



Mayor's Office of
Immigrant Affairs
Bitta Mostofi
Commissioner

October 2, 2019

Testimony of Bitta Mostofi, Commissioner
NYC Mayor's Office of Immigrant Affairs

Before a hearing of the New York City Committee on Immigration:

Introduction 1706 ("Prohibiting a smart chip from being added to New York City identity card")



Introduction

Thank you to Chair Menchaca and the members of the Committee. My name is Bitta Mostofi and I am the Commissioner of the Mayor's Office of Immigrant Affairs. I am joined today by Nicole Perry, deputy commissioner for the Office of Financial Empowerment at the Department of Consumer and Worker Protections; Sam Solomon, deputy counsel to the Chief Privacy Officer, in the Mayor's Office of Operations and Mayor's Office of Information Privacy, who has served as the point person on privacy matters on this project; and John Paul Farmer, the City's Chief Technology Officer, who are here to address questions in their respective areas of expertise.

Thank you for the invitation to testify on this bill. I welcome the opportunity to discuss the work that the Administration has done to explore this project, and to explain why the Administration opposes the bill as written.

Background on IDNYC smart chip exploration

The IDNYC program and its partners across the Administration initiated the exploration of a smart chip for purposes of financial access several years ago. This was prompted in part by the City Council's directive, in the local law that established IDNYC, that the Administration "expand the benefits associated with the card, including, at a minimum, by promoting acceptance of the card by banks."¹ As I have previously testified before this Committee, the City has undertaken significant efforts to this end and has achieved only modest accomplishments. As of today, just 13 banks and credit unions have publicly agreed to accept the IDNYC as primary identification for account-opening, and none have the kind of citywide scale and accessibility offered by the large national banks. We have heard repeatedly from cardholders that there is continuing interest in facilitating greater financial access, and specifically raising challenges cardholders have experienced with banking. Accordingly, we have considered alternative ways to support New Yorkers in need, and we elected to explore the use of a smart chip to increase financial access and MTA integrations with IDNYC.

In summer 2018, we issued a request for information, in collaboration with the Office of the Chief Technology Officer, seeking input from interested parties. We also held meetings with advocates who have worked on IDNYC for years to brief them on our exploration.

In late 2018, we issued a notice of intent to enter in to negotiations. This did not commit the City to any contracting, but instead permitted us to move ahead with our process of continuing to learn more from potential partners about what might be possible and what kinds of terms we might be able to negotiate for.

In brief, throughout the past 15-plus months of active work on this, we have conducted numerous consultations with experts, briefings and meetings and calls with advocates and Council staff, and we have consistently taken seriously the feedback we have received.

Opt-in model

I want to emphasize that through these endeavors we have maintained a goal of providing New Yorkers with more options to manage their personal affairs with confidence, autonomy, and dignity.

We have learned how challenging it is for so many families to obtain safe, affordable banking services. Too many have lost confidence in traditional options and have been forced to turn to alternative services to manage their finances, which exact high fees from already vulnerable people. Further, those who

¹ NYC Administrative Code § 3-115(f)(2).



engage with existing resources have expressed concerns around access, fee transparency, and general education or information.

A chip-enabled card and associated financial services account could help expand New Yorkers' options by offering an account that is affordable, that the cardholder can easily access wherever they are, that is insured, and includes stringent consumer protections. What is more, the city has sought to ensure this product includes extensive security protections.

It is important to understand that a chip-enabled card would be entirely optional. Cardholders could choose whether they want to opt-in to receive a card with a chip or whether they want a card without a chip at all. Anyone who has any misgivings about holding a chip card would be entirely free to receive a non-chip-enabled card, just as the IDNYC card exists today. In fact, at this Committee's last hearing on this topic, on February 11 of this year, Chair Menchaca referred to this opt-in model as a "compelling" argument in favor of making this option available.

First, I note that we currently have 13 financial partners. Our goal with those partners has been broader education on banking options and increased financial health. The addition of this option would follow that same model.

We understand that, even with an opt-in model, there may be concerns that cardholders may not sufficiently understand the implications of opting into an account that can be accessed using a smart chip. The concern has been raised that by simply offering this product to cardholders, some cardholders may believe that the City endorses this financial product as risk-free or that the product is subject to the same rules and protections as the IDNYC card program itself. To address this, the City would take several measures to ensure that cardholders are informed of all product policies, fees, and privacy policies prior to choosing to receive a chip card. First and foremost, we would by contract require certain information be included in the notice documents to customers. We would require the financial provider to make sure that these policies are outlined in clear, understandable language, translated in to the Local Law 30 languages. In addition, we would work with the financial provider, the Office of Financial Empowerment, and community partners to conduct a citywide, multilingual public education and outreach on an ongoing basis. This would be instrumental in educating cardholders about their options, including other options for financial access besides a IDNYC chip-enabled card.

We remain in the process of exploring this optional benefit. Unfortunately, as written, Introduction 1706 would deny New Yorkers the ability to make a choice for themselves, and deprive them of an option that could improve their ability to better manage their financial health. That approach represents an unwillingness to engage in the issues and an unwillingness to explore creative solutions to help community members in need, even though a resolution could result in positive benefits for New Yorkers. It further undermines the ability of New Yorkers, including the most vulnerable, to make important and empowered decisions for themselves. In fact, when IDNYC conducted focus groups with unbanked and underbanked individuals this April, the results showed that 85% of participants were interested in obtaining a smart chip on their IDNYC in order to use it for financial services access provided they could receive full information on fees, access, and privacy protections, and that 100% of participants were interested in obtaining a smart chip on their IDNYC to use it to travel on the MTA.

A method of addressing significant need for low-income residents

Since the launch of the IDNYC program, the City has sought to increase access to financial services to all New Yorkers, particularly low income New Yorkers. Through partnerships with local banks and credit unions, IDNYC has helped thousands of New Yorkers open bank accounts with their IDNYC card.

The reality is that there is still an immense need for better options. As my colleagues from the Office of Financial Empowerment will explain further, it has estimated that there are hundreds of thousands of unbanked and underbanked households in New York City—with more than 11% of households entirely unbanked and over 20% underbanked. These figures are staggering.

Living unbanked in a city like New York adds enormous financial strain to low income families. Individuals without bank accounts must rely on alternative service providers, such as cash checking, to manage their money. These providers charge high, predatory fees for services, which are unavoidable for those without alternatives. Too many unbanked individuals pay exorbitant fees for check-cashing services or other alternative services. An unbanked full-time worker would save \$41,600 over the course of her career by using a low-cost checking account rather than alternative financial services; these savings could generate up to \$360,000 in wealth over her career.²

We have also learned that fees associated with standard bank accounts drive many low income individuals away from these services. In the focus groups we held earlier this year, several focus group participants reported that they had abandoned their financial accounts after being charged a number of unexpected fees. The lack of transparency and inflexibility of these fees seriously damaged trust in financial products.

While continuing to expand our partnerships with banks and credit unions, the IDNYC program continues to look for innovative ways to address this problem. We have learned from other cities and communities that any solution must include a fee structure that is transparent, affordable, and flexible to income volatility. We learned that the City must work to ensure that individuals are thoroughly informed about the responsibilities and risks of joining financial services. We also recognized that designing a product that places the security of the cardholder at its core represents an opportunity for the City to offer cardholders a consumer-friendly and accessible option with strong protections negotiated for by the City.

Providing individuals with options for access to financial services that they understand and trust can be a powerful tool to allow families to save, plan for the future, and maintain stability in their life. Without access to these resources, individuals are faced with a multitude of pressures that make it exceedingly difficult to overcome poverty.

Increased access to financial services and ability to use mass transit

In our work exploring this option, we have focused in particular on access. On a daily basis, many people commute across the city for work, for school, for childcare, or for other responsibilities. The ability to withdraw, deposit, and manage funds at access points around the city can significantly reduce the amount of time and effort required to go about daily activities. With access challenges, daily budgeting and planning of expenses is a major source of anxiety for unbanked and underbanked persons. Planning how much cash you may need on hand can be the difference between making it home safely or not.³ As I mentioned, most of IDNYC's existing bank and credit union partners are community based and have a limited number of branches and access points across the city.

² Matt Fellowes and Mia Mabanta, METROPOLITAN POLICY PROGRAM AT BROOKINGS, *Banking on Wealth: America's New Retail Banking Infrastructure and Its Wealth-Building Potential* (January 2008), available at https://www.brookings.edu/wp-content/uploads/2016/06/01_banking_fellowes.pdf.

³ One focus group participant stated: "If I don't have that much on my MetroCard, I keep like \$100 on me. But if I have a lot on my MetroCard, then I only keep like \$40 or \$60. Because then the idea of that is if I'm stuck anywhere in the city, I want to be able to get back. Or if the train is shut down, or something crazy happens, I'll be able to at least jump in the cab and pay one way."

A chip-enabled product would offer access points in neighborhoods across the city. Cardholders could manage their funds at their convenience—online, at ATMs, neighborhood retail locations, at their place of work, or near home. This could substantially alleviate daily pressures of planning and insecurity around access. We also plan to develop a model to grant cardholders the ability to make remittances to family and friends in other countries at lower rates than may currently be available on the market.

In addition, the MTA has begun roll-out of a contactless payment system that will result in an eventual phase-out of the current MetroCard. This system will require all commuters to use a contactless payment vehicle to pay for transit, a chip enabled IDNYC card can help ensure equitable access to all New Yorkers.

Several other major cities that adopted a contactless public transit system subsequently experienced an uptick in merchant adoption of cashless systems. We are already seeing many New York stores follow suit. If this trend continues, the burden would again fall most heavily upon unbanked and underbanked residents.

Adding a contactless payment option to the IDNYC card could address this concern by providing equal access to this new system. We have received broad support for integrating MTA transit payments with the IDNYC card. Unbanked and underbanked focus group participants unanimously agreed that they would like to use their IDNYC card to pay for mass transit, with participants emphasizing that they felt it would ease their ability to use the subways and buses and one noting that it would save them money by eliminating the difficulties of consolidating multiple MetroCards with small balances.

Data security and technology

I want to give a brief overview of the technology that would be used in the proposed product. Chip-enabled IDNYC cards would include a dual interface, RFID, EMV-standard smart chip that supports both insert and contactless transactions. EMV is a global standard for cards equipped with computer chips, and outlines requirements for the technology used to authenticate chip card transactions. These chips are nearly impossible to clone and contain a number of security features. This technology has been broadly adopted in the United States, in Europe, and around the world.

Cardholders would make transactions either by inserting their chip into a chip-reader terminal, or by tapping their card on a point-of-sale terminal where contactless payments are permitted. For privacy and security reasons we determined the card would not include a magnetic stripe, as is common with credit and debit cards today. We have learned that magnetic stripes are highly vulnerable to information theft and duplication, and are the source of much credit card theft today, with thieves skimming payment details from a magnetic stripe and using this information to make fraudulent purchases.

We have had numerous open and frank discussions with advocates about the security of this proposed technology, and we have learned a great deal from them. In our work with the Chief Privacy Officer, the Chief Technology Officer, and a range of experts, we have worked hard to identify risks and identify methods to mitigate them.

Advocates have raised concerns about what information might be collected by the financial provider, how this information might be used, and with whom it would be shared. Let me first say that the City would not permit any individual-level information to be shared, sold, or otherwise disclosed to third parties not involved in providing the financial services to the cardholder, unless absolutely required by law. We have



been, and continue to be, extremely clear about the information security requirements we would contractually hold any financial provider to.

Through a contracting process, the City could impose stringent requirements upon a financial services provider to set the terms of its operation of this function, including how it handles privacy and security matters. For example, the City could limit the amount of information being collected and retained to the minimum amount required. We could also require certain security measures to protect against hack, theft, or data breach, and require that all access to this information is strictly limited and audited. We could also contractually require the financial provider to notify the City in the event of a subpoena for cardholder information in order to allow the City to attempt to intervene, where such notification is not prohibited by law. Through these kinds of contract provisions and others, the City would be able to secure far greater data security protections for cardholders than are available in other banking scenarios.

Privacy

We have worked hand in hand with the Chief Privacy Officer and her staff throughout this exploration process, in order to ensure that privacy issues are identified, analyzed, and addressed appropriately.

We are committed to the highest degree of privacy protections that can be imposed at all stages of this project. That means minimization of data collection, retention, and disclosure to the minimum that is required by law, making sure cardholder data is not bought and sold by marketers, and requiring any contracting party to give the City the opportunity to intervene in response to a subpoena, as authorized by law, among other measures.

The Chief Privacy Officer has made very clear that the privacy goals of the Administration on this project must be to identify potential risks, and to explore and employ methods to mitigate those risks. Working with the CPO and her team, and in conversations with experts and advocates, we have understood that while certain risks may be inherently present in this type of technology, those risks can be mitigated by a variety of measures, such as limiting contactlessly transmitted data to only minimal technical specifications information, rather than data points such as name, address, or account number, and by imposing requirements to ensure cardholders and the City receive notice when information is requested about their records. In some respects, we have jointly determined that certain technologies would not be appropriate for this kind of initiative—for example, for this project, we determined that magnetic stripes' and barcodes' use of unencrypted data was not acceptable.

In addition, as with data security issues, the City's role as contracting party in this instance would be immensely valuable, since it provides the government with the ability to interpose mandatory product design elements, as well as comprehensive notice and other privacy protections in the relationship between the cardholder and a financial services partner. Notably, these kinds of heightened protections—beyond the requirements of federal and state law—are not generally available to consumers who walk in to any bank or credit union branch or a bank branch, or who learn of an IDNYC-accepting bank from us. This benefit of proceeding by contract to secure privacy protections for cardholders, rather than taking a hands-off approach to any financial partner, cannot be understated—it would represent a truly significant reordering of the relationship between financial services providers and their clients, led by the City's privacy-focused example and expertise.

Consumer protections

In our work to learn what would make a consumer-friendly offering, we have learned from community members how hidden fees, a lack of transparency or clarity about these fees, and inflexible policies have driven many low-income New Yorkers away from traditional banking products. We know that alternative



financial service providers charge unreasonably high fees for services, and that unbanked and underbanked individuals who rely on these services are often targeted by predatory lenders, and may fall victim to fraud, for which they are not covered by federal protections.

We firmly believe that where we are able, we must help advance better options.

In partnership with the Office of Financial Empowerment, and informed by focus groups, experts, and conversations with community groups, we have developed the outlines of a fee structure that would provide low-income individuals with the maximum ability to secure, access, and manage their money. This would minimize fees overall, and entirely eliminate certain types of fees that are the most challenging, such as overdraft fees.

I already outlined our requirement that access points be available throughout the city. Cardholders would have to be able to load cash, withdraw money, and manage their account for free or at low, reasonable, predictable costs where fees are required. Customer service support must be available to support all aspects of account management and fraud resolution. Cardholders must also be able to contact customer service in the language that they speak to ensure they are getting the help that they need.

We would also require, with no exceptions, that any accounts opened through this project are covered by FDIC insurance and protections against fraud, loss, and theft, just as with other bank accounts. We would not permit a financial services partner to market any loan products through this program.

Perhaps most importantly, we would require the financial provider to take extensive measures to ensure that cardholders are thoroughly informed about all account policies on fees, data collection, retention, and disclosure *prior* to opting in to any payment account, and impose certain requirements on the content of related consumer notices. In addition, the City would plan to launch a citywide, multi-language, ongoing public education campaign to educate cardholders about the benefits and implications of opening a smart chip account, and to offer more comprehensive financial education and empowerment programming.

