File #: Int 0656-2011, **Version:** *

Int. No. 656

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

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

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council finds that although there is no agreement obligating them to do so, the New York City Department of Correction ("DOC") cooperates with the federal Immigration and Customs Enforcement's ("ICE") Criminal Alien Program ("CAP") by: (i) allowing ICE agents to maintain a presence at DOC's facilities, (ii) allowing ICE agents to interview DOC inmates at DOC's facilities, (iii) sharing DOC inmate database information with ICE, including place of birth, and (iv) honoring immigration detainers issued by ICE for up to 48 hours. In CY 2009 DOC identified 12,710 DOC inmates as foreign born. ICE placed detainers on 3,506 of those inmates.

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

The Council further finds that the percentages were just as troubling in calendar year 2010. From January through November 2010, of the inmates in DOC custody with immigration detainers, 20.8% had a felony and 20.6% had a misdemeanor as their highest prior conviction. Of the inmates discharged to ICE from City jails during that

time period, 18% had been previously convicted of a felony, 22.3% had had a misdemeanor conviction as their highest prior conviction, and 49.5% had no prior convictions. In both 2009 and 2010, roughly half of the people at Rikers on whom ICE issued detainers had no criminal convictions. The Council finds this is at odds with ICE's stated goal for the CAP program, which is to"screen inmates and place detainers on criminal aliens to process them for removal before they are released to the general public."

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

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

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

§2. Chapter 1 of Title 9 of the administrative code of the city of New York is amended by adding a

new section 9-131 to read as follows:

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

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

2. "Convicted of a crime" shall mean a final judgment of guilt entered on a misdemeanor or felony charge. Persons adjudicated as youthful offenders, pursuant to section 720.10(6) of the Criminal Procedure Law, or juvenile delinquents, pursuant to section 301.2(1) of the Family Court Act, shall not be considered convicted of a crime.

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

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

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

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

7. "Terrorist screening database" shall mean the central database, created pursuant to Homeland

Security Presidential Directive 6, of individuals who are known or reasonably suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism, maintained by the federal bureau of investigation's terrorist screening center.

b. Prohibition on use of department resources. The department shall not use any department resources to honor a civil immigration detainer by: (1) holding an individual beyond the time when such individual would otherwise be released from the department's custody or (2) notifying federal immigration authorities of such individual's release, provided that such individual (i) has never been convicted of a misdemeanor or felony; (ii) is not a defendant in a pending criminal case; (iii) has no outstanding warrants; (iv) is not and has not previously been subject to a final order of removal pursuant to 8 C.F.R. 1241.1; and (v) is not identified as a confirmed match in the terrorist screening database.

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

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

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

conviction but no felony convictions; (5) the number of individuals transferred to immigration pursuant to civil immigration detainers who had no criminal convictions; (6) the number of individuals transferred to immigration pursuant to civil immigration detainers who had no criminal convictions and against whom all criminal charges were subsequently dismissed; (7) the amount of State Criminal Alien Assistance funding requested and received from the federal government; and (8) the number of individuals for whom civil immigration detainers were not honored pursuant to subdivision b of this section.

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

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