
6 prosecutorial discretion. The memo that Mr.
7 Morton issued outlines how discretion is used.
8 The ICE agents that are at Rikers are the
9 equivalent of city cops. Their attitude is going
10 to be let the court sort it out, let the DA deal
11 with this, we're just here to put you in cuffs,
12 read you your rights and get you the heck out of
13 dodge.

14

They're not involved in the
15 discretion area. It is the ICE attorneys, who we
16 used to call the--what would it be--the trial
17 attorneys by Immigration. It's been a while since
18 they've used that term. But it's the trial
19 attorneys who actually are the ones who are
20 involved in the discretion area, in whether or not
21 that discretion will be applied. So it is
22 extremely important if we can even keep it from
23 getting to that level.

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What the committee also has to
understand is that in regular civil cases, a

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2 plaintiff can choose where they want to have a
3 case heard, because they know if they have it in
4 this court or in this geographic area, they have a
5 chance for getting a bigger payout than in here.
6 Immigration defendants don't have that. The
7 immigration service can pick and choose the
8 jurisdiction in which they want the case held.
9 The fact that somebody comes from New York doesn't
10 meant that if they're brought to Oakdale,
11 Louisiana they're going to be held under New York
12 rules. No, they're going to be held under the
13 rules there which can be draconianly worse than
14 the law under which they would be prosecuted here.
15 So it's extremely important to keep them out that
16 maw.

17 NANCY MORAWETZ: Can I just address
18 the question that you asked? For somebody who has
19 a pending charge, under the bill right now, they
20 basically will have to do the same thing they have
21 to do right now. They have to stay in Rikers and
22 wait it out. So in essence people don't have a
23 right to bail. The criminal court judge could say
24 I set bail, I don't think you're a danger or I
25 think it's fine, I'll think that he'll show up,

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2 and then the person can get out and try to fight
3 their criminal case. But as long as the detainer
4 depends on a pending charge or a past charge,
5 somebody who wants to fight their case is not
6 going to--is going to have to stay inside.
7 They're not going to pay the bail.

8 So the city will continue to bear
9 some of the costs that people talked about today,
10 the financial costs as well as people suffering
11 the human costs and families suffering the costs
12 of breadwinners and so on and so forth not being
13 available simply because there's a pending charge.
14 So that is a part of the bill. That's why many of
15 us say we think the bill is a good first step
16 because it does something, but if there is room to
17 improve this bill, that would be a place to
18 improve it. I think looking at people's records
19 as well is a place where it could be improved.
20 There are a number of things like that that could
21 be done.

22 ALINA DAS: That's one of the
23 reasons why the City Bar proposed as a minimum not
24 having detainers be set while the case is pending.
25 In addition to the costs that were mentioned,

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2 there are just general--you can imagine that--and
3 I think one of the individuals who testified to
4 his own experience got to this where there would
5 have been a resolution in the case but the
6 detainer essentially forced everyone to keep
7 waiting to find a different resolution because
8 they knew that he would be placed into Immigration
9 custody.

10 Another place that we see this is
11 when individuals would be referred to drug
12 treatment, mental health or other alternatives to
13 incarceration and they're not allowed to
14 participate in those programs because a detainer
15 is placed during the pendency of the case. So if
16 the City Council were to amend that piece of the
17 legislation, it would allow the criminal justice
18 system to function in the best way possible.

19 People who are granted bail can be
20 released on bail. People who are able to
21 participate in these alternative programs could
22 participate in those programs. And then after the
23 case is resolved, there could be some decision
24 making and discretion about what could happen at
25 that stage. But a lot of the cost savings and the

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2 savings in terms of separation of families really
3 do happen at that pendency stage.

4 CHAIRPERSON DROMM: Somebody else
5 had testified, I don't remember who it was, that
6 undocumented are not allowed to participate in
7 drug treatment programs even while on Rikers. Are
8 they afforded a possibility of participating in
9 drug treatment programs as part of sentencing?

10 ALINA DAS: It turns a bit on
11 whether or not these are programs where you
12 require health insurance. So some programs do and
13 some don't. There are programs in the city that
14 will be available to undocumented immigrants.

15 But the other point that's
16 important to remember is that we've been talking a
17 lot about undocumented immigrants, but there are
18 also many lawful permanent residents, refugees and
19 others who are fully eligible for all of these
20 programs who end up being ensnared by the system.
21 That's the reason that the City Bar has been
22 supportive of not using the past criminal
23 conviction as a bar because that's the story that
24 we hear every day of the green card holder who has
25 the very old conviction who then may be able to

1
2 establish rehabilitation, may be able to get into
3 a program and resolve their current case in a
4 favorable way, but they are also left out of this
5 legislation.

6 So really the emphasis that people
7 have had on creating that space for discretion,
8 recognition of rehabilitation for everyone
9 involved would address those issues. But
10 certainly there are undocumented individuals who
11 are able to participate in the city's drug
12 treatment and mental health alternative programs.

13 EUGENE J. GLICKSMAN: One of the
14 problems also with that, if I may add, is that
15 with some of these programs, in order to be able
16 to get into them, you must actually give a partial
17 at least allocution, and that will trigger
18 immigration consequences. Because Immigration
19 will say if you've done anything which limits your
20 liberty, whatever, we consider you convicted, even
21 if it's done with later on a voiding of the
22 charges. Because they would have taken that plea
23 to begin with to get into the program, they've now
24 put themselves on the bull's eye as far as
25 Immigration is concerned. That could be

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2 alleviated by giving the courts the power to not
3 take a plea and let someone go into a program
4 first. Professor Morawetz, I think you might have
5 some observations on that as well. I don't mean
6 to put you on the spot.

7 CHAIRPERSON DROMM: She is now.

8 NANCY MORAWETZ: Well, I think that
9 is a serious problem and there are things that can
10 be done at the city and state level to address the
11 question of conviction and actually Alina Das is
12 an expert on this particular issue, if you had
13 more questions on that.

14 I think the fundamental problem
15 here is that there are so many people who get
16 ensnared in the Immigration system by not letting
17 the criminal justice system work the way it's
18 supposed to work. I mean the way it's supposed to
19 work to resolve charges, to have these alternative
20 kinds of dispositions and so on.

21 New York City, you know some of
22 this you can say well the federal law should
23 change, but New York City has choices. New York
24 City has choices about what detainers it's going
25 to observe and honor. It has choices about what

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2 proof it will require before it takes a detainer.
3 It has choices about who it will then notify ICE
4 about. When New York chooses to allow that kind
5 of notification of ICE, it is participating in
6 that system. It's collaborating in that system
7 and that system is so fundamentally not just
8 broken but just so brutal in terms of what it does
9 with people's due process that New York should not
10 be participating in it.

11 [Applause]

12 CHAIRPERSON DROMM: Thank you.

13 Order in the hearing room. Well thank you
14 everybody. More remains to be done and I'm sure
15 we'll look at all these issues. I thank everyone
16 for coming out today. Is there anybody else that
17 wanted to testify? Seeing none, this meeting is
18 adjourned. Thank you.

19 EUGENE J. GLICKSMAN: Thank you,
20 Mr. Chairman.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature *Donna Hintze*

Date October 31, 2011