Concerns have been raised about the possibility of contracting with a financial technology company, citing examples of fintechs that have used predatory measures to monetize data, deny access to funds, and exploit customers. This is simply not the case here. Fintech is a very broad term for many kinds of businesses involving finance in some aspects and technology in others. Any “money services business” is subject to FinCen and BSA regulations. We have clearly outlined all of our red-lines in all negotiations, and are confident that in a contracting process with any entity—whether a fintech company, a bank, or another platform—that the City would be defining, by contract, the permitted activities with regard to transparency of fees, privacy and security protections, and other provisions.

Community reinvestment

The City has also indicated our interest in requiring a financial services provider to establish a community reinvestment program. This would mandate that the provider dedicate a percentage of profits to a community reinvestment fund. This fund could be managed by an advisory board of stakeholders to determine the allocation of the fund, within parameters to be defined through contract negotiations, such as for financial health educational materials, seed funding for new financial empowerment efforts, and more.

A prohibition is misplaced

I have described here what we are exploring, and remain in the process of exploring. As you’ve heard, this project places foremost importance on consumer consent and privacy and security protections. We



Mayor's Office of
Immigrant Affairs
Bitta Mostofi
Commissioner

are committed to exploring whether we can bring crucial services to New Yorkers in a way in which any risks can be appropriately mitigated. Importantly, this project would create a much-needed additional option for financial access and would empower residents to decide if such an option would be right for them.

I urge the Chair to withdraw Introduction 1706. The Administration would be happy to continue discussions and collaborative work. In addition, we would be happy to discuss the prospect of codifying parameters of what would be acceptable in this area, based on the extensive protections we have been developing and recommending for this initiative, and other considerations the Council and other stakeholders may have.

**Testimony of Nicole Perry
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Immigration**

**Hearing on
Introductions 1706-2019**

October 2, 2019

Good morning Chairman Menchaca and members of the committee. My name is Nicole Perry and I am the Deputy Commissioner for the Office of Financial Empowerment at the New York City Department of Consumer Affairs, recently renamed the Department of Consumer and Worker Protection (DCWP). I would like to thank the committee for the opportunity to testify today on behalf of DCWP Commissioner Lorelei Salas regarding Introduction 1706-2019 related to prohibiting a smart chip in the New York City identity card.

DCWP protects and enhances the daily economic lives of New Yorkers to create thriving communities. Through the work of the Office of Financial Empowerment (OFE), we assist New Yorkers with low incomes by developing and offering innovative programs and services to increase access to high-quality, low-cost financial education and counseling, safe and affordable financial products, and access to income-boosting tax credits and savings. DCWP has served more than 55,000 clients through our Financial Empowerment Centers, helping them reduce their debt by \$70 million, and increase their savings by \$5.8 million¹. DCWP also conducts research and advocates for public policy that furthers its work to support New York City's communities.

DCWP is committed to making sure access to safe and affordable financial products is a reality for all New Yorkers, whether through our programs and services, such as the Financial Empowerment Centers, our community partnerships, or looking at innovative policies with our colleagues in the administration. From the inception of the IDNYC program, DCWP has worked hand-in-hand with its sister agencies and the Administration to ensure the card could be a vehicle for financial access. In 2014, we partnered with the Mayor's Office to seek and obtain regulatory guidance ensuring that the card could be used as a form of identification at banks and credit unions to open new accounts, including NYC SafeStart Accounts. In the case of NYC SafeStart Accounts, we have collaborated with credit unions and banks to connect New Yorkers to a savings account with no overdraft fees, no or low minimum balance requirements, and no monthly fees (provided minimum balances are met). In 2016, with the financial institutions who agreed to accept IDNYC as a primary form of ID, many of which are credit unions, we developed a citywide advertisement campaign educating New Yorkers on their options for banking access through IDNYC. We see exploring IDNYC's ability to provide New Yorkers with a safe and affordable financial product as a continuation of this work that seeks to broaden the available tools for improving financial health.

¹ Since 2008

In 2015, DCWP commissioned a study by the Urban Institute, using data from the Federal Deposit Insurance Corporation (FDIC), to investigate how many New Yorkers are unbanked or underbanked – a key metric used to measure financial access and an indicator of an individual’s financial health. The study found, at the time, that 11.7% of New York City households did not have a bank account, while approximately 25.1% of households were underbanked². The study also showcased that those neighborhoods with the highest rates of unbanked or underbanked also had majority Black or Hispanic communities. For these communities, lacking access to safe and affordable financial products has implications on the full range of their financial health, impacting their ability to conduct day-to-day transactions, save money, guard against unexpected financial emergencies, and connect to safe credit-building and asset-building products.

Today, DCWP released additional information with updated 2017 data from the FDIC revealing only marginal decreases in unbanked and underbanked households of .5% and 3.3% respectively³. Moreover, the data continues to show that these households are not evenly distributed throughout the City, with communities in the Bronx and Brooklyn having a higher rate of households that are unbanked and underbanked at 49.2% and 33.7%, respectively, as opposed to 29.6% in Queens, 27.4% in Manhattan, and 21.6% in Staten Island.

These neighborhoods are most often “banking deserts”, or areas with inadequate brick and mortar financial institutions, and are often populated by businesses offering high-cost alternative financial services, such as pawnbrokers, check cashers, or money transferrers. The individuals and families who come to rely on alternative financial services face challenges every day in managing and improving their financial health. New Yorkers who lack accounts or transaction cards, and rely on check cashers, pay more in fees or may be forced to keep their cash in unsafe places. The average worker without a bank account can spend more than \$40,000 over the course of their lifetime to cash their paychecks⁴. Every year, New Yorkers across the City spend \$225 million in check cashing fees⁵. These are real measures of the amount of money removed from communities who can afford it the least.

Furthermore, New York City’s unbanked households continue to be highly concentrated in neighborhoods that have higher rates of vulnerable residents who are struggling with other areas of financial health, including no or low credit scores and delinquent debt. We have worked extensively with organizations in these communities, and we have met with New Yorkers in these communities – educating them on a range of topics including the dangers of predatory lending and distressful student loan debt or promoting DCWP’s Financial Empowerment Centers.

New Yorkers who do not have the opportunity to access safe financial resources may find that their only option is an expensive or predatory financial product that adversely affects their overall financial health. These products may not be insured by the FDIC or may not have built in protections for loss, theft, and unauthorized charges. They may charge junk fees harmful to

² <https://www.urban.org/interactive-map-where-are-unbanked-and-underbanked-new-york-city>

³ Brookings, Banking on Wealth: America’s New Retail Banking Infrastructure and Its Wealth-Building Potential, January 2008

⁴ Office of Financial Empowerment, Neighborhood Financial Services Study, June 2008.

working families on a tight budget, such as overdraft, insufficient funds, and declined transaction fees. Ultimately, the lack of access to a safe and affordable financial product will have repercussions down the line on the financial health of these New Yorkers.

Because of these challenges faced by our communities that lack access to affordable or safe financial products, DCWP believes it is critically important the City continues to take the lead on expanding access and protecting consumers from predatory practices. The City of New York, by developing a financial product, can provide a critical service to unbanked and underbanked communities that need more safe and affordable solutions than those offered currently in their communities. We hope the Council will reconsider this legislation and continue to partner with the City to improve financial access for more New Yorkers.

IDNYC Statement

Hello, My name is Karen Ottoni and I am a Director of Ecosystem at the Linux Foundation and work on the Hyperledger Project. The Linux Foundation supports and promotes the development of open source technology and communities around the world. Hyperledger focuses specifically on building production-grade blockchain technologies for business, organizations, and governments to be used in initiatives that seek to leverage distributed trust via a distributed network for business and societal value.

There are many use cases where blockchain technology is applicable, but one of them, that is being explored significantly, is financial inclusion. The reason for this is that the barriers that exist here in the US and around the world, while they may vary in degree, are in many ways similar—financial inclusion exists due to a lack of access to services, lack of verifiable credit history, predatory practices, and a lack of formal identification. Initiatives that tackle these issues in a privacy-preserving, identity-enabling manner are gaining traction and success in communities typically excluded from the financial system.

One example of our technology being used for financial inclusion is being led by Kiva in Sierra Leone. Kiva is a 501(c)3 non-profit organization that allows people to lend money via the Internet to low-income entrepreneurs and students in over 80 countries. Kiva's mission is "to connect people through lending to alleviate poverty." In Sierra Leone, millions of citizens do not have formal identification and hence cannot access financial services. For example "people in Sierra Leone who wanted to open a bank account might be asked to bring utility bills or information on their credit history, which they might not have."¹

Kiva is working with the National Civil Registration Authority to establish an eKYC—or Know your Customer—identity platform. " they can enable in two seconds a KYC check to happen which would normally have taken two weeks. A credit check can happen in real time in a way that allows the consumer to be in control of what information is shared and allows the bank to get a complete and unaltered version of his or her credit history. The effort to create a digital identity, gather and store an individual's transactional information in a secure and tamper-proof environment, provide transparency to the stored information, and create a credit history...will dramatically increase access to capital at reduced costs"

Another example closer to home is with the City of Austin who also wanted to tackle a similar problem amongst the homeless population in the city. A widespread fragmentation of health data is exacerbated in individuals who use emergency services frequently while lacking the IDs necessary for threading their history together—a common occurrence among the homeless population. Austin developed a pilot project called "MyPass" which is a blockchain-enabled platform that facilitates resident access to vital social and health services by digitizing their

1

<https://www.devex.com/news/in-sierra-leone-new-kiva-protocol-uses-blockchain-to-benefit-unbanked-95490>

identification and other key records. They started off small to see how it could work and are looking to expand it. In a case study by GovLoop.com, they state that “The principles underlying MyPass have obvious public sector applications – coordinating services for refugees, or for those displaced by a natural disaster.”²

Given the Hyperledger community’s activities in financial inclusion, we support this effort in modernizing the IDNYC card in a way that helps those who want to seek expanded services. While IDNYC isn’t using the technology as advanced as what I cite in my examples, it is a worthwhile initiative on further inclusion for the city to provide its citizens with an identification alternative that provides increased access to city services.

The IDNYC proposal to host and execute a banking access feature on a dual interface smart chip card is a first step in leveraging known and privacy-preserving technology for financial inclusion. Without storing personal identification information, it would provide New Yorkers with an option that facilitates interaction with financial services, access to financial enabling services, and greater protection from predatory fees and practices which can cripple a vulnerable population without much wiggle room for surprise costs. It could allow them to participate in a system that others benefit from that has typically not cared to see un/under-banked populations as potential customers. The opt-in feature for the smart chip gives people the option to leverage those services or not, but having the City of New York offer that capability is an option that can really help these communities connect to the formal financial system and access services and technology that doesn’t leave them behind the rest of the population in basic services.

² <https://www.govloop.com/community/blog/case-study-austin-using-blockchain-address-homelessness/>



FOR THE RECORD

@ the Urban Justice Center:
40 Rector Street, 9th Floor
New York, New York 10006

www.StopSpying.org | (646) 602-5600

STATEMENT OF
ALBERT FOX CAHN, ESQ.
EXECUTIVE DIRECTOR
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, INC.

BEFORE THE
COMMITTEE ON IMMIGRATION
NEW YORK CITY COUNCIL

FOR A HEARING CONCERNING
INT. 1706-2019, PROHIBITING A SMART CHIP FROM BEING ADDED TO
NEW YORK CITY IDENTITY CARD

PRESENTED
OCTOBER 2, 2019

Good afternoon, my name is Albert Fox Cahn, and I am the Executive Director of the Surveillance Technology Oversight Project (“S.T.O.P.”). I speak today in support of Int. 1706, which would prohibit New York City’s (“IDNYC”) municipal identification cards from containing or transmitting any information other than what is printed on the face of the physical card. I thank Chair Menchaca for his leadership in protecting the privacy of all New Yorkers, particularly the undocumented families put at risk by any IDNYC “smart chip.”

Mayor de Blasio’s proposal to equip IDNYC with radio-frequency identification (“RFID”) tags will risk nothing less than mass surveillance.¹ RFID chips are passive, powered by radio waves that create an electric current in the tags, triggering them to broadcast stored information.² As a result, RFID chips will broadcast without any action by a cardholder, and potentially even without their knowledge.³

Even assuming security best practices, the city could, at best, limit how much data attackers could intercept. No technical solution would prevent an adversary or a government agency from using RFID technology to track cardholders as they go about their daily lives. In this way, even the most limited RFID deployment raises real concerns, but the City is sadly proposing to go much farther. Currently, the administration is proposing to expand data storage so IDNYC can be used for commercial payments, but doing so would only further facilitate the tracking of cardholders through their travel and spending patterns.

Specifically, the administration advocates using IDNYC in conjunction with the Metropolitan Transportation Authority’s (“MTA’s”) new fare-collection system, “One Metro New York,” or “OMNY.” Alarmingly, the MTA and its vendor have failed to fully disclose what data is collected from riders and how it is used.⁴ The MTA and third parties could easily allow OMNY to inadvertently morph into a perpetual log of every rider’s movements, tracking who takes part in a political protest or attends mosque.⁵

Since IDNYC is thousands of New Yorkers’ only ID, its use with OMNY would empower the MTA to transform the card into a tool of suspicionless surveillance.⁶ The danger is even more

¹ See *Testimony on Oversight of the New York City Identification Program*, N.Y. CIVIL LIBERTIES UNION (Feb. 11, 2019) [hereinafter *NYCLU Testimony*], https://www.nyclu.org/en/publications/testimony-oversight-new-york-city-identification-program#_ftnref5.

² *Privacy Best Practices for Deployment of RFID Technology*, CTR. FOR DEMOCRACY & TECH. (Nov. 30, 2008), <https://cdt.org/insight/privacy-best-practices-for-deployment-of-rfid-technology>.

³ *Id.*

⁴ See SURVEILLANCE TECH. OVERSIGHT PROJECT, *OMNY SURVEILLANCE OH MY: NEW YORK CITY’S EXPANDING TRANSIT SURVEILLANCE APPARATUS 2* (Oct. 1, 2019).

⁵ *Id.* at 5.

⁶ *Id.*

concerning given the New York City Police Department's ("NYPD's") history of mass surveillance, particularly targeting historically marginalized communities.⁷

The combined privacy impact of OMNY and IDNYC will be felt most by the underbanked communities that the new "smart chip" is supposedly designed to serve. This is because riders with credit cards and smart devices would be less likely to pay for their transit with their IDNYC chip. Riders with no other bank account will be forced to face the choice of letting their government ID become a perpetual tracking device or to search out a way to obtain an OMNY pass vending machine. As of today, we have no idea where those machines will be located or how much riders will be forced to pay for the privilege of preserving their privacy.

In Chicago, for example, the vendor behind OMNY deployed a similar transit payment card with fees for cash payment so high that they caused a major backlash.⁸ Such fees constitute a privacy tax, one which many of those whom IDNYC was created to benefit cannot afford.⁹

We were promised that IDNYC would give peace of mind to New Yorkers who had no other form of ID, but the new OMNY will put thousands on edge. This is especially true for our undocumented neighbors.¹⁰ And the irony doesn't end there. It was only a matter of months ago that Mayor de Blasio fought a prolonged court battle to protect the privacy of IDNYC records.¹¹ He opposed the terrifying effort by Republican Assembly members to preserve IDNYC data so it could be used by ICE in immigration enforcement. But the Mayor's new proposal captures far more data than his adversaries ever could have. Even worse, it put that information in the hands of financial intermediaries that can be easily subpoenaed by the Trump Administration.

