



## Legislation Text

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**File #:** Res 0163-2010, **Version:** \*

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### Res. No. 163

Resolution urging the United States Congress to pass and the President to sign the Protect Citizens and Residents from Unlawful Detention Act and the Strong Safe Treatment, Avoiding Needless Deaths, and Abuse Reduction in the Detention System (STANDARDS) Act, two bills that will reform the U.S. immigration detention system.

By Council Members Mark-Viverito, Dickens, Dromm, James, Lander, Rodriguez and Williams

Whereas, The 1996 changes to the Immigration and Nationality Act (INA) expanded both the classes of crimes that make non-citizens removable and the categories of persons subject to mandatory detention; and

Whereas, Those 1996 changes to the INA resulted in the expansion of the immigration detention system; and

Whereas, As of January 25, 2009, 32,000 persons from 177 different countries were in the custody of Immigration and Customs Enforcement (ICE) and 58% (or 18,690) of them did not plead or were not proven guilty of a crime, meaning that they did not have criminal convictions; and

Whereas, The 32,000 immigrant detainees are held in a network of 350 local and state jails under Intergovernmental Service Agreements, as well as in private, for-profit prisons and some federal facilities; and

Whereas, The federal immigration detention system has been adjudged to have numerous violations of the federal government's standards for detention; and

Whereas, Felix Franklin Rodriguez-Torres was a construction worker who lived and worked in New York City from the time he emigrated from Ecuador in 1998; and

Whereas, On November 8, 2006, after serving five months at Rikers Island for petty larceny, Mr. Rodriguez-Torres was sent by immigration officials to an immigration jail in Eloy, Arizona; and

Whereas, Mr. Rodriguez-Torres died of testicular cancer that went untreated during his two months at

the Eloy, Arizona immigration prison facility; and

Whereas, In 2006, ICE, a division of the Department of Homeland Security (DHS), instituted several policy changes that led to ICE's increased reliance on home raid operations; and

Whereas, Since 2006, when ICE expanded its home raid operations, lawsuits have been filed in every region of the country alleging ICE misconduct; and

Whereas, According to reports, ICE agents have engaged in misconduct such as (i) entering homes without legal authority, (ii) illegally seizing non-target persons during home-raid operations, (iii) illegally searching homes, and (iv) illegally seizing persons based solely on their race, ethnicity or status as a limited-English proficient person; and

Whereas, The reported misconduct of ICE agents is particularly disturbing because DHS regulations and policies incorporate constitutional requirements, specifically those that are set forth by the Fourth Amendment prohibiting unlawful searches and seizures; and

Whereas, The Fourth Amendment restricts the power of police to seize people for investigatory purposes or to search a home without consent - in such cases, officers are required to have reasonable suspicion that an individual is engaged in unlawful activity; and

Whereas, ICE agents generally use Warrants of Deportation and Removal when conducting home raids, which are administrative, rather than criminal, and as such do not grant authority to officers to breach doors without the informed consent of a person in the home; and

Whereas, Administrative warrants do not authorize agents to enter homes without consent because they are not issued by an impartial magistrate; and

Whereas, When ICE agents enter a home without consent, with only an administrative warrant, it constitutes a constitutional violation that goes to the heart of the Fourth Amendment; and

Whereas, On July 30, 2009, Senator Robert Menendez of New Jersey and Senator Kirsten Gillibrand of New York responded to a report finding that the practices of ICE agents are in direct violation of the Fourth

Amendment by introducing the Protect Citizens and Residents from Unlawful Detention Act (S. 1549) and the Safe Treatment, Avoiding Needless Deaths, and Abuse Reduction in the Detention System Act (Strong STANDARDS Act, S. 1550), two pieces of legislation that would reform the nation's immigration arrest and detention system; and

Whereas, On January 19, 2010, Congress Members Diane E. Watson and Lynn C. Woolsey introduced the Strong STANDARDS Act companion bill in the House (H.R. 4470); and

Whereas, If enacted, the Protect Citizens and Residents from Unlawful Detention Act would establish minimum standards of procedure and treatment for United States citizens, lawful permanent residents and immigrants who are impacted by immigration enforcement and detention operations; and

Whereas, If enacted, the Protect Citizens and Residents from Unlawful Detention Act would require that ICE detainees be advised of their basic legal rights and any available legal resources, including the availability of free legal services from non-profit service providers and the right to access counsel at no cost to the government; and

Whereas, Further, if enacted, the bill would encourage government accountability by requiring reporting on current enforcement practices and their impact on U.S. citizens, lawful permanent residents and immigrant communities, as well as by establishing an ICE Ombudsman to investigate complaints, assist in resolving complaints, and recommend personnel actions to DHS; and

Whereas, The STANDARDS Act would establish minimum detention standards and would require the Secretary of DHS to ensure that laws concerning the treatment of detainees are properly enforced; and

Whereas, The impetus for the STANDARDS Act is the fact that DHS detention standards are not consistently enforced, illustrated by the deaths of, according to the American Civil Liberties Union, 104 in-custody deaths since 2003, and reports of widespread abuse within detention facilities; and

Whereas, The medical care system in immigration detention facilities is dangerously inadequate with unique consequences for women; and

Whereas, Improving health care for immigrant detainees should be a top priority for the Administration;  
and

Whereas, The problems that exist within the nation's immigrant arrest and detention system put the  
health, welfare and rights of people at risk; and

Whereas, In the words of the late Senator Edward M. Kennedy, a co-sponsor of both pieces of  
legislation, “[i]mmigrants still come to America in search of a better life for themselves and their families, and  
they make invaluable contributions to every aspect of our society. Our ability to protect their rights is a test of  
our own humanity, and we have to get it right today;” now, therefore, be it

Resolved, That the Council of the City of New York urges the United States Congress to pass and the  
President to sign the Protect Citizens and Residents from Unlawful Detention Act and the Strong Safe  
Treatment, Avoiding Needless Deaths, and Abuse Reduction in the Detention System (STANDARDS) Act, two  
bills that will reform the U.S. immigration detention system.

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