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THE COUNCIL

COMMITTEE REPORT AND BRIEFING PAPER OF THE JUSTICE DIVISION

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COMMITTEE ON IMMIGRATION

Hon. Carlos Menchaca, Chair

September 17, 2020

- Oversight:** **Immigrant Exclusion in COVID-19 Response**
- Res. No. 1399:** By Council Member Menchaca
- Title:** Resolution calling on the New York State Legislature to pass, and the Governor to sign, A10433/S5167, which would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status
- Res. No. 1404:** By the Public Advocate (Mr. Williams)
- Title:** Resolution calling on the United States Department of Justice to issue guidance that establishes protocols for the Executive Office of Immigration Review in times of public health crises, such as the SARS-CoV-2 outbreak
- Res. No. 1416:** By Council Member Eugene
- Title:** Resolution calling on the United States Department of Homeland Security to halt all deportation proceedings for the length of the COVID-19 pandemic, as a means of restricting the global spread of this disease

Res. No. 1417: By Council Member Eugene

Title: Resolution calling on the United States Department of Homeland Security to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic

Res. No. 1418: By Council Member Eugene

Title: Resolution calling on the United States Congress to pass, and the President to sign, legislation that would permit employment-based status holders to retain lawful status, after loss of employment, if such loss was related to the COVID-19 pandemic

Res. No. 1419: By Council Member Moya

Title: Resolution calling on the United States Congress to pass, and the President to sign, legislation that would provide immigration relief for family members who derive lawful immigration status from a frontline worker who passed away due to COVID-19

I. INTRODUCTION

On September 17, 2020, the Committee on Immigration, chaired by Council Member Menchaca, will hold an oversight hearing on the exclusion of immigrants in the COVID-19 response. The committee will also hold a hearing on the following legislation: Res. No. 1399, sponsored by Council Member Menchaca, in relation to the state authorizing the provision of benefits regardless of immigration status; Res. No. 1404, sponsored by the Public Advocate (Mr. Jumaane Williams), in relation to Executive Office of Immigration Review protocols; Res. No. 1416, sponsored by Council Member Eugene, in relation to halting deportations during the coronavirus pandemic; Res. No. 1417, sponsored by Council Member Eugene, in relation to a moratorium on removal proceedings for employment-based visa holders; Res. No. 1418, sponsored by Council Member Eugene, in relation to relief for employment-based visa holders; and Res. No. 1419, sponsored by Council Member Moya, in relation to relief for family members

of frontline workers who passed away due to COVID-19. The committee expects to receive testimony from the Mayor’s Office of Immigrant Affairs (‘MOIA’), as well as advocates, legal and social services providers, and members of the public.

II. BACKGROUND

A. COVID-19: Disparate Impact on Immigrant New Yorkers

Health Impact

The rapid transmission of the novel coronavirus (SARS-CoV-2) and the resulting infectious disease, COVID-19, first identified in late 2019, and the subsequent declaration of a pandemic by the World Health Organization on March 11, 2020,¹ devastated New York City. As of August 28, 2020, there were 24,499,384 confirmed COVID-19 cases worldwide, and the disease had claimed the lives of 832,608 people.² In the United States, there were 5,873,124 confirmed COVID-19 cases and 180,901 deaths as of August 28, 2020.³ On March 22, 2020, New York City was designated the epicenter of the pandemic, with approximately five percent of confirmed COVID-19 cases worldwide.⁴ As of August 27, 2020, New York State had confirmed 432,767

¹ WORLD HEALTH ORGANIZATION, WHO DIRECTOR-GENERAL’S OPENING REMARKS AT THE MEDIA BRIEFING ON COVID-19 (2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

² JOHNS HOPKINS UNIVERSITY, COVID-19 MAP, <https://coronavirus.jhu.edu/map.html> (last visited August 28, 2020).

³ *Id.*

⁴ Jesse McKinley, *New York City Region Is Now an Epicenter of the Coronavirus Pandemic*, N.Y. TIMES (Mar. 22, 2020), <https://www.nytimes.com/2020/03/22/nyregion/Coronavirus-new-York-epicenter.html>.

positive COVID-19 cases, and 25,312 related deaths.⁵ Of those, New York City had reported 229,207 positive COVID-19 cases, and 19,037 confirmed deaths.⁶

Immigrant New Yorkers have been uniquely harmed by the COVID-19 pandemic: geographic concentrations of COVID-19-positive New Yorkers have been situated in predominantly immigrant neighborhoods, such as Jackson Heights and Elmhurst, Queens.⁷ Department of Health and Mental Hygiene (DOHMH) analysis highlighted that racial and ethnic minorities are far more likely to die of COVID-19 than white New Yorkers.⁸ At the same time, data on immigrant New Yorkers indicates that immigrant communities are at higher risk of COVID-19 exposure and poorer health outcomes than their U.S.-born counterparts, due to higher rates of crowded living arrangements, higher rates of poverty, and generally lower educational attainment and lower health insurance rates.⁹

Economic Impact

The effects of this public health crisis are widespread, touching nearly every facet of New York City's economy, yet the fallout is also disproportionately affecting already-vulnerable workers and communities. According to a report by the Migration Policy Institute, nationwide, immigrant workers are overrepresented in some of the industries that are vital to the COVID-19

⁵ NEW YORK STATE DEPARTMENT OF HEALTH COVID-19 TRACKER, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last visited June 2, 2020).

⁶ In addition to confirmed deaths, the City tracks "probable" COVID-19 deaths. As of August 27, 2020, there were 4,637 probable COVID-19 deaths reported. See NYC DOHMH, COVID-19: DATA, <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> (last visited August 28, 2020).

⁷ Annie Correal & Andrew Jacobs, 'A Tragedy is Unfolding': Inside New York's Virus Epicenter, NEW YORK TIMES, Apr. 9, 2020, <https://www.nytimes.com/2020/04/09/nyregion/coronavirus-queens-corona-jackson-heights-elmhurst.html>.

⁸ NYC Dep't of Health & Mental Hygiene, COVID-19: Data: Deaths, <https://www1.nyc.gov/site/doh/covid/covid-19-data-deaths.page> (last visited August 31, 2020).

⁹ Mayor's Office of Immigrant Affairs, 2019 Annual Report (March 2020), <https://www1.nyc.gov/site/immigrants/about/annual-report.page>

pandemic response—working at high rates in occupations within the health-care, manufacturing, and agricultural fields, and keeping essential businesses like grocery stores and pharmacies open amidst the crisis.¹⁰ In New York City specifically, MOIA indicates that immigrants make up an even greater percentage of the essential workforce: while 44 percent of the total workforce are immigrant New Yorkers, 58 percent of essential workers are immigrant New Yorkers, and are over-represented in the following jobs: home health aides (81 percent), cooks (65.5 percent), janitors and building cleaners (54.3 percent), and dry-cleaning services (87 percent), and nurses (50 percent).¹¹ While immigrants pay about a quarter of federal, state, and local taxes in New York City, they have been largely left out of monetary relief efforts.¹²

Immigrants are also overrepresented in some of the industries that are now seeing huge declines in demand due to efforts to slow the spread of the pandemic.¹³ The New School’s Center for New York City Affairs estimates that of the 1.2 million jobs that the COVID-19 pandemic will cost New York City, over two-thirds of job losses will occur amongst persons of color, with Latinx workers bearing a particularly high burden, as well as Black and Asian workers.¹⁴ While foreign-born workers held 49 percent of all private jobs before the pandemic crisis, they account for 54 percent of the lost jobs.¹⁵ Many industries hard hit by social distancing requirements, such as

¹⁰ Migration Policy Institute, *Immigrant Workers: Vital to the U.S. COVID-19 Response, Disproportionately Vulnerable* (March 2020), <https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response>.

¹¹ Notes from briefing with MOIA (on file with Committee Staff).