In this climate, we know that I.C.E. will use any information at its disposal to target undocumented New Yorkers.¹² The data collected by IDNYC card processors will be nothing short of a treasure

⁷ See, e.g., Joseph Goldstein, *New York Police Are Using Covert Cellphone Trackers, Civil Liberties Groups Says*, N.Y. TIMES (Feb. 11, 2016), <https://www.nytimes.com/2016/02/12/nyregion/new-york-police-dept-cellphone-tracking-stingrays.html>.

⁸ See Jon Hillekevitch, *CT-1 Curbing Some Ventra Fees*, CHI. TRIBUNE (May 24, 2013), <https://www.chicagotribune.com/news/ct-spm-2013-05-24-ct-mer-cta-ventra-debit-card-changes-20130525-story.html>; see also Steven Vance, *Study: Ventra Fees Cost Social Service Providers 140,000 Bus Rides per Year*, STREETS BLOG CHI. (May 9, 2016), <https://chi.streetsblog.org/2016/05/09/study-ventra-fees-cost-social-service-providers-140000-bus-rides-per-year>.

⁹ See Carlos Menchaca et al., *A Dangers IDNYC Overhaul: Don't Equip This Card with Financial Technology Chips*, N.Y. DAILY NEWS (Sept. 13, 2019, 5:00 AM), <https://www.nydailynews.com/opinion/ny-oped-the-dangerous-push-to-overhaul-idnyc-20190913-qjnil6rahfd4vpsge43z5fta7q-story.html> ("We are talking about the most vulnerable New Yorkers—the homeless, the homebound, the elderly, the young, veterans, immigrants . . .").

¹⁰ See Jillian Jorgensen, *Immigration Groups Say They Won't Recommend IDNYC to Clients if Financial Smart Chip Plan Moves Forward*, N.Y. DAILY NEWS (Feb. 11, 2019, 7:15 AM), <https://www.nydailynews.com/news/politics/ny-pol-immigration-advocates-idnyc-smart-chip-financial-20190211-story.html>.

¹¹ See *Castorina v. N.Y.C. Human Res. Admin.*, No. 153487/2017, 2019 WL 3550709 (N.Y. Sup. Ct. July 31, 2019); *Castorina v. De Blasio*, 56 Misc. 3d 413, 55 N.Y.S.3d 599 (N.Y. Sup. Ct. 2017).

¹² See, e.g., Christopher J. Brooks, *ICE Arrests More Than 80 Immigrants Over 5 Days on LI*, NYC, NEWS DAY, <https://www.newsday.com/long-island/ice-arrests-immigrants-long-island-1.36873559> (last updated Sept. 26, 2019, 8:46 PM);

trove. But it won't be held by the City, instead, it will be controlled by banks and credit card networks. Even if these companies disagreed with the Trump deportation philosophy, we can't depend on them to reliably fight off I.C.E.'s attempt to commandeer this information.¹³ And since many IDNYC cardholders are undocumented, location and merchant patterns could be used to create a target list for raids.¹⁴ We should note that the privacy impact is exacerbated by existing NYPD data sharing agreements with federal agencies.¹⁵

City officials responded before to these exact same privacy threats. They put in safeguards to block retention of IDNYC cardholders' identity and residency documentation for longer than absolutely necessary.¹⁶ They even limited recordkeeping, removing any reference to which types of documents are used to establish identity and residency.¹⁷ So how can the Administration move forward with this proposal when none of these requirements extends private sector partners? How can they use RFID technology that exposes cardholders to data breaches and identity theft?¹⁸

In light of the foregoing, we urge this City Council to enact Introduction 1706 and prohibit the retention or transmission of any additional information in IDNYC cards. This legislation will reinforce the purpose for which the IDNYC program was created: providing a valid, reliable, and privacy-protective form of ID to those New Yorkers most at risk. I thank you for giving me the opportunity to address this urgent issue, and I look forward to working with the Council to safeguard the rights of New Yorkers in the months and years to come.

Miriam Jordan, *More Than 2,000 Migrants Were Targeted in Raids. 35 Were Arrested.*, N.Y. TIMES (July 23, 2019), <https://www.nytimes.com/2019/07/23/us/ice-raids-apprehensions.html>. See also Ben Chapman, *New York Attorney General, Brooklyn District Attorney Sue ICE Over Courthouse Arrests*, WALL ST. JOURNAL (Sept. 25, 2019, 6:30 PM), <https://www.wsj.com/articles/new-york-attorney-general-brooklyn-district-attorney-sue-ice-over-courthouse-arrests-11569450631>.

¹³ See N.Y.C. ADMIN. CODE § 3-115(e)(4) (prohibiting disclosure of applicant information except under certain narrow circumstances, such as “[t]o a law enforcement agency that serves the [HRA] a judicial subpoena or judicial warrant”).

¹⁴ See SURVEILLANCE TECH. OVERSIGHT PROJECT, *supra* note 4, at 5.

¹⁵ See Felipe De La Hoz, *New York, a Sanctuary State, Provides Criminal Justice Data to ICE*, DOCUMENTED (May 8, 2019, 10:47 AM), <https://documentedny.com/2019/05/08/new-york-a-sanctuary-state-provides-criminal-justice-data-to-ice>.

¹⁶ Executive Order No. E-739, Retention of Copies of Records Provided by New York City Identity Card (IDNYC) Program Applicants to Prove Identity and Residency (Dec. 7, 2016), https://www1.nyc.gov/assets/idnyc/downloads/pdf/eo_739_retention_120716.pdf.

¹⁷ N.Y.C. ADMIN. CODE § 3-115(e)(5).

¹⁸ Jorgensen, *supra* note 10; Menchaca et al., *supra* note 9.



**IMMIGRANT
DEFENSE
PROJECT**

40 West 39th Street, Fifth Floor, New York, NY 10018

Tel: 212.725.6422 • Fax: 800.391.5713

www.ImmigrantDefenseProject.org

**New York City Council Committee on Immigration
October 2, 2019 Hearing re: INT 1706
Testimony of Mizue Aizeki, Deputy Director, Immigrant Defense Project**

Int 1706 - In relation to prohibiting a smart chip from being added to New York City identity card.

Thank you to the Committee for holding this public hearing and for allowing the public the opportunity to address our deep concerns and opposition to the De Blasio administration's proposal to integrate multiple functions into the IDNYC. The Immigrant Defense Project (IDP) is a New York-based nonprofit that works to secure fairness and justice for all immigrants by focusing on the rights of those caught at the intersection of the criminal justice system and the immigration system.

IDP is part of the NYC Municipal ID Coalition that worked in 2014 with the New York City Council and the administration for a municipal ID that would ensure equal access to services and protections for all New Yorkers. A central principle of this coalition was protecting the privacy and security of cardholders, and to provide a uniquely protected state-issued ID card for those who were vulnerable as they often faced obstacles in acquiring one—namely the homeless, formerly incarcerated people, gender non-conforming people, youth and undocumented immigrants. This card would provide some protection from being brought into the precinct to those who were subject to frequent interaction with the NYPD and the City committed to not retaining the underlying documents used to acquire a card in 2016.

The administration has stated that the primary features they are exploring to be enabled by a chip is the contactless MTA fare system and to some form of access to financial services. To be clear, striving for equal and efficient access to public transportation and solutions to achieve economic justice are critical and must be explored. Once again, we are here to reiterate that the addition of these functions to the IDNYC is, clearly, not the solution.

In early January, we sent a memo to the administration and a sign on letter outlining our concerns and requesting responses to key privacy, security, and financial questions. In February, we presented testimony to this committee that covered many of the key concerns with the City's "smart chip proposal" and also submitted a narrower set of questions to the City. In April we sent an even narrower set of questions to the administration. These questions remained unanswered. Today we submit a letter signed by 65 organizations—including community, labor, immigrant, civil rights, legal services, and economic justice organizations—expressing "united and unqualified opposition to the administration's plan to add financial technology and a host of integrations to NYC's

municipal identification (IDNYC) cards, which are held by more than 1.2 million New Yorkers.”

I have attached my prior testimony and the January memo, and summarize some key points below:

- It remains a central principle to our vision for the IDNYC that New Yorkers and their personal information should be kept safe from discriminatory local and federal policing, as well as from surveillance.
- The tools of police and ICE surveillance, as well as the scale of the state’s efforts to identify and track people, have grown immensely over the past 15 years. ICE has repeatedly made clear that NYC is a primary target for ICE policing because it has passed laws to protect people from being turned over to immigration.¹ Data collection and analysis is central to ICE’s ability to identify and track immigrants. ICE relies on data gathered by a wide array of government and private sources. Increasingly, data collection and analysis is also central to the profit-driven strategy of corporations including the financial technological sector.² The increased state interest and investment in surveillance, combined with the corporate drive to collect and share data as a key source of profit, is one of our key concerns about the IDNYC smart chip proposal. ICE currently relies on a data analysis system developed by Palantir that allows the agency to quickly analyze vast quantities of data collected by private and state entities. Health insurance companies deny coverage or increase rates based on gathering “lifestyle” data.³ Globally, police regularly access smartcard data from transit usage.⁴
- Privacy and security experts that we have consulted with have highlighted a few other key concerns with this proposal: creating multiple datasets tied to the ID, narrowing the pool of IDNYC cardholders by offering and/or requiring services that are most likely to be used by people without other options makes it easier to deanonymize the data, and the “function creep”--the gradual widening of uses beyond its original stated purpose--associated with ID integrations. As stated in my February 11, 2019 testimony, examples have shown that once implemented, the ID begins to be used in an increasing range of functions which not only

¹ Beth Fertig, “ICE Complains About NY’s Sanctuary Policies After Making 82 Arrests,” *The Gothamist*, September 27, 2019. <https://gothamist.com/news/ice-complains-about-nys-sanctuary-city-policies-after-making-82-arrests>; Chantal da Silva, “ICE Blames New York’s Sanctuary Policies For Crackdown Led to 225 Arrests,” *Newsweek*, April 19, 2018. <https://www.newsweek.com/ice-blame-new-yorks-sanctuary-policies-crackdown-led-225-arrests-892533>

² <https://www.theverge.com/2018/8/30/17801880/google-mastercard-data-online-ads-offline-purchase-history-privacy>

³ Marshall Allen, “Health care insurers are vacuuming up details about you -- and it could raise your rates,” *ProPublica*, April 17, 2018. https://www.propublica.org/article/health-insurers-are-vacuuming-up-details-about-you-and-it-could-raise-your-rates?utm_campaign=sprout&utm_medium=social&utm_source=facebook&utm_content=1531834045

⁴ <http://www.ttf.org.au/wp-content/uploads/2016/06/TTF-Smartcard-Ticketing-On-Public-Transport-2010.pdf>; “Personal data disclosure to police and other law enforcement agencies,” March 14, 2017, <http://content.tfl.gov.uk/aac-20170314-part-1-item15-personal-data-disclosure.pdf>; <https://www.theguardian.com/government-computing-network/2012/feb/09/met-police-oyster-card-data-requests-tfl>

makes the ID a source of more and more data for both the public and private sector but also potentially forces residents to get an ID in order to access services.

We have had numerous meetings, submitted memos, presented our research that we've gathered from consulting with numerous experts, yet many of the questions we have raised with the administration about privacy, data collection, police access to this data, and how the financial inclusion will work remain unanswered. For many of these questions, we have been given no clear answer because 'this' is still in the exploratory phase, or because of procurement rules. We have received no clear answer about whether or not data will be collected. We have received no clear answer whether or not data will be collected. We have received no clear answer as to whether or not NYPD or ICE or other state or private interests would be able to access data collected by a third party vendor. We have not received a clear explanation of how any of this will work to alleviate poverty and protect privacy and security nor the role of outside vendors in shaping it.

The addition of a chip towards "financial inclusion" has repeatedly been framed by the administration as a proposal that comes out of the community, with a singular purpose of improving the lives of New Yorkers. Yet it is no secret that financial corporations like MasterCard have an interest in this proposal. Mastercard has named "financial inclusion" as a fundamental component of its strategic plan for increasing profits. A centerpiece of this includes moving towards a cashless society—with a key tactic being the integration of their services with mass transit systems, pushing their financial services into the hands of low-income people. In fact, shortly after joining the De Blasio Administration, the former CTO of New York City launched NYCx, which issued the IDNYC RFEI. Today, he works for Mastercard as the Executive Vice President of Global Cities.⁵ There he is to play a lead role "in scaling of urban tech solutions pioneered by Mastercard."⁶

Launched in 2017, a Mexico MasterCard financial inclusion initiative linked to transit has been riddled with problems. The Mastercard licensee that issues the card, Broxel, is very poorly regulated and has disastrous customer service. It freezes cash balances on the metro card above 15,000 pesos (less than 1,000 USD) and doesn't allow cardholders to transfer money until they sign a contract with the company for a

⁵ <https://www.govtech.com/people/New-York-City-CTO-Miguel-Gamino-Departs-for-Private-Sector.html>;
<https://www.linkedin.com/pulse/idnyc-gateway-financial-inclusion-all-new-yorkers-youssef-kalad>

⁶<https://newsroom.mastercard.com/press-releases/miguel-gamino-jr-joins-mastercard-as-executive-vice-president-for-global-cities/>; Cesar Espinoza, VP for Government and Development in Latin America, MasterCard: "It is MasterCard's global vision to go after cash. Cash is actually our biggest competitor in Latin America, cause it is like 85% of transactions that people make, at least in Latin America are cash-based...What we want is more MasterCard cards in the market, that is what we want. We are going to bring more cards into the market, using transportation as an excuse...So what we are getting in return, for the more the card is used, if it's used in the restaurant, pharmacy, at the supermarket, that is our business model. We make money out of that transaction." Cesar Espinoza, VP, Business Development at Mastercard, Ali Withers, "Mastercard Targets Mexico City Where Cash is King," Bloomberg Businessweek, August 16, 2017; <https://www.bloomberg.com/news/articles/2017-08-16/mastercard-targets-mexico-city-where-cash-is-king>

"premium" account. The metro card can be used as a credit card, for which Broxel charges a real interest rate (CAT, a standardized Mex. gov't measurement) of 97%.⁷

While companies like Mastercard insist that they value privacy and financial solutions for the most economically marginalized people, a growing part of their business model is not only expanding the use of credit cards but also the collection and sharing of data.⁸ The Electronic Privacy Information Center (EPIC) filed a complaint with the U.S. Federal Trade Commission over Mastercard's data sharing agreement with Google.⁹ A MasterCard led collaboration between Microsoft, called City Possible, outlined in a white paper the key elements of an initiative that, contrary to the stated objectives of the IDNYC program, looks to integrate staggeringly large sets of consumer data compiled from MasterCard's "more than 160 million transactions every hour all over the world" to "take the byproduct of those transactions" and, "by combining insights from how consumers shop, travel, and interact with services," help governments become more "efficient and productive."¹⁰ Is this where we are leading the IDNYC program?

Because of the conflicting information that we have received, the lack of transparency surrounding this proposal, and the evident corporate motivation for this pathway, and the broad community concern, it is not possible to have confidence that the privacy, security and economic justice of New Yorkers is at the core of this proposed integration.

As I mentioned in my previous testimony, "No other municipal ID program in the U.S. has implemented the kind of technology and integration that NYC is now considering. Chicago opted for minimal data retention with their municipal ID card—in addition to not retaining any supporting documents, the system does not retain names or addresses. The transit card function to Chicago's municipal ID is completely optional, as the City offers metro cards that are not linked to the ID. Also, Chicago decided against including a financial services function to their municipal ID due to concerns about data collection, as well as the exorbitant fees typically charged by the financial services providers." Chicago took these steps to provide maximum protection to the rights of those for whom their municipal ID was intended for—similar to the IDNYC, some of the most vulnerable residents of their City.

⁷ "The average, that is to say, the approximate real cost that the client will end up paying for a credit or a credit card, including interests and commissions, is 97.1% without tax. For example, if you solicit a credit of 10,000 pesos with Broxel, what the client will end up paying, in addition to the 10,000 pesos, are 9,700 extra pesos." <https://www.rindecuentas.org/reportajes/2019/05/15/creditos-vales-comerciales-y-multinivel-la-red-detras-de-las-tarjetas-del-metro/#sdfootnote4sym>

⁸ MasterCard, "City Possible: Using Data to Create New Opportunities," white paper downloadable at: <https://partners.mastercard.com/en-us/welcome-to-the-city-possible/?Channel=Quartz&Marketer=MasterCard&TestControl=0&AdCreative=Bulletin2>

⁹ Mark Bergen and Jennifer Surane, "Google and Mastercard cut a secret ad deal to track retail sales," Bloomberg, August 30, 2018, <https://www.bloomberg.com/news/articles/2018-08-30/google-and-mastercard-cut-a-secret-addeal-to-track-retail-sales>.

¹⁰ MasterCard, "City Possible: Using Data to Create New Opportunities," white paper downloadable at: <https://partners.mastercard.com/en-us/welcome-to-the-city-possible/?Channel=Quartz&Marketer=MasterCard&TestControl=0&AdCreative=Bulletin2>.

What we have repeatedly urged the administration to consider, and stated quite clearly in a meeting earlier this week, is that we need to preserve the IDNYC as is. There is no other government-issued ID that offers the same level of protection for undocumented immigrants from potential intrusion from police, ICE or other entities. It is time to close the chapter on this proposed modification of the IDNYC to allow the space for the necessary stakeholders to fully engage the City's goal of maximizing financial inclusion.

I will leave it to the financial equity and economic justice experts to explore those possibilities with the administration. But from the position of an organization whose goal is to provide maximum protection for immigrants during a time of increasing hostility and the constantly growing engagement of the tech industry in the surveillance and policing state, it is clear that the correct path is not to give financial corporations more power and information on us than they already have.¹¹ In conversations with economic justice advocates, it is clear that a positive step towards financial inclusion must include fighting for banking options that are invested in the public good--and are transparent with their business strategies and handling of our data. We need an equitable consumer banking system: we need publicly-owned banks that are democratically controlled and regulated like a public utility. We need financial cooperatives that are driven by mission rather than the profit motive, and we must ensure that underbanked populations in our communities can access the services they need without fear of their data being collected to be used against them or monetized.

¹¹ Mijente, Immigrant Defense Project, and the National Immigration Project of the National Lawyers' Guild. *Who's Behind ICE: The Tech and Data Corporations Fueling Deportation*. October 2018
<https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>



NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION
IDNYC OVERSIGHT HEARING – FEBRUARY 11, 2019

TESTIMONY BY DEYANIRA DEL RIO
CO-DIRECTOR, NEW ECONOMY PROJECT

Good afternoon, Committee Chair Menchaca and members of the Committee. Thank you for holding today's IDNYC oversight hearing and for the opportunity to testify. My name is Deyanira Del Rio and I am the co-director of New Economy Project, an economic justice organization that works with community groups and low-income New Yorkers throughout NYC. New Economy Project was part of the original municipal ID coalition that worked with the City to create and promote IDNYC in 2015, and we applaud Mayor de Blasio and the City Council for launching this vital program. Like other coalition partners here today, we remain committed to ensuring the continued integrity of the program and security of undocumented, homeless, and other New Yorkers who rely on IDNYC in their daily lives.

My testimony today will focus on the Mayoral administration's dangerous proposed plan to partner with a financial technology or other financial services company to embed an EMV/contact and RFID/contactless chip in the next generation of IDNYC cards, to allow for broad integration with private and public services and systems.¹

New Economy Project unequivocally objects to the administration's planned integration of IDNYC with financial services, MTA, and other systems. Such sweeping integration would result in massive data collection about IDNYC cardholders and expose undocumented and other New Yorkers to serious privacy, surveillance, and financial risks. Our organization fights for fair access to banking -- but this is not the way to achieve that. It is vital that the NYC Council understand just how problematic -- and dangerous -- this proposal is. Given the threshold issues presented today, it should be clear that the risks presented would not be eliminated by making tweaks to the proposed program. We urge you to join us in calling on the administration to abandon its plan.

My testimony will focus on a few main points:

1. The administration's proposed plan would unnecessarily jeopardize the integrity of IDNYC and undermine public confidence in the program.

¹ The City issued a Request for Expressions of Interest (RFEI) in an "IDNYC Dual Interface Card Payment Initiative" on May 30, 2018, with responses from financial services providers due by June 29, 2018. In mid-December, the City issued a solicitation for negotiated acquisition, with responses from financial services providers due on January 8, 2019 (the deadline was then extended by 10 days). See <https://tech.cityofnewyork.us/2018/05/22/idnyc-nycx-rfeij/>.

2. The administration's proposed plan would not expand access to banking.
3. Nonbank and financial technology (fintech) companies, with which the City would likely partner to implement its envisioned plan, present specific fair lending, privacy, and consumer protection risks.
4. The administration should pursue progressive approaches to financial inclusion that prioritize equity and transparency, in partnership with community groups and other stakeholders.

Founded in 1995, New Economy Project works with community groups and low-income New Yorkers throughout the city to build an economy that works for all, based on principles of cooperation, equity, racial justice, and ecological sustainability. We have been at the forefront of efforts in New York and nationally to combat predatory finance; hold regulators and elected officials accountable; and support cooperative finance and community-led development. Our staff includes nationally-recognized experts on financial regulation and consumer protection, fair housing and fair lending, community development finance, debt collection, immigrants' rights in the banking system, and more. My comments today are informed by New Economy Project's 24 years of experience providing legal advice and representation to low income New Yorkers; bringing major impact litigation against predatory financial companies; conducting community know-your-rights workshops for tens of thousands of people; and securing local, state, and federal policy changes on issues ranging from subprime lending, foreclosures, and debt collection to immigrant taxpayer rights, insurance redlining, payday lending, and more.

1. PROPOSED CHANGES WOULD UNNECESSARILY JEOPARDIZE THE INTEGRITY OF IDNYC AND UNDERMINE PUBLIC CONFIDENCE IN THE PROGRAM

The administration's proposed changes would go far beyond IDNYC's original intent of providing safe, government-issued photo ID to immigrant, homeless and other New Yorkers. The City would in effect be creating a platform through which a range of public and private services would be connected to people's identity cards -- now and going forward -- without a clear sense of the kinds of data that will be created, or how this data will be used. The proposed changes would raise risks that outweigh any potential benefits, and chill uptake and renewal of IDNYC cards among populations it was designed to serve. Other groups here today are testifying in greater detail about privacy, surveillance, and other risks associated with the proposed plan.

The administration's rationale and motivation for pursuing these changes are unclear, given the risks to vulnerable New Yorkers. The administration has cited multiple, distinct reasons for incorporating changes to the IDNYC card. Rather than pursue wholesale integration with IDNYC as a solution to distinct issues and concerns, the City should address each of these on the merits, and develop solutions that do not expose IDNYC cardholders to undue risk.

2. THE ADMINISTRATION'S PLAN WOULD NOT EXPAND ACCESS TO BANKING

As a steering committee member of the municipal ID coalition, New Economy Project worked closely with coalition partners and the administration to ensure that IDNYC was designed to meet federal regulatory requirements, precisely so that banks and credit unions could accept IDNYC as primary ID to open accounts. Fourteen financial institutions currently accept IDNYC as a primary form of identification. These include the city's not-for-profit community development

credit unions, which not only open accounts for IDNYC cardholders but also provide responsible loans, Individual Taxpayer Identification Number (ITIN) application services, free tax preparation and financial counseling, and more to promote their members' well-being and financial stability. Large national banks, for their part, do not accept IDNYC or recognize it only as a secondary form of ID, adding to barriers that immigrant and low-income New Yorkers face with respect to banking access. The federal regulators, meanwhile, have clearly affirmed that banks are permitted to accept IDNYC as they would other forms of government-issued ID.²

The administration has cited big banks' refusal to accept IDNYC in justifying its pursuit of a fintech solution. This plan, however, would do nothing to increase acceptance of IDNYC by banks or credit unions, which would continue to open accounts based on their existing identification and other requirements. What would be newly-introduced through this proposal is a reloadable prepaid debit option, discussed below, widely regarded by advocates, financial regulators and experts as an inferior option to fully-insured, federally-protected depository accounts. By steering IDNYC cardholders to these services, the City would effectively be reinforcing disparities in banking access.

3. NONBANK AND FINANCIAL TECHNOLOGY (FINTECH) COMPANIES PRESENT SPECIFIC FAIR LENDING, PRIVACY, AND CONSUMER PROTECTION RISKS.

The administration has stated that IDNYC cardholders who do not have bank or credit union accounts would have the option to load funds into a prepaid account, linked to their IDNYC cards. Cities like Oakland, CA, that have previously incorporated prepaid debit services directly into their municipal ID cards quickly ceased to do so, because of widespread and widely-reported problems including high and hidden fees charged to cardholders.³ Other cities, including Chicago, considered and ultimately decided that connecting their municipal IDs to financial services was too risky. The NYC municipal ID coalition opposed a similar proposal when IDNYC was developed in 2015. The Center for Popular Democracy, which has advised and supported municipal ID programs throughout the country, recommends against incorporating financial services on the IDs, citing problems experienced by municipalities like Oakland as well as regulations that require financial institutions to retain customers' documents used to open accounts for five years after the account is closed.⁴ We are unaware of any municipal ID program connected to financial services, at this point -- for good reason.

Problems with prepaid debit cards are widespread and not limited to those connected to municipal IDs. These cards, targeted to lower income people, are not uniformly covered by the strong federal consumer protections that shield all bank and credit unions accounts, in the event of fraud or loss of funds. Depending on how prepaid cards are established, a cardholders' funds may or may not be fully FDIC-insured. In October 2015, the RushCard company left thousands of people stranded -- in some cases, for weeks -- without access to their wages, Social Security benefits, and other funds.⁵ NetSpend was cited for engaging in deceptive marketing and other

² On April 30, 2015, the federal bank regulators, including Treasury Department's Financial Crimes Enforcement Network (FinCen), issued a joint letter confirming that banks may accept IDNYC to verify a customer's identity, and use the ID card's number as a valid identification number for non-U.S. citizens.

³ See, e.g., <https://www.sfgate.com/bayarea/article/Oakland-debit-card-fees-draw-criticism-4368734.php#ixzz2Q5Nxoqfka>

⁴ See, CPD *Municipal ID Toolkit*, at https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf

⁵ See, e.g., <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/unirush-llc-and-mastercard-international-incorporated/>

practices, and the list goes on.⁶ For decades, prepaid debit card companies have touted their product as a solution to “banking deserts” and, for decades, the rhetoric has failed to match the reality. Whatever one thinks of the product, New Yorkers who wish to purchase prepaid debit cards can readily do so online, at check cashing storefronts, drugstores, and other locations. There is no compelling reason for the City of New York to steer IDNYC cardholders to this service, much less to connect it to people’s identity cards.

Financial technology (fintech) companies engage in broad and invasive data collection, and often attempt to circumvent strong state consumer protection laws, like New York’s interest rate (usury) cap.⁷ According to U.S. PIRG and Center for Digital Democracy, “The use of personal data by Fintech companies is pervasive and touches every aspect of their business operation, including marketing, customer loyalty management, pricing, fraud prevention, and underwriting.....either directly collecting data from consumers or relying on third parties for Big Data analytics to classify consumers and to make predictions about them.” The consequences “are not well understood and may further increase social inequities.”⁸

Under the Trump administration, federal regulators are seeking to exempt fintech companies from key consumer protection rules.⁹ The national bank regulator has moved to issue “special purpose charters” to nonbank fintech companies, potentially conferring broad powers to evade state consumer protection laws. New York State’s Department of Financial Services has forcefully cracked down on abusive practices by online lenders and taken outspoken positions on fintech.¹⁰ In short, the City of New York would be exposing IDNYC cardholders and the IDNYC program to serious risks by steering undocumented, low income and other New Yorkers to fintech companies.

We must note that the administration has previously stated to groups like ours that it is interested in making loans and alternative credit scoring available, through IDNYC. This would be an extremely dangerous move likely to open the door to usurious lending and other abuses. This reinforces the administration’s apparent lack of understanding about the industries with which it is seeking to partner and the serious risks involved.

4. THE ADMINISTRATION SHOULD PURSUE PROGRESSIVE APPROACHES TO FINANCIAL INCLUSION THAT PRIORITIZE EQUITY AND TRANSPARENCY, IN PARTNERSHIP WITH COMMUNITY GROUPS AND OTHER STAKEHOLDERS.

New York City is a banking capital of the world, and billions of municipal dollars move through banks each year. New York is also home also to some of the strongest community development financial institutions (CDFIs) in the country, including the community development credit unions that have stepped up to accept and promote IDNYC, from day one. New York City and State

⁶ See, e.g., <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-charges-prepaid-card-company-deceptively-marketed-reloadable>

⁷ See, e.g., Senate Testimony by Frank Pasquale, Professor of Law, University of Maryland, “Exploring the Fintech Landscape”, at https://www.google.com/url?q=https://www.banking.senate.gov/download/pasquale-testimony-9-12-17pdf&sa=D&ust=1546531847924000&usq=AFQjCNEuinJlk00_U_5hFPUZQLfQ7oyVGA

⁸ See <https://www.occ.gov/topics/responsible-innovation/comments/comment-cdd-uspirg.pdf>

⁹ <https://news.bloomberglaw.com/banking-law/2019-outlook-cfpb-innovation-policies-may-face-state-challenges> and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-atty-general.pdf>

¹⁰ See https://www.dfs.ny.gov/reportpub/online_lending_survey_rpt_07112018.pdf and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-dfs.pdf>

enforcement agencies have been national leaders in promoting responsible lending, cracking down on unfair and abusive industries and practices, and keeping payday and other forms of predatory lending out of our state, working closely with financial justice, labor, and civil rights advocates and coalitions. The administration and Council should work with these and other stakeholders to craft solutions to bank redlining that address root causes and ensure equitable access to financial services for all New Yorkers.

We appreciate the opportunity to testify at today's hearing, to shine a light on groups' serious concerns and unanswered questions about proposed IDNYC program changes. When groups like ours learned about the administration's plan and expressed concerns throughout the summer, MOIA and HRA repeatedly said the RFEI was "exploratory" only and that further discussion, research and engagement would follow. In December, the administration contacted groups saying it was moving forward, and on December 14, 2018 issued a Solicitation for Negotiated Acquisition, with financial services providers' responses due in early January. The process has moved forward quickly, without meaningful consultation or engagement of community groups, advocates, City Council, and the broader public, including IDNYC cardholders. The lack of transparency is a stark contrast to the collaborative way in which groups and the City worked together to create and promote public confidence in IDNYC, and gives the impression that the administration is on a fast track and this is a "done deal."

We urge the City Council to use its oversight authority to obtain concrete answers to the many questions and concerns groups have raised (including in the attached letter and memo). We hope that the Council will probe into the administration's Request for Expressions of Interest and subsequent Solicitation for Negotiated Acquisition to identify the kinds of companies with which the administration is considering partnering and the projected costs to the City of New York. We further urge the Council to probe how the current IDNYC proposal may relate to other city initiatives, as well as any potential conflicts of interest between administration officials and companies responding to the administration's solicitations.