¹² National Immigration Forum, *Immigrants as Economic Contributors: Immigrant Tax Contributions and Spending Power*, September 6, 2018, <https://immigrationforum.org/article/immigrants-as-economic-contributors-immigrant-tax-contributions-and-spending-power/>.

¹³ Migration Policy Institute, *supra* note 10.

¹⁴ The New School’s Center for New York City Affairs, *The New Strain of Inequality: The Economic Impact of Covid-19 in New York City*, April 15, 2020,

https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5e974be17687ca34b7517c08/1586973668757/NNewStrainofInequality_April152020.pdf.

¹⁵ *Id.*

accommodation and food services, construction work, and domestic work, rely very heavily on immigrant workers, including undocumented immigrants.¹⁶

As U.S.-born and foreign-born residents alike face mass layoffs, with families struggling to afford food, medical care, and other necessities, immigrant workers have less access to COVID-19-specific relief and existing safety-net programs, and also face additional vulnerabilities.¹⁷ For example, immigrant workers have lower incomes and larger families than their U.S.-born counterparts in the same industries, with 38 percent of immigrants living in low-income households (compared to 30 percent of their U.S.-born counterparts), 28 percent lacking health insurance (twice the rate of similar U.S.-born workers), 38 percent having a minor child at home (compared to 23 percent of U.S.-born workers), and 55 percent with limited English proficiency.¹⁸ Employment-based immigration statuses are also at risk for many foreign-born workers, depending on the specifications of their visas.

Anti-Asian Racism

The New York City Commission on Human Rights (CCHR) found that claims of anti-Asian discrimination and harassment have skyrocketed during the COVID-19 pandemic. From February 1 through March 15, 2019, CCHR received 11 such complaints, but for the same time period this year, they received 133.¹⁹ CCHR launched a massive effort to combat anti-Asian bias amidst increased reports of discrimination, committing \$100,000 to a public education effort, in multiple languages, that would put ads in local media, online, and in community pharmacies and

¹⁶ *Id.*

¹⁷ Migration Policy Institute, *supra* note 10.

¹⁸ Mayor's Office of Immigrant Affairs, *supra* note 9.

¹⁹ Catherine Thorbecke, *NYC launches \$100,000 effort to combat anti-Asian discrimination in COVID-19 era*, ABC NEWS, May 26, 2020, <https://abcnews.go.com/US/nyc-launches-100000-effort-combat-anti-asian-discrimination/story?id=70830974>.

convenience stores, aimed to encourage more reporting of cases of discrimination and harassment, as well as to educate the public.²⁰ The campaign also used the platform WeChat, which is popular among Asian communities in the U.S. During a virtual town hall to celebrate API Heritage Month, CCHR Commissioner Malalis stated that CCHR tracked 300 cases related to COVID-19 in the last few months, a third of which included some anti-Asian discrimination. CCHR created a COVID-19 response unit to expedite these complaints, and also hosted five Bystander Intervention Trainings.²¹ MOIA Commissioner Mostofi stated that MOIA was continuing to share information with community and ethnic media partners on a weekly basis about how communities could access medical care and legal services without fear, and that their outreach team was committed to reaching out via different channels, such as WeChat, KakaoTalk, WhatsApp, etc.²²

Misinformation and Fraud

Unfortunately, since the City shut down in March,²³ rumors and misinformation about COVID-19 and the country's response have spread through social media and mobile applications, manipulating public opinion, creating false narratives, and promoting dangerous practices.²⁴ This misinformation often circulated within immigrant communities, or was targeted at immigrant communities.²⁵ For example, links to supposedly free \$250 gift cards from Amazon and Walmart were circulating on WhatsApp, likely by individuals seeking to commit identity fraud or steal money from strangers.²⁶ Other links claimed to offer money or food from the President of the

²⁰ *Id.*

²¹ Notes from API Heritage Month Virtual Town Hall (on file with Committee Staff).

²² *Id.*

²³ NY on PAUSE, March 22, 2020 Executive Order by Governor Cuomo.

²⁴ Nicolás Ríos, et al., *The Cure for COVID-19 is a Hair Found in a Bible and Other Misinformation Fact-checked*, DOCUMENTED NY, April 15, 2020, <https://documentedny.com/2020/04/15/the-cure-for-covid-19-is-a-hair-found-in-a-bible-and-other-misinformation-fact-checked/>.

²⁵ *Id.*

²⁶ *Id.*

United States.²⁷ Additional misinformation circulating on social media and mobile apps included false information about how to treat COVID-19, or how COVID-19 would affect individuals, which raises serious health concerns.²⁸

The Manhattan District Attorney's Office disseminated information related to COVID-19-related scams and frauds in English and Spanish.²⁹ This includes information about when city workers may reach out to individuals for legitimate reasons, what information a contact tracer will never ask, and information on other scams such as investment scams involving products or services that can prevent, detect, or cure COVID-19.³⁰

Immigrant Mutual Aid

As in other crises,³¹ the city's immigrant-led and -serving advocacy organizations were quick to set up a variety of mutual aid funds to support undocumented immigrants, who were excluded from federal and New York state benefit programs. For example, the National Day Laborer Organizing Network (NDLON) set up an Immigrant Worker Safety Net Fund, and Undocublack Network, serving formerly and currently undocumented Black people, also created a COVID-19 fund.³² In New York, similar funds were created by organizations such as the New York Immigration Coalition, Make the Road NY, and Unlocal.³³ However, many of these

²⁷ *Id.*

²⁸ *Id.*

²⁹ Manhattan District Attorney's Office, *COVID-19 Related Scams and Frauds*, <https://www.manhattanda.org/covidscams/>.

³⁰ *Id.*

³¹ Nathan Schneider, *How to build mutual aid that will last after the Coronavirus pandemic*, AMERICA MEDIA, April 1, 2020, <https://www.americamagazine.org/politics-society/2020/04/01/how-build-mutual-aid-will-last-after-coronavirus-pandemic>.

³² Lizzie Tribone, *Mutual Aid, for and by Undocumented Immigrants*, AMERICAN PROSPECT, July 1, 2020, <https://prospect.org/coronavirus/mutual-aid-for-and-by-undocumented-immigrants/>

³³ Sierra Dickey, *How Coronavirus Relief Is Being Distributed to Undocumented Immigrants*, DOCUMENTED NY, May 29, 2020, <https://documentedny.com/2020/05/29/how-coronavirus-relief-is-being-distributed-to-undocumented-immigrants/>.

organizations have struggled with setting up direct cash assistance, as fundraising, accounting, and disbursement require complex planning and documentation. Additionally, mutual aid funds struggle with the tremendous need in undocumented immigrant communities, unable to adequately serve as a substitute for the inclusion of undocumented immigrants in federal relief programs.

B. City Response

MOIA had all staff working from home starting the week of March 16. By March 24, MOIA had posted to the City's Agency Service Updates page that the following services had been altered:³⁴

- We Speak NYC –English language classes—shifting to remote
- Know Your Rights programming—shifting to remote
- NYC Care—outreach & enrollment paused per H&H
- IDNYC renewal—online and by phone only
- Immigrant Information desks—suspended
- IDNYC new enrollment—suspended

In addition to these service changes, MOIA pivoted its staff to COVID-19-responsive roles conducive to ensuring (1) connecting with and sharing information with immigrant communities, (2) streamlining language access across the administration, and (3) continued policy work around immigration enforcement, public charge, courts, health and safety of immigrant workers, and loss of income for immigrant workers. The legal services referral program, ActionNYC, was altered to be entirely remote, including conducting client intakes via telephone.³⁵ New programmatic areas for MOIA during the pandemic include the creation and distribution of a Resource Guide for

³⁴ NYC.gov, *City Agency Service Updates*, <https://www1.nyc.gov/nyc-resources/city-agency-service-updates.page>; Since March 24, 2020, this page has not been updated.

³⁵ Conversations with staff, (Notes on file with Committee Staff).

immigrant New Yorkers impacted by COVID-19, in 25 languages including English.³⁶ Additionally, City Hall created an Emergency Management Language Access Taskforce, led by MOIA, and including representatives of DOHMH, NYCEM, DSS, and MOPD.³⁷ MOIA also worked with SBS to ensure information about the Paycheck Protection Program was available in language, and with DCWP on work related to immigrant-targeted fraud and price gouging.³⁸

Other City Agencies

The Mayor's Office partnered with the City Council to provide \$25 million to food pantries and community organizations. Ten citywide organizations were designated with the ability to subgrant funds to smaller CBOs.³⁹ This effort is in addition to the meal hubs at Department of Education schools and food delivery options. MOIA has played a supportive role in this roll-out, disseminating information, in up to 25 languages.

Burial costs were inflated in the spring.⁴⁰ The Human Resources Administration (HRA)'s burial assistance program provides financial assistance for those who cannot afford to pay the fees associated with burial.⁴¹ During the pandemic, this assistance was increasingly sought by low-income immigrant New Yorkers whose families were disproportionately impacted by fatal COVID-19 infections. Frustratingly, eligibility was not extended to immigrant New Yorkers under

³⁶ Mayor's Office of Immigrant Affairs, *Resources for Immigrant Communities During COVID-19 Pandemic*, <https://www1.nyc.gov/site/immigrants/help/city-services/resources-for-immigrant-communities-during-covid-19-pandemic.page>.

³⁷ Testimony before the Committees on Immigration and Finance, May 21, 2020, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4452302&GUID=812D2014-9578-4678-9149-F980453A3BCB&Options=&Search=>.

³⁸ *Id.*

³⁹ Office of the Mayor, *Mayor de Blasio and Speaker Johnson Announce \$25 Million in Emergency Funding for Food Providers*, April 10, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/245-20/mayor-de-blasio-speaker-johnson-25-million-emergency-funding-food-providers>.

⁴⁰ Ann Choi & Beatriz Muylaert, *How Families Pay a High Price When Loved Ones Die of COVID-19*, THE CITY, May 21, 2020, <https://www.thecity.nyc/coronavirus/2020/5/21/21270825/how-families-pay-a-high-price-when-loved-ones-die-of-covid-19>.

⁴¹ NYC Human Resources Administration, *Burial Assistance*, <https://www1.nyc.gov/site/hra/help/burial-assistance.page>.

state law, but MOIA was able to secure a private funding source through the Mayor's Fund to cover burial assistance for immigrant applicants.⁴² Costs for burial services far exceeded the cap of the existing burial assistance program, and MOIA worked with HRA to issue an emergency rule on May 2, raising the grant cap from \$900 to \$1,700 and the cap on burial costs from \$1,700 to \$3,400.⁴³ MOIA also advised updates to the program to ensure immigrant privacy and sensitivity. MOIA has deployed staff to answer questions and provide support to members of the public seeking burial assistance information, as noted previously.

The City instituted a temporary hotel accommodation program wherein eligible New Yorkers could receive free hotel accommodations, including transportation, food, and wellness checks, regardless of immigration status.⁴⁴ MOIA conducted outreach to ensure that high-risk neighborhoods (many with large immigrant populations) were aware of the resources available. MOIA shared with Committee staff on July 30, 2020 that the program remains available, managed through New York City's Health and Hospitals Corporation ("H+H") and as an additional resource to the NYC Test and Trace operation. A full report of the program has not yet been made available.

NYC has deployed an expansive contact tracing operation, through their "Test & Trace Corps," hiring more than 3,000 individuals as of June 21, 2020.⁴⁵ Because of unique concerns faced by immigrants, including data privacy and cultural sensitivity, in-language consumer education and Know Your Rights information are critical for the safeguarding of immigrant New

⁴² Office of the Mayor, *Mayor de Blasio and Mayor's Fund Announce Support for Families of Immigrant New Yorkers Who Died During the COVID-19 Pandemic With Program to Cover Burial Costs*, June 17, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/447-20/mayor-de-blasio-mayor-s-fund-support-families-immigrant-new-yorkers-who-died#:~:text=Mayor%20de%20Blasio%20and%20Mayor's,Program%20to%20Cover%20Burial%20Costs&text=%E2%80%9CIn%20their%20time%20of%20grief,ones%20how%20they%20see%20fit.%E2%80%9D>.

⁴³ NYC Rules, *Changes to Burial Claims*, <https://rules.cityofnewyork.us/content/changes-burial-claims>.

⁴⁴ NYC.gov, *COVID-19 Hotel Program*, <https://www1.nyc.gov/site/helpnownyc/get-help/covid-19-hotel-program.page>.

⁴⁵ Sharon Otterman, *N.Y.C. Hired 3,000 Workers for Contact Tracing. It's Off to a Slow Start.*, NEW YORK TIMES, June 21, 2020, <https://www.nytimes.com/2020/06/21/nyregion/nyc-contact-tracing.html>.

Yorkers. These have yet to be guaranteed. The Mayor's Office, in partnership with H+H and DOHMH, released a Request for Proposals, seeking applications from CBOs to disseminate information about the contact tracing operation, conduct public education about social distancing and mask-wearing, and the importance of getting tested. The contract would be for a limited timeframe—July-November 2020.⁴⁶ The deadline for the RFP application was July 13, 2020.⁴⁷

Public Private Philanthropy

On April 16, 2020, Mayor de Blasio announced a partnership with the Open Society Foundation to establish the New York City COVID-19 Immigrant Emergency Relief program.⁴⁸ This involves a \$20 million donation that will be allocated to 20,000 immigrant workers and their families who have largely been excluded from the federal COVID-19 relief programs. MOIA played an advisory role in assisting the Mayor's Fund to Advance New York City in creating a citywide network of community-based organizations and worker centers that would disseminate one-time emergency relief payments to eligible New Yorkers in the following amounts:

- \$400/individual;
- \$800 for couple or single parent with children;
- \$1,000 for family with multiple adults and children; and/or
- where identified, increased additional supports.

To date, information on the disbursement of funds is not publicly available.

⁴⁶ NYC Health and Hospitals, *Community Partnerships*, <https://www.nychealthandhospitals.org/test-and-trace/community-partnerships/>.

⁴⁷ NYC Health and Hospitals, Request for Proposals, <https://hhinternet.blob.core.windows.net/uploads/2020/07/test-and-trace-community-based-organization-engagement-opportunities.pdf>.

⁴⁸ Office of the Mayor, *Mayor de Blasio Announces New York City COVID-19 Immigrant Emergency Relief Program with Open Society Foundations*, April 16, 2020, <https://www1.nyc.gov/office-of-the-mayor/news/262-20/mayor-de-blasio-new-york-city-covid-19-immigrant-emergency-relief-program-open>.

C. State Response

In May 2020, New York State Governor Cuomo stated there was no plan for New York State to provide additional COVID-19 assistance for undocumented immigrants who are ineligible for emergency aid or unemployment. Instead, he pointed to Washington, stating that “[t]he federal government has a number of programs to address that. If we get some state funding through the federal government, we’ll do whatever we can.”⁴⁹

In the aftermath of the COVID-19 pandemic, the State Legislature is considering several pieces of legislation that could impact relief eligibility for immigrant New Yorkers and create safeguards for contact tracing programs. Assembly Member Catalina Cruz and State Senator Persaud are sponsoring legislation (A07742/S05267) that would extend eligibility for state- and locally-funded public benefits, regardless of immigration status. This legislation would restore eligibility that was restricted by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and would permit New York City to provide cash assistance and other much needed targeted COVID-19 relief to its hardest hit immigrant communities.