Thank you for your consideration. I would be happy to answer any questions.

MEMORANDUM

To: Commissioner Bitta Mostofi, MOIA; Colette Samman, IDNYC Executive Director, HRA;
J. Phillip Thompson, Deputy Mayor for Strategic Policy Initiatives
Cc: NYC Council Speaker Corey Johnson; Council Member Carlos Menchaca; Council
Member Daniel Dromm
From: NYC Municipal ID Coalition Members
Date: January 11, 2019
Re: Follow-up on IDNYC proposed changes

Thank you for meeting with us on January 7, 2019 to further discuss the administration's interest in partnering with a financial services provider to implement a smart chip on IDNYC identification cards. Our organizations have outlined our serious concerns about this proposal and process, in prior conversations and in a joint letter dated December 26, 2018 (reattached here). Although we appreciated the opportunity to meet this week, we remain deeply concerned that the City is considering making major, unprecedented changes to the IDNYC program that could expose New Yorkers to serious privacy, surveillance, and financial risks, and undermine public trust in the program. As organizations that have been instrumental in shaping and building support for IDNYC since 2014, we remain committed to the principles of inclusivity, equity, and security on which IDNYC was built. We appreciate your attention and responsiveness to community concerns.

We respectfully request the administration's responses, in writing, to our organizations' outstanding concerns and questions, below, by next Friday, January 17, 2019. Concrete answers to these questions and concerns are necessary to fully understand and address specific risks presented by the potential addition of a smart chip to IDNYC cards.

We additionally ask your agencies to commit to holding public hearings on proposed IDNYC changes. We were pleased to hear from MOIA, at this week's meeting, that the City has not decided whether it will move forward with an IDNYC smart chip. However, the administration has moved forward significantly and quickly, without sufficient engagement of community groups, advocates, City Council Members, or the general public.¹¹ With so much at stake, the City must conduct hearings and ensure a thorough, transparent public process.

Our concerns and questions about the IDNYC smart chip proposal include:

Unclear rationale and motivation for the change, given the risks to vulnerable NYers. The administration has cited multiple, distinct reasons for incorporating EMV/RFID smart chip technology on IDNYC cards. These include a desire to address "banking deserts" in NYC; to integrate IDNYC with MTA's planned contactless card payment system; to integrate IDNYC with other city agencies and services, such as DHS shelters and NYC Health + Hospitals; and to

¹¹ The City issued a Request for Expressions of Interest (RFEI) in an "IDNYC Dual Interface Card Payment Initiative" on May 30, 2018, with responses from financial services providers due by June 29, 2018. In mid-December, the City issued a solicitation for negotiated acquisition, with responses from financial services providers due on January 8, 2019 (the deadline has since been extended by 10 days).

ensure IDNYC's longevity and continued appeal, including in the event that NYS driver licenses become available to undocumented immigrants. No other municipal ID program, to our knowledge, has implemented the kind of technology and broad integration that NYC is now considering. Particularly in the current political context, unnecessary data collection on immigrant, homeless, and other New Yorkers is of grave concern. The proposed changes raise risks that outweigh any potential benefits, and could chill uptake and renewal of IDNYC cards among populations it was designed to serve.

Questions:

- Can you describe the administration's due diligence in crafting, and evaluating responses to, the IDNYC smart chip RFEI and its privacy and technological criteria? With which entities (technology, privacy, and financial services experts, regulators, and others) has the City consulted? What examples have you identified of successful municipal ID/financial services/technology partnerships, and what were their outcomes?
- Would the City collect smart chip data, either individually or in the aggregate, about IDNYC cardholders' activity? (The negotiated acquisition solicitation specifically states that "data collected through the financial institution cannot be shared with any entity *other than the City of New York.*")
- What do you project would be the City's annual cost to contract with a financial services provider to host and execute a smart chip? Is the City seeking to generate revenue from any of the proposed smart card features?

Privacy and surveillance risks, particularly those associated with RFID technology and data collection. Possible RFID harms are significant, and the potential for harm is unclear from the City's statements and RFEI. Specifically:

- RFID is not a standard but rather a collection of terms for different wireless identification technologies. Security of wireless transmission and encryption protocols depends on vendor and model. The RFEI only calls for ISO 7816 (contact), 14443 A/B (contactless), and 7813 (magnetic stripe) standards, which by themselves do not implement security or privacy features. Some products are highly insecure and have been hacked or cloned in the past.¹²
- Potential identification of IDNYC cardholders would be dependent on RFID implementation. The RFID technology could reveal from a distance whether someone is carrying an IDNYC card. Some RFID cards are readable with widely accessible technology from distances of more than 200 feet, without the cardholder's knowledge.¹³ It is unclear how the chosen technology would transmit information, and whether it would allow for the distinction/tracking of IDNYC cards specifically. Regardless of encryption protocol, a RFID wireless implementation is passively powered by induction response, which allows for card visibility to transmitters and could make the IDNYC appear—based on frequency, communication, or response—unique compared to other RFID chip cards.
- Cardholders would not be able to "opt in" to or "opt out" of the RFID technology. The administration has emphasized that IDNYC cardholders would have the option to

¹² RFID/NFC- A Pentesters Perspective by Gerhard Klostermeier:
<https://media.ccc.de/v/gpn18-79-rfid-nfc-grundlagen-a-pentesters-perspective#t=333>

¹³ The 900MHz EPC Gen2 tag (found in Enhanced Drivers Licenses and some passports) is readable from 30 feet with off-the-shelf equipment. Without amplifying the signal from a commercial reader the tag can be read from 69 feet, and with less than \$1000 of radio equipment it can be read from 217 feet away. See: DEF CON 18 - Chris Paget - Extreme-Range RFID Tracking: https://www.youtube.com/watch?v=q9_8F_BKeto

activate (or not) the financial services and other features. However, RFID cannot be turned on or off, and all IDNYC cardholders would be exposed to the risks associated with this technology—even if they did not opt in to the financial services, MTA, or other features.

Questions:

- What are the privacy risks to which the RFID chip would expose IDNYC cardholders?
 - Specifically, what type of data would be collected with the use of this technology? Would the card or RFID chip vendor, MTA, or any other entity collect location/usage data from the contactless cards?
 - From what distance could the contactless RFID cards be read? How would the public check to verify that any RFID cannot be tracked from a distance without the cardholder's knowledge?
 - What measures would the City implement to prevent city or federal agencies, or hackers, from being able to track the location of the IDNYC RFID cards?
 - What disclosures would vendors be required to share with the City and the public about how they implement any new or contactless features?
 - Would RFID implementation make the IDNYC appear—based on frequency, communication, response—unique compared to other RFID chip cards?
- Would NYPD or other law enforcement agencies be able to access the data? If so, what procedures would be required for them to do so? How have your agencies engaged NYPD or other law enforcement agencies in the smart chip research/planning, to date?
- What protections would be available to cardholders if a federal government agency demanded data/information/analysis from the City or the RFID chip vendor?
- When and how would the City be made aware of any data requests made to the private vendor and whether or not they were fulfilled?

Concerns regarding IDNYC integration with financial services and fintech companies.

The City's RFEI seeks a financial services provider to host and execute a dual interface smart chip on IDNYC cards. The financial services entity would also provide what we understand to be a reloadable prepaid debit account or similar payment option for "unbanked" cardholders. Cities that have previously attempted to incorporate (or considered incorporating) financial services directly into their municipal ID cards have ceased to do so, because of widespread problems.¹⁴ Local advocates strongly opposed a similar proposal when IDNYC was created in 2014.¹⁵

There are myriad privacy and financial risks to equipping an identity card, such as IDNYC, that contains a wealth of sensitive personal information about the cardholder—including name, address, date of birth, and ID number—with the functionality to carry out routine financial transactions. Many credit card companies have rules that prohibit merchants from requiring cardholders to provide additional identification when making purchases, precisely

¹⁴ <https://www.sfgate.com/bayarea/article/Oakland-debit-card-fees-draw-criticism-4368734.php#ixzz2O5Nxqfka>; <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/unirush-llc-and-mastercard-international-incorporated/> and <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-charges-prepaid-card-company-deceptively-marketed-reloadable>

¹⁵ The Center for Popular Democracy's *Building Identity: A Toolkit for Designing and Implementing a Successful Municipal ID Program* recommends against inclusion of a reloadable debit card feature on municipal IDs. https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf

to guard against identity theft and other risks.¹⁶ In the IDNYC smart chip scenario, the identification and payment card would be one and the same, depriving cardholders of these protections. Problems associated with hybrid student ID-debit cards may also be instructive: students have been hard-hit with overdraft and other fees; and the exclusive partnerships between colleges and financial institutions have exposed students to aggressive marketing by the financial partners.¹⁷

Additional concerns include:

- Widespread problems associated with the financial technology (fintech) industry, which includes companies that rely on broad and invasive data collection, and that often attempt to circumvent state fair lending and consumer protection laws.¹⁸ Under the Trump administration, federal regulators are actively seeking to exempt fintech companies from key consumer protection rules.¹⁹
- Prepaid debit cards and fintech products and services often carry high and hidden fees and are not uniformly covered by strong federal consumer protections that apply to bank and credit union accounts—reinforcing a two-tiered system in which the poor pay more for less advantageous (and sometimes predatory) services.
- The administration has previously stated to advocates that it is interested in making credit available to IDNYC cardholders through a smart chip—a dangerous move that could open the door to usurious lending and other abuses that are currently illegal in NYS. (We were informed by MOIA, at our January 7, 2019 meeting, that loans are not currently a priority.)

Questions:

- Has the administration consulted with credit unions and banks that accept IDNYC, about ways to expand responsible financial services access to underserved populations?
- What steps has the administration undertaken to secure broader acceptance of IDNYC—including by Designated Banks that hold municipal deposits? Have you consulted with advocates, regulators, and elected officials regarding ways to increase bank acceptance?
- We understand that one of the administration's priorities is to increase access to banking for New Yorkers through IDNYC. Can you clarify how a smart chip would directly allow IDNYC cardholders to open bank accounts?
- Federal Know-Your-Customer rules require financial institutions to retain customers' identification and other underlying documents used to open accounts, while an account is open and for 5 years after an account is closed. Could this jeopardize in any way IDNYC's commitment to not retain cardholders' personal background documents? How would the City's agreement with a financial entity be structured to avoid conflicts

¹⁶ See, e.g., MasterCard Rules, dated December 18, 2018, at <https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>, at p. 93, section 5.10.4; and Visa Core Rules and Visa Product and Service Rules, dated October 13, 2018, at p. 100, section 1.5.5.3

¹⁷ See Center for Responsible Lending, *Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees*, March 2015, http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf.

¹⁸ <https://www.google.com/url?q=https://www.banking.senate.gov/download/pasquale-testimony-9-12-17pdf&sa=D&ust=1546531847924000&usq=AFQjCNEuinJlk00 U 5hFPUZQLfQ7oyVGA;>

¹⁹ <https://news.bloomberglaw.com/banking-law/2019-outlook-cfpb-innovation-policies-may-face-state-challenges> and <https://www.americanbanker.com/opinion/cfpbs-disclosure-sandbox-puts-consumers-at-risk> and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-dfs.pdf> and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-atly-general.pdf>

between local and federal law? Could someone's records held by a smart chip provider be subject to Freedom of Information Law (if not, please explain why not)?

Thank you for your time and consideration. If the City requires additional time to answer some of our questions, please provide as much information as you are able, and a timeframe for answers to the remaining questions, by Friday, January 17, 2019. For further info, please contact Mizue Aizeki (maizeki@immigrantdefenseproject.org); Deyanira Del Rio (dey@neweconomynyc.org); Jonathan Stribling-Uss (jstriblinguss@nyclu.org); or Betsy Plum (eplum@nyic.org).

December 26, 2018

[Resubmitted on January 11, 2019 with additional signatories]

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio:

The undersigned organizations write to express our serious concerns about the City of New York's plan to implement "smart chip" technology and a financial services component on NYC's municipal identification (IDNYC) cards. The proposed changes raise a host of privacy, security, consumer protection, and other questions and concerns, which we have attempted to raise with the City agencies coordinating this process. While the City has elicited proposals from a number of financial services providers, it has failed to meaningfully engage our public interest organizations or the 1.2 million IDNYC cardholders that stand to be affected, or to substantively address concerns we have raised. With so much at stake for the undocumented, homeless, and other New Yorkers who rely on IDNYC in their daily lives, we urge the City to change course.

We call on the City to immediately halt the IDNYC “smart chip” procurement process and to conduct public hearings about this proposal, at which the public and subject matter experts may testify. The City must engage in a transparent, accountable process and ensure that the IDNYC program does not inadvertently expose New Yorkers to serious privacy and financial risks, as well as increased vulnerability due to potential surveillance.

Given the Trump administration’s ongoing assault on immigrants, including heightened threat from Immigration and Customs Enforcement (ICE) and other Department of Homeland Security (DHS) agencies -- not to mention the long list of data breaches in the financial services arena -- there is clearly a tremendous amount at stake for New Yorkers with this proposal. The incorporation of the smart chip, and the City’s intention to enable multiple uses for the IDNYC, has the potential to expose New Yorkers to a wide range of privacy and surveillance risks. The City’s interest in including a small dollar loan feature in the card raises additional red flags, as this could make IDNYC cardholders vulnerable to high-cost loans and other abuses. These are threshold concerns that call for careful scrutiny; the process should not be rushed or allowed to bypass meaningful public input.

Our organizations include key members of the city-wide coalition that was instrumental in shaping and building support for the IDNYC program, in 2014, as well as community development credit unions that readily accept IDNYC to open accounts and provide loans and other vital financial services to New Yorkers. Collectively, we represent hundreds of thousands of immigrant, senior, homeless, and other New Yorkers who have benefited tremendously from the IDNYC program. We are grateful to you and to New York City for initiating IDNYC, which has grown to become the largest municipal ID program in the country. We are pleased that since the program’s inception, the City has made changes to IDNYC to strengthen privacy protections and expand access to the ID. We trust that we share the overarching goal of advancing New Yorkers’ security and access to the City. We appreciate also the administration’s interest in increasing financial options for underserved New Yorkers. The current proposal, however, presents risks that far outweigh any potential benefits.

Collectively, our organizations have decades of expertise in a range of privacy, financial inclusion, regulatory, consumer protection, immigration, DHS and ICE surveillance and deportation practices, and other relevant matters, which form the basis of our concerns regarding the current proposal. We are troubled also by the lack of transparency and meaningful public engagement that such a large-scale and far-reaching proposal warrants. The participatory process in which the City engaged when designing IDNYC was critical to ensuring that the program met New Yorkers’ needs, and to building widespread trust and buy-in for the program. A similar process must be instituted now.

Our organizations learned that the City was seeking a financial services partner after it issued a Request for Expressions of Interest (RFEI), on May 30, 2018, regarding an “IDNYC Dual Interface Card Payments Initiative.” Several of our groups immediately contacted the Mayor’s Office of Immigrant Affairs, Human Resources Administration, and the office of the Deputy Mayor for Strategic Initiatives to express our concerns.

After consistently telling groups for months that the RFEI was merely exploratory, and that there would be ample time and a process for our organizations to provide input, the City recently indicated that it is on a fast track to implementing the chip-embedded cards. A single meeting was convened with groups, in August, to address this proposal. The City has not yet followed through on commitments to provide greater details and to bring other stakeholders into the conversation. Just last week, the City released a Negotiated Acquisition solicitation, directed at financial services providers, with responses due by January 8, 2019. (We must note that the timeline for the solicitation coincides with the end-of-year holidays -- another indication of flawed process.)