New York State Senator Gustavo Rivera and state Assembly Member Richard Gottfried have also introduced a bill (S08450C/A10500) to protect the data compiled by contact tracers from legal processes and make such data inadmissible in court proceedings.⁵⁰ The bill would also prohibit law enforcement and immigration enforcement employees from serving as contact

⁴⁹ Denis Slattery, *Immigration advocates want Cuomo to do more for state’s undocumented workers*, NY DAILY NEWS, May 19, 2020, <https://www.nydailynews.com/news/politics/ny-immigration-advocates-call-on-cuomo-to-help-undocumented-20200519-a3jrj7lkyjawtgjfcyjew6eou-story.html>

⁵⁰ Sophia Chang, *Immigration And Privacy Advocates Seek New Law Shielding COVID-19 Contact Tracing Data From Law Enforcement*, GOTHAMIST, July 12, 2020, <https://gothamist.com/news/immigration-privacy-advocates-coronavirus-contact-tracing-data-law-enforcement>

tracers.⁵¹ As of this writing, the bill has passed both the State Assembly and the Senate and is waiting for signature from the Governor.⁵²

D. Federal Response

CARES Act

Despite contributing nearly \$460 billion in 2018 in taxes to federal, state and local governments,⁵³ undocumented immigrants and mixed-immigration status couples were omitted from the federal Coronavirus Aid, Relief and Economic Security Act (CARES Act) that authorized checks of up to \$1,200 to most taxpayers. The bill excluded nonresident aliens from eligibility, restricting eligibility to U.S. Citizens and work-authorized resident aliens.⁵⁴ Only family units where both partners had valid Social Security numbers were eligible for CARES Act aid.⁵⁵ This relief excluded U.S. Citizen children whose parents do not have valid social security numbers.⁵⁶

Continued Anti-Immigrant Agenda

The Trump Administration has exploited the COVID-19 pandemic to further push its anti-immigrant agenda, implementing more than a dozen changes to the immigration system.⁵⁷ Immigration court hearings were postponed, refugee admissions were put on pause and migrants, including children, have been largely barred from entering the United States.⁵⁸ In June 2020, there

⁵¹ *Id.*

⁵² NY State Senate Bill S8450C, 2019-2020 Legislative Session, <https://www.nysenate.gov/legislation/bills/2019/s8450>.

⁵³ New American Economy, *Immigrants and the Economy in the United States of America*, <https://www.newamericaneconomy.org/locations/national/>,

⁵⁴ Nicole Narea, *For immigrants without legal status, federal coronavirus relief is out of reach*, VOX, May 5, 2020, <https://www.vox.com/2020/5/5/21244630/undocumented-immigrants-coronavirus-relief-cares-act>

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ New York Immigration Coalition, *New Asylum Rule Change Continues Trump's Exploitation of COVID-19 Pandemic to Push Anti-Immigrant Agenda*, July 8, 2020, <https://www.nyic.org/2020/07/new-asylum-rule-change-continues-trumps-exploitation-of-covid-19-pandemic-to-push-anti-immigrant-agenda/>.

⁵⁸ *Id.*

were a series of immigration bans and administrative rule changes, including a shift in work authorization rules for asylum seekers, requiring them to wait a year to receive permission to have a job.⁵⁹ In late June, the Trump Administration issued an executive order temporarily preventing foreign nationals from entering the U.S. with H1B, L-1, H2B, or J-1 status.⁶⁰ In early July, ICE announced that international students pursuing degrees in the U.S. would have to leave the country under the threat of deportation if their university switched to online-only classes.⁶¹ ICE guidance issued July 24, 2020, further clarifies that continuing international students can remain in the U.S., but new students will not be allowed to enter the U.S. if their programs are entirely online beginning Fall 2020.⁶² Also in July, DHS published a new asylum rule barring applicants from countries with a disease outbreak, deeming those asylum seekers a danger to public safety, even though the U.S. has far more coronavirus deaths and confirmed infections than any other nation in the world.⁶³

EOIR procedures

Despite the pandemic's devastating surge in the U.S., focused in Seattle and New York City in March and April, and steadily spreading throughout the U.S., the Department of Justice did not issue a blanket policy on immigration court proceedings but rather delegated authority to each EOIR office throughout the United States, and on a case-by-case basis, specific judges made their own decisions about in-person hearings. A lack of clear instructions and immediate options for filing documentation electronically meant that defendants and their attorneys, in addition to

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² U.S. Immigration and Customs Enforcement, *Broadcast Message: Follow-up: ICE continues March Guidance for Fall School Term*, July 24, 2020, <https://www.ice.gov/doclib/sevis/pdf/fall2020faq.pdf>.

⁶³ New York Immigration Coalition, *supra* note 57.

EOIR’s own staff, put themselves at risk of contracting COVID-19 by continuing to attend in-person proceedings. Official EOIR updates regarding court openings were regularly issued after business hours, solely in English via Twitter. In mid-March 2020, EOIR created a COVID-19-specific webpage⁶⁴ on which court openings and closures appeared. In late March, EOIR also populated this webpage with other procedural updates, but as of July 2020, all information remains available only in English. It was not until 11:55pm on March 17, 2020 that a notice was posted to Twitter that all non-detained cases were postponed, beginning, presumably at 12:00am on March 18,⁶⁵ and it was not until March 31 that electronic filings were permitted for ongoing cases.⁶⁶ Advocates and public defenders representing clients before EOIR have expressed frustration at the e-filing system’s file size limit and EOIR itself tweeted that it “cannot provide technical support or confirm receipt of filings” when the system was initially made available nationally.⁶⁷

ICE Detention

When the COVID-19 pandemic first reached the U.S., ICE detained approximately 38,000 individuals across its detention centers, charged with civil immigration offenses. After vocal advocacy⁶⁸ and laborious litigation in federal court to push for the release of ICE detainees, as of July 18, 2020, the detained population decreased to 22,142 individuals, a 42 percent decrease in the overall population.⁶⁹

⁶⁴ U.S. Dep’t of Justice, *EOIR OPERATIONAL STATUS DURING CORONAVIRUS PANDEMIC*, <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

⁶⁵ Twitter: @DOJ_EOIR, March 17, 2020, https://twitter.com/DOJ_EOIR/status/1240124718298038273?s=20.

⁶⁶ Twitter: @DOJ_EOIR, March 31, 2020, https://twitter.com/DOJ_EOIR/status/1245115680736804868?s=20.

⁶⁷ Twitter: @DOJ_EOIR, March 31, 2020, https://twitter.com/DOJ_EOIR/status/1245115683433844737?s=20.

⁶⁸ New York Lawyers for the Public Interest, *Open Letter to ICE from Medical Professionals Regarding COVID-19* (March 2020), <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf>.

⁶⁹ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19: ICE Detainee Statistics*, <https://www.ice.gov/coronavirus#wcm-survey-target-id>.

Meanwhile, ICE has continued to deport individuals despite guidance from the CDC strongly advising against detention transfers,⁷⁰ and contrary to the U.S. Department of State’s “Level 4 – Do Not Travel” advisory, applicable globally. As part of its removal procedure, ICE conducts a “visual screening consistent with its own guidance,” and checks body temperatures prior to boarding airplanes, which are insufficient protocols for determining if a person is infected with SAR-CoV-2.⁷¹ At least one report from an ICE whistleblower shared that when a deportee arrived at the airport presented a 103 degree fever, agents instructed he be “put under the air conditioning unit” to cool down, as deportees with fevers above 99 degrees Fahrenheit are not allowed to board ICE deportation planes.⁷² Recent reports have increasingly shown how ICE deportations are directly linked with spreading COVID-19 internationally, with at least 11 countries reporting COVID-19 outbreaks linked to ICE deportations of their ex-patriots.⁷³ Simultaneously, the Trump Administration has coerced countries to assist in the United States’ immigration policy by accepting deportees at the risk of visa denials⁷⁴ and access to ventilators.⁷⁵

III. CONCLUSION

The Committee on Immigration intends to highlight the ways in which City efforts to serve immigrant New Yorkers have attempted to close the gap of immigrant exclusion in the COVID-

⁷⁰ U.S. Center for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (July 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁷¹ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus#wcm-survey-target-id>.