We look forward to discussing in greater detail our organizations' serious concerns relating to cardholder privacy, data collection and sharing, surveillance, consumer protection, financial technology, fair lending, and equity issues associated with the smart chip proposal. We remain eager to work with the City to address financial access barriers that immigrant, senior, and other low-income New Yorkers face, and to develop solutions that ensure equity and fairness.

For further information, please feel free to contact Mizue Aizeki, Deputy Director, Immigrant Defense Project (maizeki@immigrantdefenseproject.org); Theo Oshiro, Deputy Director, Make the Road New York (theo.oshiro@maketheroadny.org); Deyanira Del Rio, Co-Director, New Economy Project (dey@neweconomynyc.org); or Betsy Plum, Vice President of Policy, New York Immigration Coalition (eplum@nyic.org).

Sincerely,

Arab American Association of New York
Asian American Federation
Brooklyn Cooperative Federal Credit Union
Center for Popular Democracy
Families for Freedom
Immigrant Defense Project
Inclusiv (formerly National Federation of Community Development Credit Unions)
Lower East Side People's Federal Credit Union
Make the Road NY
MinKwon Center for Community Action
Neighborhood Trust Federal Credit Union
New Economy Project
New Sanctuary Coalition
New York Civil Liberties Union (NYCLU)
New York Immigration Coalition
Northern Manhattan Coalition for Immigrant Rights

Cc:

NYC Council Speaker Corey Johnson
NYC Council Member Daniel Dromm
NYC Council Member Carlos Menchaca

Commissioner Steven Banks, Human Resources Administration (HRA)
Commissioner Bitta Mostofi, Mayor's Office of Immigrant Affairs
Laura Negrón, Chief Privacy Officer for the City of New York
Nicole Perry, Deputy Commissioner for Office of Financial Empowerment, DCA
Commissioner Lorelei Salas, Department of Consumer Affairs (DCA)
Colette Samman, IDNYC Executive Director, HRA
J. Phillip Thompson, Deputy Mayor for Strategic Initiatives

September 12, 2019

[Resubmitted on October 2, 2019 with additional signatories.]

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio:

The undersigned community, labor, immigrant, civil rights, legal services, and economic justice organizations write to express our united and unqualified opposition to the administration's plan to add financial technology and a host of integrations to NYC's municipal identification (IDNYC) cards, which are held by more than 1.2 million New Yorkers.

We call on you to halt the City's pursuit of this dangerous, corporate-driven plan, which threatens to erode public confidence in IDNYC and expose cardholders -- particularly immigrant New Yorkers -- to serious privacy, surveillance, consumer protection, and other unwarranted risks. ~~These very real risks far outweigh any purported benefits the plan would provide to New Yorkers.~~

Our organizations include leading members of the coalition that worked to design, promote, and help launch IDNYC in 2015. Collectively, we represent hundreds of thousands of low-income, immigrant, senior, homeless, and other New Yorkers who have benefited tremendously from IDNYC. Our opposition to the proposed IDNYC changes is rooted in our desire to protect the integrity of this vital program, and in our decades of work and expertise on privacy, consumer protection, immigration, financial services, federal surveillance, deportation and other relevant matters. Over the past year, many of our organizations have communicated our detailed concerns and steady opposition to this plan. We have participated in phone and in-person meetings with your administration, testified at a City Council IDNYC oversight hearing, submitted detailed memos, engaged community members, and consulted with national experts who have affirmed our assessments of the vast risks to which the proposal would expose the very New Yorkers that IDNYC is intended to support.

Last year, your administration began soliciting proposals from financial firms to host an EMV/RFID "smart chip" on IDNYC cards. According to the solicitation, the chip would allow cardholders to load funds onto their IDNYC cards, make payments to private vendors, and enable "integrations with public and private partners, such as the MTA's planned contactless fare payment system and NYC Health + Hospitals medical records."

If implemented, the proposed changes to IDNYC would facilitate unprecedented, wide-scale data collection about New Yorkers' travel, spending, and other activities. Indeed, administration officials have spoken publicly about their express interest in generating "big data" and revenue through IDNYC cards equipped with smart chips. Even if well-intended, connecting this kind of technology and data to vulnerable New Yorkers' identification cards would expose people to serious risks -- including dangerous experimentation or misuse by current or future administrations and private vendors -- that far outweigh any potential benefits. These risks are particularly heightened given the Trump administration's escalating attacks on immigrant communities.

The administration has asserted that an IDNYC-financial technology (fintech) partnership would “eliminate banking deserts.” This is false. Fintech companies are not banks. They do not provide branches and personnel that customers can readily access. They do not have legal obligations to reinvest in communities. And they are not subject to the strong, uniform federal regulations and consumer protections that govern banks and credit unions. Moreover, the fintech industry is notorious for data breaches and a business model that relies on the collection and sale of people’s personal data. By steering undocumented and low income New Yorkers to these entities, the City would be perpetuating, not resolving, inequality in our banking system and potentially facilitating IDNYC cardholders’ exploitation.

According to the City’s own research, IDNYC cardholders want access to actual banks and credit unions. In fact, more than 9,000 people used IDNYC successfully to open bank and credit union accounts in the program’s first year. The same research found that the top reason New Yorkers hesitated to get an IDNYC card was the concern that it was being used to monitor people. IDNYC cardholders simply are not clamoring for the type of “banking solution” that this proposal would advance. Recently, immigrant communities won passage of NYS Green Light legislation, which will allow undocumented New Yorkers to obtain driver licenses; this will go far to expand equitable and safe banking access for hundreds of thousands of New Yorkers.

The IDNYC fintech proposal is neither progressive nor effective. NYC is home to a robust landscape of nonprofit economic justice and immigrant rights activists; community reinvestment and fair lending advocates; consumer law attorneys; community development financial institutions; and many others that are eager to work with your administration to advance truly progressive solutions to bank redlining and economic inequality.

IDNYC was created for -- and must continue to prioritize the safety of -- undocumented, homeless, and other New Yorkers who, more than ever, face real privacy and surveillance risks. The proposed changes to IDNYC are antithetical to the program’s original purpose and scope, and would expose New Yorkers to unprecedented risks at a time when they can least afford to be subjects of such experimentation. For the security and stability of our communities, we call on you to ensure that this exploration comes to an end.

For further information, please feel free to contact Mizue Aizeki, Deputy Director, Immigrant Defense Project (maizeki@immigrantdefenseproject.org); Natalia Aristizabal, Co-Director of Organizing, Make the Road New York (natalia.aristizabal@maketheroadny.org); Deyanira Del Rio, Co-Director, New Economy Project (dey@neweconomynyc.org); Betsy Plum, Vice President of Policy, New York Immigration Coalition (eplum@nyic.org); or Daniel Schwarz, Privacy & Technology Strategist, New York Civil Liberties Union (dschwarz@nyclu.org).

Signed,

African Communities Together
ALIGN
Arab American Association of New York
Association for Neighborhood and Housing Development
The Black Institute
Brandworkers
Brooklyn Cooperative Federal Credit Union
Brooklyn Defender Services
Cabrini Immigrant Services of NYC, Inc.

CASA – New Settlement Apartments
Center for Family Life in Sunset Park
Chinese Progressive Association
Citizen Action - NYC
Common Cause/NY
Community Solutions
Cooper Square Community Land Trust
District Council 37
DRUM – Desis Rising Up & Moving
East Harlem-EI Barrio Community Land Trust
Families for Freedom
Frank Pasquale, author of *The Black Box Society*
Freedom to Thrive
GOLES
Green Worker Cooperatives
Housing Court Answers
Immigrant Defense Project
Inclusiv
Interfaith Center on Corporate Responsibility
Justice For Our Neighbors
LatinoJustice PRLDEF
The Legal Aid Society
Legal Services Staff Association, NOLSW/UAW 2320
Lower East Side People's Federal Credit Union
Make the Road New York
Men Talk
Minkwon Center for Community Action
Mixteca Organization, Inc.
Mobilization for Justice, Inc.
National Center for Law and Economic Justice
Neighborhood Defender Service
New Economy Project
New Immigrant Community Empowerment
New Sanctuary Coalition
New York Civil Liberties Union
New York Communities for Change
New York Immigration Coalition
New York State Youth Leadership Council
NYC Network of Worker Cooperatives
Pan-African Community Development Initiative
Peter Cicchino Youth Project of the Urban Justice Center
Queens Law Associates
Red de Pueblos Transnacionales
SEIU 32BJ
South Bronx Unite
S.T.O.P. - Surveillance Technology Oversight Project
TakeRoot Justice
UAW Region 9a New York Area CAP Council
UHAB

UnLocal, Inc.
Upturn
Violence Intervention Program, Inc.
Volunteers of Legal Service
The Working World
Worth Rises
Youth Represent

cc:

NYC Council Speaker Corey Johnson
NYC Council Member Carlos Menchaca
NYC Council Member Daniel Dromm
Commissioner Steven Banks, Human Resources Administration
Commissioner Bitta Mostofi, Mayor's Office of Immigrant Affairs
Laura Negrón, Chief Privacy Officer for the City of New York
Commissioner Lorelei Salas, Department of Consumer and Worker Protection
J. Phillip Thompson, Deputy Mayor for Strategic Initiatives



New York City Council – Immigration Committee – IDNYC Hearing

Testimony from the New York Immigration Coalition

October 2, 2019

Good afternoon. My name is Betsy Plum and I am the Vice President of Policy at the New York Immigration Coalition, an umbrella policy and advocacy organization that works statewide with over 200 immigrant-serving member organizations. Thank you to the members of the City Council, the Immigration Committee and Chair Menchaca for convening this important hearing on IDNYC and for the introduction of legislation that would prohibit a smart chip on IDNYC cards. We fully support this legislation and feel that the addition of a smart chip would jeopardize the integrity of the card and program and the safety of the people who use it.

Since its inception in 2015, IDNYC has been a vital and well-received tool, especially for immigrant and other New Yorkers who have traditionally faced obstacles to securing a government-issued form of identification. The card has helped individuals prove their identity at hospitals and government buildings, helped parents enter their child's school, and helped hardworking New Yorkers open bank and credit union accounts to protect their earnings. Barrier after barrier has been overcome to create a more inclusive and welcoming city.

Much of IDNYC's success came from its root in community organizing and listening clearly to what communities and advocates were calling for to ensure the safest and most inclusive program. Sitting at one table, advocates and city government built trust navigating how the program's rules and regulations could protect cardholders while encouraging wide acceptance of the card, and later worked together in the aftermath of the 2016 presidential election to fortify the security of the program. This trust between the City, communities, and advocates was key to the program's success. Sitting here today, I feel more confident than ever in the safety, security, and straightforward nature of the current program. At community events across the City and with the NYIC's member organizations, the NYIC actively encourages immigrant New Yorkers to apply for and use their card. In nearly every case, the benefits far outweigh the risks. That is a principle, as well as ongoing trust from communities and advocates, that must be maintained.

The proposed changes to the IDNYC program at the heart of today's hearing go far beyond IDNYC's original intent of providing safe, government-issued photo ID to immigrant, homeless and other New Yorkers who face barriers to securing other forms of government-issued ID. In fact, it runs completely contrary to the initial goal of the program. It effectively creates a re-envisioned program that sacrifices the safety and security of the cardholders, who most rely on the IDNYC program, and trades it for potential new benefits that would be best delivered by a completely different program, particularly a more progressive one. The most important principle of the program, that the benefits always far outweigh the risks, is lost.

Embedding “smart chips” into IDNYC cards is a dangerous and ill-advised solution. There are myriad privacy and financial risks to equipping an identity card, such as IDNYC, that contains a wealth of sensitive personal information about the cardholder—including name, address, date of birth, and ID number—with the functionality to carry out routine financial transactions. There is a reason that no other municipal (or state) ID program has implemented the kind of technology and broad integration that the Mayor’s Office is currently exploring and it has nothing to do with a lack of innovative initiative and progressive will, but because of the fact that the risks are too high. Any solution, including payment cards that the City may wish to develop, should not be connected to IDNYC cards. This should be common sense, and is why we fully support Intro 1706.

And while we do not support the integration of a smart chip into IDNYC cards, we do want to work alongside our municipal leaders to continue to think progressively around solutions to various issues that they are proposing to use IDNYC to attempt to address. We want to work with the City, the MTA, and the State - who is ultimately responsible for the MTA - to ensure that all New Yorkers have access to our vital public transportation system as the MTA transitions from the MetroCard to a contactless system. We are especially eager to work with leaders to find solutions around expanding financial access and empowerment. However, finding a “one size fits all” solution via the IDNYC program to these issues is unacceptable and dangerous.

Our immigrant communities have been left beaten and bruised by rampant immigration enforcement. Parents, children, spouses, and friends are all left reeling after the deportation of a loved one, the detention of another, an unlawful home raid, the fear that entire lives and dreams will be shattered in an instant. New York City is one of the most welcoming cities in the nation for immigrants but there is still a stigma and confusion around government for many. Even with the best of intentions, our governments no longer have the benefit of the doubt. We must acknowledge the fears of immigrant communities and work together to break them down and build back trust. It is not time to dangerously play with a program that has been an incredible asset to over 1.2 million New Yorkers. Privacy and trust must be maintained and legitimacy must be afforded to the program. Our desire to uphold these principles, especially privacy, is not driven by paranoia - though we are right to be so, but by the harsh reality that we all live in, and that immigrant communities must navigate daily.

Thank you, and we look forward to continuing to work with City Council and the Mayor's Office to expand access and opportunity to all New Yorkers, while enshrining the integrity and safety of the IDNYC program. We hope the City Council will move Intro 1706 to a full vote, and are grateful to the City Council for protecting the IDNYC program and immigrant New Yorkers.

Testimony to the New York City Council Immigration Committee
In Support of Intro 1706-2019: Prohibiting a smart chip from being added to New York City identity card
Jaime Weisberg, Senior Campaign Analyst, Association for Neighborhood and Housing Development
October 2, 2019

Thank you to Councilmember Menchaca and the members of the New York City Council Immigration Committee for the opportunity to give testimony today about the addition of an EMV/RFID chip to the IDNYC identification card. I am here to testify strongly in support of your bill that would prevent such a chip from being added to the card.

The Association for Neighborhood & Housing Development (ANHD) is a nonprofit coalition comprised of over 80 neighborhood-based affordable housing and equitable economic development organizations and CDCs with over 40 years of experience in policy and organizing work related to bank reinvestment, affordable housing, and equitable economic development.

The mission of ANHD is to build community power to win affordable housing and thriving, equitable neighborhoods for all New Yorkers. As a coalition of community groups across New York City, we use research, advocacy, and grassroots organizing to support our members in their work to build equity and justice in their neighborhoods and citywide.

ANHD has been a strong supporter of the IDNYC since its inception, actively encouraging banks to accept it as primary identification and urging the regulators to support this as well. We have serious concerns about adding a so-called smart chip to the card. The risks far outweigh any benefits it might add.

Security / Privacy Concerns

First of all, we echo our colleagues' strong security and privacy concerns. The IDNYC is used far and wide throughout New York City, including by many undocumented immigrants who are particularly vulnerable right now, at risk of detention, deportation, and harassment. We have already seen the misuse of technology by big tech companies, such as Amazon, whose cloud computing and facial recognition are being used by ICE to fuel the deportation machine that is tearing families apart. While collusion with ICE is clearly not the intent of New York City, there are not enough safeguards to prevent their information from getting into the wrong hands. And not enough reasons to put them at such risk.