⁷² Noah Lanard, *Whistleblowers Say an ICE Detention Center Used Deceptive Tricks to Conceal COVID Outbreak*, MOTHER JONES, July 21, 2020, <https://www.motherjones.com/politics/2020/07/whistleblowers-say-ice-detention-center-used-deceptive-tricks-to-conceal-covid-outbreak/>

⁷³ Emily Kassie & Barbara Marcolini, *How ICE Exported the Coronavirus*, THE MARSHALL PROJECT, July 10, 2020, <https://www.themarshallproject.org/2020/07/10/how-ice-exported-the-coronavirus>.

⁷⁴ Michelle Hackman, *Trump Threatens to Deny Visas to Countries Refusing Deportees*, WALL STREET JOURNAL, Apr. 10, 2020, <https://www.wsj.com/articles/trump-threatens-to-deny-visas-to-countries-refusing-deported-citizens-11586577586>.

⁷⁵ Tracy Wilkinson, *Trump’s message to Central America: Want ventilators? Help us with immigration*, LOS ANGELES TIMES, April 24, 2020, <https://www.latimes.com/world-nation/story/2020-04-24/trumps-message-to-latin-america-want-ventilators-help-us-with-immigration>.

19 response, and investigate the continued disproportionate impacts of COVID-19 on immigrant populations. As the City takes stock of its position, almost six months from the apex of COVID-19 pandemic in the City, it must prepare for the risk of a resurgence of COVID-19 cases. The committee hopes to hear how local investments in immigrant communities can positively affect health and economic outcomes as the City enters a time of recovery. Lessons learned will serve as a starting point for the next crises that will invariably touch the lives of many immigrant New Yorkers, as they make up 37 percent of New York City’s population.

IV. LEGISLATIVE ANALYSIS OF RES. NO. 1399

Res. No. 1399 (Council Member Menchaca) calls on the New York State Legislature to pass, and the Governor to sign, A10433/S5167, which would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status. The Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) enacted drastic changes to the nation’s welfare and safety programs, by among other things, restricting eligibility for more means-tested benefits and many services offered at the federal, state and local level for most categories of non-citizens. The PWRORA also barred states and localities generally from offering “any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit.”⁷⁶ Some notable exemptions to the federal ban include emergency healthcare and services, short-term in-kind emergency disaster relief, public health assistance for immunization and treatment of communicable diseases, and programs, services or assistance specified by the U.S. Attorney

⁷⁶ 8 U.S.C. § 1621.

General. Additionally, refugees, asylees, lawful permanent residents having resided at least five years in the U.S., among a few select categories, are also excluded from the federal ban.

An important provision of the PRWORA grants states the authority to enact laws to extend eligibility to certain categories of noncitizens excluded from benefits eligibility by federal statute. Several states have taken advantage of this provision: California enacted legislation to extend state-funded cash assistance to elderly and/or disabled noncitizens who would otherwise be eligible for SSI/SSP cash assistance, but for their immigration status; California and Illinois have extended occupational and professional licenses to eligible individuals, and Texas has expanded access to locally-funded nonemergency health benefits regardless of immigration status.

In New York, A10433/S5167, sponsored by Assembly Member Catalina Cruz and State Senator Roxanne Persaud would allow for state agencies, municipalities and authorities to provide state or local public benefits regardless of immigration status. This bill would be first of its kind, nationally, and could provide much needed relief to vulnerable foreign-born communities, largely excluded from public benefits since 1996.

V. LEGISLATIVE ANALYSIS OF RES. NO. 1404

Res. No. 1404 (Public Advocate Williams) calls on the U.S. Department of Justice to issue guidance that establishes protocols for the Executive Office of Immigration Review (EOIR) in times of public health crises, such as the SARS-CoV-2 outbreak. With the early outbreak of the SARS-CoV-2 virus, and the COVID-19 infectious disease, in New York City, Governor Cuomo signed the New York State on PAUSE executive order, which closed all non-essential businesses, effective March 22, 2020. Rather than issue a blanket policy for immigration court proceedings, the U.S. Department of Justice delegated authority to each EOIR throughout the U.S., allowing specific judges to make additional decisions regarding in-person hearings on a case-by-case basis.

As a result, defendants, their attorneys and EOIR's own staff put themselves at risk of contracting COVID-19 by continuing to attend in-person proceedings. Until mid-March, EOIR updates regarding court proceedings were regularly issued after business hours on social media (Twitter). Later, a COVID-19 specific webpage was posted online with court updates, available only in English, making it difficult for many defendants to know up-to-date information about their case proceedings.

Res. No. 1404 calls for the U.S. Department of Justice to issue court protocols informed by public health experts to ensure due process for all individuals interacting with the immigration court system while lowering the health risk posed to all individuals interacting in-person. The Resolution also calls for these protocols to be translated in multiple languages and be broadly disseminated, as New York City, alone, is home to more than three million immigrants who speak over 200 languages, and as of March 2020, NYC-area EOIR had more than 100,000 cases pending.

VI. LEGISLATIVE ANALYSIS OF RES. NO. 1416

Res. No. 1416 (Council Member Eugene) calls on the U.S. Department of Homeland Security (DHS) to halt all deportation proceedings for the length of the COVID-19 pandemic, as a means of restricting the global spread of this disease. The U.S. has continued to lead in the number of COVID-19 cases worldwide, with more than 5 million cases and over 180,000 deaths. Many other countries across the world are struggling to contain the ever-evolving COVID-19 pandemic, motivating the U.S. Department of State to issue a global "Level 4 – Do Not Travel" warning as of March 31, 2020, recommend that U.S. citizens avoid all international travel due to

the virus. Meanwhile, the DHS continues to conduct thousands of international deportations against CDC standards which advise that transfers of detained individuals should be restricted unless necessary. To date, at least 11 countries have reported COVID-19 outbreaks linked to ICE deportations of their expatriates. Simultaneously, the Trump Administration has coerced countries to assist in the United States' immigration policy by accepting deportees at the risk of visa denials and access to critical medical supplies, such as ventilators. While more than 100 detained individuals in New York City-area ICE facilities have been released on case-by-case basis, ICE continues to deport New Yorkers contravening expert guidance, risking further transmissions internationally.

VII. LEGISLATIVE ANALYSIS OF RES. NO. 1417

Res. No. 1417 (Council Member Eugene) calls on the U.S. Department of Homeland Security to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic. Early estimates of the economic toll of the pandemic, in part due to precautionary lockdown measures initiated by Governor Cuomo's March 22, 2020 "NY on PAUSE" Executive Order, anticipate the loss of 1.2 million jobs, including 27 percent of all private sector and independent contractor jobs. Foreign-born New Yorkers are particularly vulnerable to job loss during the pandemic: while 49 percent of all private sector jobs were held by foreign-born workers, foreign-born workers account for 54 percent of those who lost jobs. Widespread layoffs and staff furloughs could turn from loss of employment-based status to removal proceedings for foreign-born workers. The Trump Administration has continued to prioritize the deportation of foreign-born nationals throughout the pandemic, and without a moratorium on removal proceedings, individuals in the U.S. formerly on

employment-based visas could be targeted for removal. Res. No. 1417 thus calls for the DHS to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic.

VIII. LEGISLATIVE ANALYSIS OF RES. NO. 1418

Res. No. 1418 (Council Member Eugene) calls on the United States to pass, and the President to sign, legislation that would permit employment-based status holders to retain lawful status, after loss of employment, if such loss was related to the COVID-19 pandemic. Early estimates of the economic toll of the pandemic, in part due to precautionary lockdown measures initiated by Governor Cuomo's March 22, 2020 "NY on PAUSE" Executive Order, anticipate the loss of 1.2 million jobs, including 27 percent of all private sector and independent contractor jobs. Nationally, a disproportionate share of foreign-born individuals, one-in-five, are employed in industries facing major lay-offs as compared to 17 percent of their U.S.-born counterparts. Foreign-born workers have lower incomes and larger families, on average, than their U.S.-born counterparts working in the same industries, with half the rate of health insurance, and significantly lower median earnings, less than \$30,000, as compared to \$48,000. Foreign-born individuals experienced a greater increase in unemployment in the first months of the pandemic than U.S.-born workers, with Latinos experiencing the highest rates of unemployment.

In 2019, the U.S. issued 8.7 million non-immigrant visas, which include employment-based visas, largely issued under very specific criteria, requiring recipients to re-apply should employment circumstances change in any way. With widespread layoffs and staff furloughs, hundreds of thousands of foreign-born individuals, formerly active members of the U.S. workforce, could find themselves losing lawful work authorization and resident status. New York

City's recovery will not be possible without full participation of all New Yorkers, including its foreign-born workforce. Thus, Res. No. 1418 calls on the federal government to create a legislative solution to provide temporary work and residency authorization for foreign-born individuals who have been laid off or furloughed due to the COVID-19 pandemic.

IX. LEGISLATIVE ANALYSIS OF RES. NO. 1419

Res. No. 1419 (Council Member Moya) calls on the United States Congress to pass, and the President to sign, legislation that would provide immigration relief for family members who derive lawful immigration status from a frontline worker who passed away due to COVID-19. Nationally, foreign-born individuals account for a larger share of essential workers, including 17 percent of the healthcare workforce, while in New York, the foreign-born share of the healthcare workforce is more than twice the national average. In fact, in New York City, 47 percent of hospital medical staff and more than 79 percent of home health aides are foreign-born, across the five boroughs.⁷⁷

A large proportion of foreign-born frontline workers in the healthcare profession are present in the U.S. on nonimmigrant employment-based visas, which are restrictive and require individuals to re-apply should circumstances warrant any changes of employment. Certain nuclear family members may derive visas from a primary nonimmigrant visa-holder, but if this primary visa-holder passes away then all family members on derived visas must return to their countries of origin. In many cases, families on such visas have established lives in the United States, with employment, schooling, and connections to local communities that make it very difficult to uproot

⁷⁷ Mayor's Office of Immigrant Affairs, *2019 Annual Report* (March 2020), <https://www1.nyc.gov/site/immigrants/about/annual-report.page>.

and return to their countries of origin. It is imperative that Congress enact legislation to ensure that families do not lose their lawful status as a result of the fatal contraction of COVID-19 by their frontline working family member.

Res. No. 1399

Resolution calling on the New York State Legislature to pass, and the Governor to sign, A10433/S5167, which would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status

By Council Member Menchaca

Whereas, In 1996, President Bill Clinton signed into law the Personal Responsibility and Work Opportunity Act (PRWORA), enacting drastic changes to the nation's welfare and safety net programs; and

Whereas, Among the many changes set in motion by the PRWORA, the Act explicitly restricted eligibility for most means-tested benefits and many services offered at the federal, state and local level for all categories of non-citizens, with certain exceptions; and

Whereas, The PRWORA barred states and localities, in addition to the federal government, from providing "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit;" and

Whereas, Generally, emergency healthcare and services, short-term in-kind emergency disaster relief, public health assistance for immunization and treatment of communicable diseases, and programs, services or assistance specified by the U.S. Attorney General, are exempt from the noncitizen eligibility restriction; and

Whereas, Refugees, Asylees, Lawful Permanent Residents having resided at least five years in the U.S., certain individuals granted parole or whose deportations have been withheld by the U.S. Department of Homeland Security, Cuban/Haitian entrants, and survivors of domestic

violence and severe forms of trafficking, are considered exempt from the restricted eligibility set out in the PWRORA; and

Whereas, In 2002, the Farm Security and Rural Investment Act of 2002 broadly restored food assistance eligibility to most lawfully permanent non-citizens, including individuals who resided in the US for five years, children under 18, and individuals receiving disability-related assistance; and

Whereas, While the PRWORA restricts the provision of benefits and services to ineligible noncitizens by states and localities, it grants states the authority to pass laws to extend state- and local-funded benefits and services to ineligible noncitizens through the enactment of state laws; and

Whereas, Under this last provision, several states have enacted laws that extend eligibility to certain categories of noncitizens explicitly excluded from benefits eligibility by PWRORA; and

Whereas, For example, in 1998, California enacted legislation that extended stated-funded cash assistance to elderly and/or disabled noncitizens who would otherwise be eligible for SSI/SSP cash assistance, but for their immigration status; and

Whereas, California also enacted legislation to extend food assistance to noncitizens who had been eligible for such assistance prior to the passage of PRWORA, and remained eligible but for their immigrant status; and

Whereas, Other examples of states enacting legislation to expand eligibility to residents otherwise restricted by PRWORA include expanding occupational and professional licenses to eligible individuals in California and Illinois, and expanding access to locally-funded nonemergency health benefits regardless of immigration status in Texas; and

Whereas, Another category of benefit that has been extended in at least 21 states and the District of Columbia, including New York, regards extending in-state tuition to all state residents, regardless of immigration status, with 12 states and the District of Columbia additionally offering state-funded financial aid to residents regardless of immigration status; and

Whereas, In its 2019-2020 legislative session, the New York State Legislature is contemplating legislation (A10433/S05167), currently sponsored by Assembly Member Catalina Cruz and State Senator Roxanne Persaud that would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status; and

Whereas, This bill would be the first of its kind in the nation to expressly grant broad authority for the extension of any or all state and local public benefits, and could potentially provide much needed relief to vulnerable foreign-born communities, largely excluded from public benefits since 1996; and

Whereas, More than 3.1 million immigrants call New York City home, nearly half of whom could be currently ineligible for most public benefits, under PRWORA restrictions; and

Whereas, Non-citizen New Yorkers have significantly lower median earnings, less than \$30,000, as compared to \$48,000 for U.S.-born New Yorkers, despite having similar or greater labor participation; and

Whereas, According to NYC's Mayor's Office of Immigrant Affairs, more than a quarter of all noncitizen New Yorkers currently live at or below the poverty rate; and

Whereas, Those currently excluded from public benefits under PRWORA includes more than 500,000 undocumented New Yorkers, who are almost twice as likely as their U.S.-citizen counterparts to lack health insurance; and

Whereas, Passage of A10433/S5167 would extend the right to localities, specifically New York City, to extend city-funded public benefits programs such as cash assistance to all residents, regardless of immigration status; and

Whereas, In the wake of the coronavirus pandemic, and in anticipation of future crises, this legislation could have far-reaching impact by allowing the City to provide directly for the needs of its most vulnerable, and heretofore excluded, immigrant communities; and

Whereas, Half of immigrant workers in New York City have experienced job losses due to the pandemic, further exacerbating the vulnerability of individuals who are barred from public benefits and safety net assistance; now, therefore, be it,

Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign into law, A10433/S5167, which would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status.

LS15257
EK
8/24/2020

Res. No. 1404

Resolution calling on the United States Department of Justice to issue guidance that establishes protocols for the Executive Office of Immigration Review in times of public health crises, such as the SARS-CoV-2 outbreak.