According to the City's own research, IDNYC cardholders want access to actual banks and credit unions. Other studies have similar findings¹. However, the city's same research found that the top reason New Yorkers hesitated to get an IDNYC card was the concern that it was being used to monitor people.

Access to Banking

Access to banking is a major concern in New York City. Fifteen percent of Black households and 18% of Hispanic households in the NY metro region are completely unbanked, versus just 2.8% for white households.² Prior studies show higher rates of unbanked residents in many NYC neighborhoods of color³. The IDNYC was designed in part to increase access to banking. In fact, more than 9,000 people

¹ <https://www.nationalcapacd.org/uncategorized/banking-color-new-findings-financial-access-low-moderate-income-communities/>

² https://www.economicinclusion.gov/surveys/2017household/documents/tabular-results/2017_banking_status_New_York_Newark_Jersey_City_NY_NJ_PA.pdf

³ <https://www.urban.org/interactive-map-where-are-unbanked-and-underbanked-new-york-city>

used IDNYC successfully to open bank and credit union accounts in the program's first year. However, more needs to be done to accomplish IDNYC's goal of increasing access to banking; only seven CRA-regulated banks accept the IDNYC as primary identification⁴. And two of those require a social security number (SSN), thus defeating the purpose.

This chip will in no way increase access to banking nor will it eliminate banking deserts. The banks have given numerous excuses over the years for why they will not take the IDNYC, but the federal regulators stated quite clearly that the ID is an acceptable form of identification⁵ and the few CRA-regulated institutions that accept it operate under the same regulations, meaning more certainly could and should accept it as it is now. There is nothing we can see in this chip proposal that would ensure more banks would accept the IDNYC as primary identification.

The recent passage of the NYS Green Light legislation allows undocumented New Yorkers to obtain driver licenses. This immigrant-led campaign will go far to expand equitable and safe banking access for hundreds of thousands of New Yorkers who will now have that form of identification, but the IDNYC should remain an acceptable alternative for those do not want a state ID or cannot afford one.

We also note that over time, banks have felt more comfortable accepting other alternative forms of identification such as the Mexican Consular ID and foreign passports without visas. This came about both through advocacy and seeing the IDs used successfully by other financial institutions. We believe the same can happen with the IDNYC over time.

The Wrong Banking Solution

FinTechs are not banks and pre-paid debit cards are not the same as bank accounts. Products like the prepaid debit cards the city is proposing incorporating as part of IDNYC are symbolic of a two-tier banking system that pushes underserved populations – low-income, minority, immigrants - to prepaid debit cards while higher income customers have access to full-service bank accounts that promote savings and can lay the groundwork to achieving larger financial goals, such as purchasing a home or financing a business. Some banks are rightly moving away from this system. Chase, for example, stopped offering its prepaid card and now offers instead a low-cost no-overdraft bank account. Other banks are introducing low-cost accounts and similar products to help people open an account or re-enter the banking system. Clearly, more needs to be done to improve access to banks and banking, and especially low and no-fee bank accounts, but a FinTech company providing more prepaid debit cards is not the solution.

Much more can be done to increase access to banks and banking for low-income communities of color and immigrant populations while protecting their privacy and security. We would be happy to sit down with all stakeholders – advocates, consumers, City officials, regulators, and banks – to explore ways to do so. This chip is not that solution and we support this bill that will prevent the city from adding it.

Thank you for this opportunity to submit testimony. I can be reached at 212-747-1117 x23 or jaime.w@anhd.org if you need additional information.

⁴ <https://www1.nyc.gov/site/idnyc/benefits/banks-and-credit-unions.page>

⁵ <https://www.scribd.com/document/272763771/BdofGovsLetter>



Testimony Before the New York City Council Regarding IDNYC Program

I want to thank City Council Member Carlos Menchaca and all members of the City Council present today for allowing me to speak about the need to ban a smart-chip on the IDNYC card. My name is Alicia Portada from the Lower East Side People's Federal Credit Union, a local not-for-profit financial cooperative with branches in East Harlem, the Lower East Side and the North Shore of Staten Island. We serve 8,500+ members many of whom are low-income, people of color and immigrants with quality and affordable financial services.

I'm here today to support the "Prohibiting a smart chip from being added to New York City identity card" bill in order to protect card holder's privacy and provide comprehensive financial access.

Our communities don't need more reloadable cards, we need to ensure that people can build assets and support the development of their communities.

Transforming the IDNYC Card from a purely identification card into a smart chip enabled card to allow financial services is a bad idea as the marketplace already has a number of reloadable card options. They are said to be preferred for their quick access, and not requiring a bank or credit union account. We believe in the initial goal of the IDNYC program, to provide required identification so that individuals could access a complete range of financial services. There is not natural step from using a reloadable card to opening an account. Also, reloadable cards come with a heavy cost, not only in terms of dollars but in lack of consumer service and consumer protections that our low-income and immigrant New Yorkers simply cannot afford.

Lower East Side Peoples Federal Credit Union's community organization partners do not ask for prepaid cards, they ask for their members and clients to have:

- Multi-lingual trained professionals who can thoroughly answer financial questions
- Physical branches where people can meet and reach trusted credit union representatives
- Access to quality financial products including low cost savings and checking accounts which help people build assets and leads them to economic security
- Access to fair and affordable credit
- Immigrant services such as ITIN lending, DACA loans, international money wiring, etc.
- Acceptance of the IDNYC as a standalone ID to open an account

More broadly, community partners want to support organically the economic development of their own communities. Unfortunately, FinTechs and out-of-state banks involved with reloadable prepaid cards do not have community reinvestment responsibilities in New York. Funds that



would be deposited on these cards would therefore flow outside NY and not yield the benefits to our communities.

We need to ensure that financial innovation doesn't come with the cost of losing consumer protections.

Most Fintech providers develop partnerships with a handful of OCC chartered banks based outside of New York State and thereby are pre-empted from our strong consumer protection laws and regulations. Reloadable cards are known for lacking consumer protections from hidden fees, liability for unauthorized transactions, uncapped fees, etc.¹

Banks and credit unions are obligated to disclose fees (and rates) to consumers at the time of account opening. Both federal and state regulation require that these financial institutions have fair and sound practices, i.e. that accurate account statements are provided, that excessive overdraft fees are not charged, that unauthorized transactions are not the liability of the cardholder and that consumers are notified of changing fees and charges.

These consumer protections have been mandated to avoid harm to consumers. We know, through our financial counseling program, of many members unsuccessfully fighting incorrect charges and/or overcharges by corporations for years. Some give up and don't follow through as they are constantly met with a bureaucratic dead-end path.

We need to maintain confidence in the IDNYC program among the vulnerable communities who most need this identification and against data breaches and identity theft risks

In the current political climate, the concentration of information and data from the primary ID coupled with account access, transactional information and possibly the funds themselves could place cardholders at greater risk both to federal authorities and to purveyors of identity theft and scams.

Our partners, like New Immigrant Community Empowerment that works with day laborers in Queens, many undocumented; and Mixteca, an organization that works with Latino and immigrant families in Sunset Park have stated that they would not feel comfortable promoting the proposed IDNYC card among their membership due to security and privacy concerns.

One of the main obstacles to banking outreach is the perceived lack of information on how personal data is shared/sold to third parties. Regulated depository financial institutions have strong policies about protecting the privacy of our members and clients. Let's not risk the strides

¹ The Pew Charitable Trusts. Consumers Continue to Load Up on Prepaid Cards. 2014.
https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2014/prepaidcardsstillloadedreportpdf.pdf



made by the IDNYC card by coupling it with the smart-chip as this could put into jeopardy its continued adoption by questioning the ability of the City to protect the private information of these vulnerable New Yorkers.

What is the solution?

We think it is a mistake to pair the IDNYC card with the smart chip and financial services.

We support the bill to keep the IDNYC as a pure identification vehicle and encourage other Credit Union, Banks and all financial institutions in NYC to accept the card as stand-alone identification. Thus, allowing full access by these vulnerable communities to quality financial services at institutions of their choice.

About Lower East Side People's Federal Credit Union

Lower East Side People's Federal Credit Union is a non-profit financial cooperative organized in 1986 that promotes economic justice and opportunity in NYC neighborhoods. We are owned by our members and dedicated to providing high-quality financial services and community development investments in low income, immigrant and other underserved communities.



1Make the Road New York Testimony on The IDNYC Program

Oct 2, 2019
New York City Council, Committee on Immigration

Good afternoon. Thank you to Councilman Menchaca and to the rest of the members of the Immigration Committee holding this hearing and listening to community members today. My name is Natalia Aristizabal and I'm the Co-Director of organizing at Make the Road New York (MRNY). Make the Road New York is a non-profit community-based membership organization with over 23,000 members dedicated to building the power of immigrant and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services. As most of you know, we operate five community centers in Brooklyn, Queens, Staten Island, Long Island, and Westchester County.

I'm here today to speak to you all about the innovative program known as IDNYC and the concerns our community has regarding potential changes that have been proposed. MRNY was an early voice urging the creation of a municipal identification card and fought hard alongside the immigrant community and others for the existence and implementation of what came to be IDNYC. We are proud of the outcome of our work and currently tell everyone in our membership that they should enroll and get ID. Our experience working with our members has demonstrated that this program is successful because our to enroll and for a while, they could do so in our offices because we were an enrollment center. The IDNYC for many of our members is the only source of identification and for some of us, we have benefited from the perks and enjoyed access to museums and city parks where we would have likely not done so in the past.

BROOKLYN
301 GROVE STREET
BROOKLYN, NY 11237
718 418 7690

QUEENS
92-10 ROOSEVELT AVENUE
JACKSON HEIGHTS, NY 11372
718 565 8500

STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
718 727 1222

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
631 231 2220

WESTCHESTER
46 WALLER AVENUE
WHITE PLAINS, NY 10605
914 948 8466

WWW.MAKETHEROADNY.ORG

MRNY is deeply concerned by the proposal the IDNYC program is going to take. Currently when a community member comes to our office asking for guidance about the IDNYC, we can tell them that even though they have to submit documentation to get the identification and will be in that database all the documents to prove who they are and their address won't be stored, we have fought to keep IDNYC as safe as possible. For someone who resides in the city and is undocumented, it is less risky to get the IDNYC than to walk around with their home passport or consular ID. So our conversations are simple and even joyful: get the IDNYC because it's safe, it's a great initiative and individuals don't have extra risk to worry about by signing up. This allows many to be able to carry out a life that many don't have to question, for example: how to get through security when visiting their kid's school during the parent-teacher night. Or how to get into a building that won't let them in without showing identification.

As an advocate for immigrants, and more specifically undocumented people who live in heightened fear during this particularly challenging time, the need to protect private information is of utmost concern, and is our job to foresee or think of the worst-case scenario, and the current federal administration has shown us that our worst fears can become true. We have attended many meetings the Mayors Office of Immigrant Affairs (MOIA) have convened over a year and a half and have not heard answers to the questions or concerns we have presented and do not feel any of the information shared with us or the benefits outweigh our concerns. We don't want third parties having our information, we don't want the possibility of being tracked or surveilled when we take the subway and we don't want to further create databases with this program, we don't want opt-in options. We know surveillance, data storage or tracking of a lot of our lives already happens in different ways but we can say that is not due to IDNYC and we want to keep it that way. We understand MOIA wants to help banking deserts and bring more benefits to New Yorkers, and while we commend this thinking we don't think a chip or contactless technology in our IDNYC gets to the roots of the problems as to why banking in low income, poor and/or communities of color are an issue or why more people don't have bank accounts. We do think the city can look into expanding the perks and who signs on to obtain the IDNYC without jeopardizing a program that is working.

In a time where there is so much distrust in government in general, the IDNYC has shown us that with good policies we can have programs that truly benefit immigrant New Yorkers and we value that trust. We should not make significant changes that will change the purpose of the identification and create mistrust between government and individuals, this needs to be preserved now more than ever.

I thank you for your time and look forward to continuing conversations that include our concerns and where it's understood how much is at stake for different IDNYC holders.

September 12, 2019

[Resubmitted on October 2, 2019 with additional signatories.]

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio:

The undersigned community, labor, immigrant, civil rights, legal services, and economic justice organizations write to express our united and unqualified opposition to the administration's plan to add financial technology and a host of integrations to NYC's municipal identification (IDNYC) cards, which are held by more than 1.2 million New Yorkers.

We call on you to halt the City's pursuit of this dangerous, corporate-driven plan, which threatens to erode public confidence in IDNYC and expose cardholders -- particularly immigrant New Yorkers -- to serious privacy, surveillance, consumer protection, and other unwarranted risks. These very real risks far outweigh any purported benefits the plan would provide to New Yorkers.

Our organizations include leading members of the coalition that worked to design, promote, and help launch IDNYC in 2015. Collectively, we represent hundreds of thousands of low-income, immigrant, senior, homeless, and other New Yorkers who have benefited tremendously from IDNYC. Our opposition to the proposed IDNYC changes is rooted in our desire to protect the integrity of this vital program, and in our decades of work and expertise on privacy, consumer protection, immigration, financial services, federal surveillance, deportation and other relevant matters. Over the past year, many of our organizations have communicated our detailed concerns and steady opposition to this plan. We have participated in phone and in-person meetings with your administration, testified at a City Council IDNYC oversight hearing, submitted detailed memos, engaged community members, and consulted with national experts who have affirmed our assessments of the vast risks to which the proposal would expose the very New Yorkers that IDNYC is intended to support.

Last year, your administration began soliciting proposals from financial firms to host an EMV/RFID "smart chip" on IDNYC cards. According to the solicitation, the chip would allow cardholders to load funds onto their IDNYC cards, make payments to private vendors, and enable "integrations with public and private partners, such as the MTA's planned contactless fare payment system and NYC Health + Hospitals medical records."

If implemented, the proposed changes to IDNYC would facilitate unprecedented, wide-scale data collection about New Yorkers' travel, spending, and other activities. Indeed, administration officials have spoken publicly about their express interest in generating "big data" and revenue through IDNYC cards equipped with smart chips. Even if well-intended, connecting this kind of technology and data to vulnerable New Yorkers' identification cards would expose people to serious risks -- including dangerous experimentation or misuse by current or future administrations and private vendors -- that far outweigh any potential benefits. These risks are particularly heightened given the Trump administration's escalating attacks on immigrant communities.

The administration has asserted that an IDNYC-financial technology (fintech) partnership would "eliminate banking deserts." This is false. Fintech companies are not banks. They do not provide branches and personnel that customers can readily access. They do not have legal obligations to reinvest in communities. And they are not subject to the strong, uniform federal regulations and consumer protections that govern banks and credit unions. Moreover, the fintech industry is notorious for data breaches and a business model that relies on the collection and sale of people's personal data. By steering undocumented and low income New Yorkers to these entities, the City would be perpetuating, not resolving, inequality in our banking system and potentially facilitating IDNYC cardholders' exploitation.

According to the City's own research, IDNYC cardholders want access to actual banks and credit unions. In fact, more than 9,000 people used IDNYC successfully to open bank and credit union accounts in the program's first year. The same research found that the top reason New Yorkers hesitated to get an IDNYC card was the concern that it was being used to monitor people. IDNYC cardholders simply are not clamoring for the type of "banking solution" that this proposal would advance. Recently, immigrant communities won passage of NYS Green Light legislation, which will allow undocumented New Yorkers to obtain driver licenses; this will go far to expand equitable and safe banking access for hundreds of thousands of New Yorkers.