By the Public Advocate (Mr. Williams)

Whereas, SARS-CoV-2 is the virus responsible for causing the new infectious disease known as COVID-19; and

Whereas, The first cases of humans infected with COVID-19 were identified in Wuhan, China in December 2019; and

Whereas, By June 2020, there were more than five million cases reported across the world and more than 300,000 deaths linked to the disease; and

Whereas, In New York City, there were more than 190,000 confirmed cases of COVID-19 and more than 16,000 confirmed deaths from the disease by June 2020; and

Whereas, In order to help slow the spread of the virus, New York Governor Cuomo signed the New York State on PAUSE executive order that, among other mandates, closed all non-essential businesses effective March 22, 2020; and

Whereas, This executive order led State and City government agencies to work remotely, where possible, and State courts either offered remote hearing options or postponed cases; and

Whereas, The U.S. Department of Justice' Executive Office of Immigration Review (EOIR) did not immediately issue a blanket policy on immigration court proceedings but rather delegated authority to each EOIR office throughout the United States, and on a case-by-case basis, specific judges made their own decisions about in-person hearings; and

Whereas, A lack of clear instructions and immediate options for filing documentation electronically meant that defendants and their attorneys, in addition to EOIR's own staff, put themselves at risk of contracting COVID-19 by continuing to attend in-person proceedings; and

Whereas, Official EOIR updates regarding court openings were regularly issued after business hours, solely in English, and on the social media platform Twitter; and

Whereas, In mid-March 2020, EOIR created a webpage on which court openings and closures appeared, as related to COVID-19; and

Whereas, In late March, EOIR also populated this webpage with other procedural updates, but as of June 2020, all this information is only available in English; and

Whereas, It was not until 11:55pm on March 17 that a notice was posted to Twitter that all non-detained cases were postponed, beginning, presumably at 12:00am on March 18, and it was not until March 31 that electronic filings were permitted for ongoing cases; and

Whereas, Advocates and public defenders representing clients before EOIR have expressed frustration at the e-filing system's file size limit and EOIR itself tweeted that it "cannot provide technical support or confirm receipt of filings" when the system was initially made available nationally; and

Whereas, Court protocols informed by public health experts are critical to ensure due process for all individuals interacting with the immigration court system while lowering the health risk posed to all individuals interacting in person with this system; and

Whereas, These protocols must additionally be translated into multiple languages and be broadly disseminated; and

Whereas, New York City is home to more than three million immigrants who speak over 200 languages; and

Whereas, As of March 2020, the New York City-area EOIR court had more than 100,000 cases pending, including over 30,000 new deportation orders filed in 2019 alone, and

Whereas, As a matter of policy, New York City is committed to the due process rights of all New Yorkers, regardless of immigration status, and has enshrined this commitment by funding deportation defense attorneys through the City Council's New York Immigrant Family Unity Project, in addition to the provision of other legal services; and

Whereas, Anti-immigrant policies furthered by the Trump administration have made the current climate particularly hostile to immigrants everywhere, especially New Yorkers; and

Whereas, As New York City begins to re-open non-essential services, in tandem with New York State and Federal guidance, under the advice of public health experts, it is imperative that official guidance on immigration court re-openings be informed by public health professionals, disseminated through official channels, and in multiple languages, in a timely fashion; now, therefore, be it

Resolved, That the Council of the city of New York calls on the United States Department of Justice to issue guidance that establishes protocols for the Executive Office of Immigration Review in times of public health crises, such as the SARS-CoV-2 outbreak.

LS14432
EK
6/30/2020

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Res. No. 1416

Resolution calling on the United States Department of Homeland Security to halt all deportation proceedings for the length of the COVID-19 pandemic, as a means of restricting the global spread of this disease

By Council Member Eugene

Whereas, SARS-CoV-2 is the virus responsible for causing the new infectious disease known as COVID-19; and

Whereas, The first cases of humans infected with COVID-19 were identified in December 2019, and by mid-June 2020, there were more than eight million cases reported across the world, with more than 400,000 deaths linked to the disease; and

Whereas, At the same time, the United States (U.S.) continues to lead in the number of confirmed COVID-19 cases worldwide, with more than two million positive cases and 116,000 deaths; and

Whereas, Many countries are struggling to deal with the ever-evolving COVID-19 pandemic, so much so that the United States Department of State has issued a global “Level 4 – Do Not Travel” warning, as of March 31, 2020, recommending that all U.S. citizens avoid all international travel due to the virus; and

Whereas, The possibility of disease transmission remains as the U.S. Department of Homeland Security (DHS) continues to conduct international deportations; and

Whereas, Deportees pose a risk to both the U.S. and the countries receiving them, many of which are ill-equipped to handle large-scale COVID-19 outbreaks; and

Whereas, In the case of detained individuals, U.S. Immigration and Customs Enforcement (ICE) facilities have been rife with COVID-19 clusters, raising the risk that if detained individuals are deported, they could infect individuals in their countries of origin; and

Whereas, In standards governing detention facilities, the U.S. Center for Disease Control (CDC) has advised that transfers should be restricted unless absolutely necessary, as transfers of detained individuals risk spreading the virus; and

Whereas, Against CDC standards, DHS has transferred and deported thousands of people in its custody to their countries of origin since the onset of the pandemic; and

Whereas, As part of its removal procedure, ICE conducts a “visual screening consistent with its own guidance,” and checks body temperatures prior to boarding airplanes, which are insufficient protocols for determining if a person is infected with SAR-CoV-2; and

Whereas, International advocates including Amnesty International have called on DHS Acting Secretary Chad Wolf to halt deportations for domestic and international public health; and

Whereas, One in five COVID-19 cases in Guatemala were individuals recently deported from the United States, by the end of April; and

Whereas, By mid-June, individuals deported to at least five different countries have tested positive for COVID-19 following removal proceedings; and

Whereas, Simultaneously, the Trump administration has coerced countries to assist in the United States’ immigration policy by accepting deportees at the risk of visa denials and access to ventilators; and

Whereas, Nationally, 24,713 detained individuals remain in ICE custody, and in the New York City-area, there have been over 6,000 new removal orders filed in immigration courts in 2020 alone, with a backlog of immigration court cases well over 102,000; and

Whereas, While more than 100 detained individuals in New York City-area ICE facilities have been released on case-by-case basis, ICE continues to deport individuals contravening expert

guidance, putting immigrant New Yorkers at risk of infection, and risking further transmissions internationally; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Department of Homeland Security to halt all deportation proceedings for the length of the COVID-19 pandemic, as a means of restricting the global spread of this disease.

LS14724
EK
6/29/2020

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Res. No. 1417

Resolution calling on the United States Department of Homeland Security to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic

By Council Member Eugene

Whereas, SARS-CoV-2 is the virus responsible for causing the new infectious disease known as COVID-19; and

Whereas, The first cases of humans infected with COVID-19 were identified in December 2019; by August 2020, there were more than 22 million cases reported across the world and more than 780,000 deaths linked to the disease; and

Whereas, In New York City, there were more than 227,000 confirmed cases of COVID-19 and more than 19,000 confirmed deaths from the disease by August 2020; and

Whereas, In order to help slow the spread of the virus, New York Governor Cuomo signed the New York State on PAUSE executive order that, amongst other things, closed all non-essential businesses effective March 22, 2020; and

Whereas, Early assessments of the devastating economic impact of the pandemic estimate that New York City may lose as many as 1.2 million jobs, including 27 percent of all private sector and independent contractor jobs; and

Whereas, Foreign-born New Yorkers are particularly vulnerable to job loss during the pandemic: while 49 percent of all private sector jobs were held by foreign-born workers, foreign-born workers account for 54 percent of those who lost jobs; and

Whereas, In 2019, the U.S. issued 8.7 million non-immigrant visas, which include employment-based visas; and

Whereas, Employment-based visas are issued under specific criteria including listing the employer, and require recipients to re-apply should circumstances warrant any changes of employment; and

Whereas, Washington D.C.-based think tank, Niskanen Center, estimates that as many as 250,000 foreign-born workers on temporary visas seeking green cards could have fallen out of lawful status by June 2020; and

Whereas, With widespread layoffs and staff furloughs, hundreds of thousands of foreign-born individuals who were formerly active members of the U.S. workforce, could find themselves losing lawful work authorization and resident status; and

Whereas, The Trump Administration has already issued two different actions to limit access to employment-based visas during the pandemic, through Presidential Proclamations on April 22, 2020 and on June 22, 2020; and

Whereas, These actions have been met by harsh criticism from multiple sectors, including the technological industry, and have already led to the separation of families, including at least 1,000 Indian nonimmigrant work-related based visas; and

Whereas, The Trump Administration has continued to prioritize the deportation of foreign-born nationals, unhindered by the pandemic; and

Whereas, The foreign-born workforce is critical to the economic recovery in the U.S. broadly, but especially in the New York City, where 65.5 percent of the City's foreign-born residents participate in the labor force; and

Whereas, It is imperative that a moratorium on removal proceedings be put into effect for individuals who retained lawful status tied to their employer up until the start of COVID-19 pandemic; now, therefore, be it

Resolved, That the Council of the City of New York calls on United States Department of Homeland Security to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic.

LS14726
EK
8/24/2020

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Res. No. 1418

Resolution calling on the United States Congress to pass, and the President to sign, legislation that would permit employment-based status holders to retain lawful status, after loss of employment, if such loss was related to the COVID-19 pandemic

By Council Member Eugene

Whereas, SARS-CoV-2 is the virus responsible for causing the new infectious disease known as COVID-19; and

Whereas, The first cases of humans infected with COVID-19 were identified in December 2019, by August 2020, there were more than 22 million cases reported across the world and more than 780,000 deaths linked to the disease; and

Whereas, In New York City, there were more than 227,000 confirmed cases of COVID-19 and more than 19,000 confirmed deaths from the disease by August 2020; and

Whereas, In order to help slow the spread of the virus, New York Governor Cuomo signed the New York State on PAUSE executive order that, amongst other things, closed all non-essential businesses effective March 22, 2020; and

Whereas, Early assessments of the pandemic's devastating economic impact estimate that New York City may lose as many as 1.2 million jobs, including 27 percent of all private sector and independent contractor jobs; and

Whereas, Nationally, foreign-born individuals account for 17 percent of the national workforce, but a larger share (19 percent) of the coronavirus-response frontline occupations, or six million individuals across essential industries such as: healthcare (17 percent foreign-born), essential retail and wholesale (18 percent foreign-born), manufacturing (26 percent foreign-born), agriculture, forestry, fishing and hunting (27 percent foreign-born), transportation (34 percent foreign-born), and scientific research and development (22 percent foreign-born); and

Whereas, Nationally, a disproportionate share of foreign-born individuals, one-in-five, are employed in industries facing major lay-offs as compared to 17 percent of their U.S.-born counterparts; and

Whereas, In New York, the foreign-born share of the health care workforce (37 percent) is twice the national average, with high rates of foreign-born registered nurses (29 percent), and the highest share of home health aides (75 percent); and

Whereas, Hardest-hit industries with over-representation of a foreign-born workforce includes accommodations and food services (22 percent foreign-born), personal Services and private households (30 percent foreign-born), and Building Services (38 percent foreign-born), among others; and

Whereas, Foreign-born workers have lower incomes and larger families, on average, than their U.S.-born counterparts working in the same industries, with half the rate of health insurance; and

Whereas, Foreign-born New Yorkers who have not become naturalized citizens have significantly lower median earnings, less than \$30,000, as compared to \$48,000 for U.S.-born New Yorkers; and

Whereas, Foreign-born individuals experienced greater increased in unemployment in the first months of the pandemic than U.S.-born workers, with Latinos experiencing the highest rates of unemployment; and

Whereas, In 2019, the U.S. issued 8.7 million non-immigrant visas, which include employment-based visas; and

Whereas, Employment-based visas are issued under very specific criteria including listing the employer, and require recipient to re-apply should circumstances warrant any changes of employment; and

Whereas, Washington D.C.-based think tank, Niskanen Center, estimates that as many as 250,000 foreign-born workers on temporary visas seeking green cards could have fallen out of lawful status by June 2020; and

Whereas, With widespread layoffs and staff furloughs, hundreds of thousands of foreign-born individuals, formerly active members of the U.S. workforce, could find themselves losing lawful work authorization and resident status; and

Whereas, The Trump Administration has already issued two different actions to limit access to employment-based visas during the pandemic, through Presidential Proclamations on April 22, 2020 and on June 22, 2020 and

Whereas, These actions have been met by harsh criticism from multiple sectors, including the technological industry, and have already led to the separation of families, including at least 1,000 Indian nonimmigrant work-related based visas; and

Whereas, New York City, once considered the epicenter of the global pandemic, has long championed the rights of its immigrant residents, currently more than 3 million strong; and

Whereas, The City's economic recovery will not be possible without full participation of all New Yorkers, and most especially its foreign-born workforce; and

Whereas, In order to maintain the strength of the City's foreign-born workforce, the federal government must create a solution to provide temporary work and residency authorization for foreign-born individuals who have been laid off or furloughed due to the COVID-19 pandemic; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Congress to pass, and the President to sign, legislation that would permit employment-based status holders to retain lawful status, after loss of employment, if such loss was related to the COVID-19 pandemic.

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8/24/2020

Res. No. 1419

Resolution calling on the United States Congress to pass, and the President to sign, legislation that would provide immigration relief for family members who derive lawful immigration status from a frontline worker who passed away due to COVID-19

By Council Member Moya

Whereas, SARS-CoV-2 is the virus responsible for causing the new infectious disease known as COVID-19; and

Whereas, The first cases of humans infected with COVID-19 were identified in December 2019, and by mid-August 2020, there were more than 22 million cases reported across the world and more than 780,000 deaths linked to the disease; and

Whereas, In New York City, there were more than 227,000 confirmed cases of COVID-19 and more than 19,000 confirmed deaths from the disease by August 2020; and

Whereas, Nationally, foreign-born individuals account for a larger share of essential workers, including 17 percent of the healthcare workforce; and

Whereas, In New York, the foreign-born share of the healthcare workforce is more than twice the national average, with high rates of foreign-born registered nurses, and the highest share of home health aides; and

Whereas, New York City's Mayor's Office of Immigrant Affairs estimates that more than 47 percent of hospital medical staff and more than 79 percent of home health aides are foreign-born, across the five boroughs; and

Whereas, A large proportion of foreign-born frontline workers in the healthcare profession are present in the United States on nonimmigrant visas; and

Whereas, Employment-based nonimmigrant visas are restrictive and must specify an employer and location of employment, requiring individuals to re-apply should circumstances warrant any changes of employment; and

Whereas, Certain nuclear family members may derive visas from a primary nonimmigrant visa-holder, but if this primary visa-holder passes away then all family members on derived visas must return to their countries of origin; and

Whereas, In many cases, families on such visas have established lives in the United States, with employment, schooling, and connections to local communities that make it very difficult to uproot and return to their countries of origin; and

Whereas, This is additionally difficult for children who may no memory of their birthplace or may be U.S.-born citizens themselves; and

Whereas, In May, the United States House of Representatives passed the HEROES Act (H.R. 6800) sponsored by U.S. Representative Nita Lowey (D-NY), which, among other things, provided specific immigration relief to surviving family members of frontline healthcare workers who passed away as a result of contracting COVID-19; and

Whereas, Congressional action on this specific provision is desperately needed as families are already fighting their pending deportations, brought about by fatal SARS-CoV-2 infections; and

Whereas, In August, ProPublica highlighted significant under-reporting of COVID-19 related deaths within the healthcare profession by New York State, the U.S. Center for Disease Control and the U.S. Occupational Safety and Health Administration, among other entities; and

Whereas, As a result, it is difficult to estimate the number of healthcare professionals who have contracted fatal COVID-19 infections, despite higher levels of exposure; and

Whereas, The deaths of visa-sponsoring individuals is likely to put many immigrant New Yorkers at risk of losing their own immigration statuses and subjecting them to removal proceedings solely because their family members sacrificed their lives to help others during an unprecedented global pandemic; now, therefore, be it

Resolved, That the Council of the City of New York calls on the United States Congress to pass, and the President to sign, legislation that would provide immigration relief for the noncitizen family members who derive lawful status from a frontline worker who passed away due to COVID-19.

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8/24/2020