The IDNYC fintech proposal is neither progressive nor effective. NYC is home to a robust landscape of nonprofit economic justice and immigrant rights activists; community reinvestment and fair lending advocates; consumer law attorneys; community development financial institutions; and many others that are eager to work with your administration to advance truly progressive solutions to bank redlining and economic inequality.

IDNYC was created for -- and must continue to prioritize the safety of -- undocumented, homeless, and other New Yorkers who, more than ever, face real privacy and surveillance risks. The proposed changes to IDNYC are antithetical to the program's original purpose and scope, and would expose New Yorkers to unprecedented risks at a time when they can least afford to be subjects of such experimentation. For the security and stability of our communities, we call on you to ensure that this exploration comes to an end.

For further information, please feel free to contact Mizue Aizeki, Deputy Director, Immigrant Defense Project (maizeki@immigrantdefenseproject.org); Natalia Aristizabal, Co-Director of Organizing, Make the Road New York (natalia.aristizabal@maketheroadny.org); Deyanira Del Rio, Co-Director, New Economy Project (dey@neweconomynyc.org); Betsy Plum, Vice President of Policy, New York Immigration Coalition (eplum@nyic.org); or Daniel Schwarz, Privacy & Technology Strategist, New York Civil Liberties Union (dschwarz@nyclu.org).

Signed,

African Communities Together
ALIGN
Arab American Association of New York
Association for Neighborhood and Housing Development
The Black Institute
Brandworkers
Brooklyn Cooperative Federal Credit Union
Brooklyn Defender Services
Cabrin Immigrant Services of NYC, Inc.

CASA – New Settlement Apartments
Center for Family Life in Sunset Park
Chinese Progressive Association
Citizen Action - NYC
Common Cause/NY
Community Solutions
Cooper Square Community Land Trust
District Council 37
DRUM – Desis Rising Up & Moving
East Harlem-El Barrio Community Land Trust
Families for Freedom
Frank Pasquale, author of *The Black Box Society*
Freedom to Thrive
GOLES
Green Worker Cooperatives
Housing Court Answers
Immigrant Defense Project
Inclusiv
Interfaith Center on Corporate Responsibility
Justice For Our Neighbors
LatinoJustice PRLDEF
The Legal Aid Society
Legal Services Staff Association, NOLSW/UAW 2320
Lower East Side People's Federal Credit Union
Make the Road New York
Men Talk
MinKwon Center for Community Action
Mixteca Organization, Inc.
Mobilization for Justice, Inc.
National Center for Law and Economic Justice
Neighborhood Defender Service
New Economy Project
New Immigrant Community Empowerment
New Sanctuary Coalition
New York Civil Liberties Union
New York Communities for Change
New York Immigration Coalition
New York State Youth Leadership Council
NYC Network of Worker Cooperatives
Pan-African Community Development Initiative
Peter Cicchino Youth Project of the Urban Justice Center
Queens Law Associates
Red de Pueblos Transnacionales
SEIU 32BJ
South Bronx Unite
S.T.O.P. - Surveillance Technology Oversight Project
TakeRoot Justice
UAW Region 9a New York Area CAP Council
UHAB

UnLocal, Inc.
Upturn
Violence Intervention Program, Inc.
Volunteers of Legal Service
The Working World
Worth Rises
Youth Represent

cc:

NYC Council Speaker Corey Johnson
NYC Council Member Carlos Menchaca
NYC Council Member Daniel Dromm
Commissioner Steven Banks, Human Resources Administration
Commissioner Bitta Mostofi, Mayor's Office of Immigrant Affairs
Laura Negrón, Chief Privacy Officer for the City of New York
Commissioner Lorelei Salas, Department of Consumer and Worker Protection
J. Phillip Thompson, Deputy Mayor for Strategic Initiatives



40 West 39th Street, Fifth Floor, New York, NY 10018

Tel: 212.725.6422 • Fax: 800.391.5713

www.ImmigrantDefenseProject.org

**New York City Council Committee on Immigration
February 11, 2019 Hearing on Oversight—IDNYC Program
Testimony of Mizue Aizeki, Deputy Director, Immigrant Defense Project**

Thank you to the Committee for holding this public hearing and for allowing the public the opportunity to address the proposal to integrate multiple functions into the IDNYC with the City. The Immigrant Defense Project (IDP) is a New York-based nonprofit that works to secure fairness and justice for all immigrants by focusing on the rights of those caught at the intersection of the criminal justice system and the immigration system. IDP fights to end the current era of unprecedented mass criminalization, detention and deportation through a multi-pronged strategy including advocacy, litigation, legal support, community partnerships, and strategic communications.

IDP is part of the NYC Municipal ID Coalition that worked in 2014 with the New York City Council and the administration for a municipal ID that would ensure equal access to services and protections for all New Yorkers. As a coalition, we were committed to ensuring that the IDNYC would offer a secure state-issued ID to New Yorkers who faced obstacles in acquiring one—namely the homeless, formerly incarcerated people, gender non-conforming people, youth and undocumented immigrants. Given that many of these New Yorkers were also subject to frequent interaction with the NYPD, the City secured a commitment from the NYPD that the IDNYC would be regarded as a valid form of ID so people would not be brought into the precinct solely because of a lack of an ID. For immigrants, not being brought to a precinct significantly limits the potential of ICE being notified of someone in police custody.¹ Privacy concerns were also a central concern. The Coalition advocated for the City to not retain any underlying documents—the result being a decision by the City to retain the documents for two years, rather than five, and to destroy the documents by December 31, 2016.² Fortunately, the City was able to fight off a legal challenge filed by two State Assembly members in December 2016 who argued that destroying the records would threaten national security and that the data should be made accessible under New York State's freedom of information law.³

Keeping New Yorkers and their personal information safe from discriminatory local and federal policing and surveillance remains a central principle to our vision for the IDNYC. For this

¹ Fingerprints taken at booking are sent to ICE, allowing ICE to make a detainer request to police to notify ICE when the person is being released from criminal custody. In some jurisdictions, ICE will request that the police hold the person for up to 48 hours after release from custody for ICE to pick them up. Given the increasing risk of deportation that immigrants face when brought into the police precinct, avoiding arrest is ever more critical. Once immigrants are funneled from the criminal legal system into ICE custody, they are often transferred to remote immigration detention centers, making their lack of access to services more severe. People in ICE detention face an incredibly difficult time fighting a pending criminal charge, reuniting with children, or fighting their deportation

² http://rules.cityofnewyork.us/sites/default/files/adopted_rules_pdf/amendments_to_idnyc_rule.pdf;

³ <https://www.nytimes.com/2017/04/07/nyregion/new-york-can-destroy-documents-judge-rules-in-municipal-id-case.html>

reason, IDP joins our coalition members today in expressing our grave concern about the potential risks associated with the City's proposal to integrate multiple functions into the IDNYC and urge the City to halt the current proposal and pursue an alternative path.⁴ The proposed integrations with public and private partners to the IDNYC—including “MTA's planned contactless fare payment system, the NYC Health + Hospitals medical records,” and a financial services component—put immigrants at even greater risk of ICE surveillance and targeting.

While we acknowledge and appreciate the City's commitment to serve the needs of New Yorkers, we urge the City to pursue progressive solutions that are not connected to the IDNYC. Combining all these functions on the IDNYC increases the vulnerability of card holders to data breaches. It also increases the likelihood that they will be profiled, targeted, and surveilled based on this data. At a time when the federal government has made clear that immigrants in cities who have passed policies to protect its residents from ICE are the number one target, we cannot afford to put our communities at even greater risk.

For the coalition's overall concerns related to the proposed integrations, please see our December 26, 2018 letter and January 11, 2019 memo with follow up questions to the City.⁵

My comments today focus on the privacy and surveillance risks of the proposed integrations—assessments made in consultation with data security experts. Forest Gregg of DataMade, a civic technology company based in Chicago, is one of the experts who helped ensure maximum privacy protections for the municipal ID program in Chicago. Rocio Baeza, the CEO and Founder of CyberSecurityBase, specializes in helping tech companies with information security. I also consulted with Dr. Tom Fisher with Privacy International, a London-based nonprofit that has expertise in global security issues, and Jason M. Schultz, Director of NYU's Technology Law & Policy Clinic, who focus includes practical frameworks and policy options to help traditional areas of law such as privacy, consumer protection, and civil rights adapt in light of new technologies and the challenges they pose.

Risks from Data-mining and Metadata – When Data Gets Into the Wrong Hands:

Five days after the inauguration on January 20, 2017, the Trump administration laid out its mass deportation agenda in an Executive Order, “Enhancing Public Safety in the Interior of the United States.”⁶ This has included an escalation of Immigration and Customs Enforcement (ICE) community arrests and raids, with a stated focus on the targeting of “sanctuary jurisdictions” such as New York City—those with policies limiting collusion between local law enforcement

⁴ These integrations with public and private partners include “MTA's planned contactless fare payment system, the NYC Health + Hospitals medical records,” and a financial services component. The City of New York, Request for Information (RFI) IDNYC Dual Interface Card Payments Initiative, IDNYC, Human Resources Administration, Issue Date: Wednesday, May 30, 2018

⁵ The NYC Municipal ID Coalition letter to Mayor Bill de Blasio and follow up memo to MOIA Commissioner Bitta Mostofi, Collette Samman, IDNYC Executive Director, HRA, and J. Phillip Thompson, Deputy Mayor for Strategy Policy Initiatives were submitted along with the testimony of Deyaniri del Rio, Co-Director, New Economy Project

⁶ Enhancing Public Safety in the Interior of the United States. <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>

ICE. Indeed, IDP has documented a 1700% increase in ICE operations at New York courthouses during the Trump administration.⁷

We also learned in early 2017 that ICE, through a contract with data-mining firm, Palantir, has a web-based system that allows “ICE agents to access a vast ‘ecosystem’ of data” that facilitates ICE targeting of immigrants for deportation.⁸ This system allows ICE to quickly search multiple databases to build profiles on people they want to target for deportation. This includes databases of federal and local law enforcement agencies, as well as any other information they can get access to—data gathered and sold by private companies, location data, social media content and contacts, financial information, health information, and more.

We are deeply concerned that the potential integrations to the IDNYC put immigrants at even greater risk of ICE surveillance, as the data collected through multiple points associated with the ID can become a very useful tool for creating profiles about people or groups of people. According to Privacy International, “Smartcard metadata are usually sufficient to identify an individual with a high degree of precision. Behavioral patterns, physical movements, and purchasing habits can then all be inferred and attributed to the identified individual(s). Should these data become accessible to a third party...they can be used to track and persecute vulnerable groups.”⁹

According to the privacy experts that we consulted, combining an ID with multiple functions exposes people to significant privacy and surveillance risks, including:

- **Tying ID to healthcare and financial data:** There is big money made from collecting and selling data. For example, MasterCard has widely noted this is a growing revenue source for the company, selling data to retailers, banks, governments, and Google.¹⁰ Data brokers also make substantial profits by combining personal information, such as healthcare data with financial data, and selling to insurance companies who may deny coverage or increase health insurance rates based on that information.¹¹ The FBI has warned health care facilities about the potential for cyber attacks to gather medical data—as the sale of this type of personal data is extremely profitable.¹²
- **Tying ID to location data:** In other cities where contactless transit systems are in place, police and federal intelligence agencies have regularly accessed collected data. A position paper on the Australian transit system states: “In almost every jurisdiction where smartcard ticketing has been implemented, police and intelligence agencies are able to access travel information on smartcards for the investigation or prevention of crime. In

⁷ Immigrant Defense Project, *The Courthouse Trap: How ICE Operations Impacted New York Courts in 2018*, <https://www.immigrantdefenseproject.org/ice-courts/>

⁸ <https://theintercept.com/2017/03/02/palantir-provides-the-engine-for-donald-trumps-deportation-machine/>

⁹ *The Humanitarian Metadata Problem - Doing No Harm in the Digital Era*: page 16;

<https://privacyinternational.org/report/2509/humanitarian-metadata-problem-doing-no-harm-digital-era>

¹⁰ <https://www.forbes.com/sites/petercohan/2018/07/22/mastercard-amex-and-envestnct-profit-from-400m-business-of-selling-transaction-data/#120c3df77229>

¹¹ <https://www.newsweek.com/secretive-world-selling-data-about-you-464789>

¹² <https://www.reuters.com/article/us-cybersecurity-hospitals/your-medical-record-is-worth-more-to-hackers-than-your-credit-card-idUSKCN0HJ21120140924>

the UK, police make over 3,000 requests per year for travel information from Transport for London.”¹³

- **Creating multiple databases tied to the ID:** The various integrations with the IDNYC would create multiple databases with different data and potentially varying levels of security protections. For example, transit data that may be limited to ID number and travel time and location, could be coupled with the medical data which would have much more detailed personal information. It is critical to have more information regarding data protection. That information should include: what data is being stored, who (the government or a third-party provider) is storing it, how long the data will be kept, and who will have access to the data.
- **Narrowing the pool of IDNYC cardholders to those most vulnerable to surveillance:** Privacy experts also have noted that by offering and requiring services on the card that are most likely to be used by people without other options (those who rely on the City’s health insurance system, who do not have a bank card, who need the IDNYC as their metro card), this will narrow the group of people who are IDNYC users in the various databases, making it easier to de-anonymize the data and to identify individuals based on the data.
- **Function creep:** According to Privacy International, function creep is one of the main dangers of an ID system—once implemented, the ID begins to be used in an increasing range of functions which not only makes the ID a source of more and more data for both the public and private sector but also potentially forces residents to get an ID as they would otherwise not be able to access services. Two notable examples of ID systems where function creep has violated rights include the national ID controversies in Ireland (the Public Services Card or PSC) and in India (Aadhaar).¹⁴ In Ireland, the PSC ID card started off as an optional card, but became mandatory to access social welfare benefits, to apply for a passport, to take a driver’s test, and more.¹⁵ The PSC, which has come under growing scrutiny, may be terminated as it maybe be in violation of the European Union’s General Data Protection Regulation (GDPR).¹⁶ In India, the Aadhaar ID card, where it is compulsory to link a unique biometric identify with bank accounts, income tax returns, and access to government benefits, has been subject to at least 21 leaks or data breaches—including the breach of personal details of over 1 billion people. The use of Aadhaar by the private sector was declared unconstitutional by the Indian Supreme Court. The court ruled, ‘Allowing private entities to use Aadhaar numbers will lead to commercial exploitation of an individual’s personal data without his/her consent and could lead to individual profiling’.¹⁷

¹³ <http://www.ttf.org.au/wp-content/uploads/2016/06/TTF-Smartcard-Ticketing-On-Public-Transport-2010.pdf>; <https://privacyinternational.org/blog/1596/oyster-octopus-and-metro-cards-what-happens-our-data>

¹⁴ <https://www.thejournal.ie/public-services-card-oireachtas-committee-3840426-Feb2018/>;

<https://www.sbs.com.au/news/what-is-aadhaar-india-s-controversial-billion-strong-biometric-database>

¹⁵ <https://www.irishtimes.com/business/technology/wary-of-the-public-services-card-you-have-good-reason-to-be-1.3351106>

¹⁶ <https://www.dublinlive.ie/news/dublin-news/public-service-cards-scrapped-14271141>

¹⁷ <https://www.hindustantimes.com/india-news/right-to-privacy-a-fundamental-right-7-aadhaar-controversies-that-raised-concerns/story-UGTtXhgJDtaWrmyuli2LwO.html>; <https://privacyinternational.org/feature/2299/initial-analysis-indian-supreme-court-decision-aadhaar>

Need for more participatory evaluation of the risks, and answers to questions:

Community involvement has been a central feature of the IDNYC, and we appreciate the City's ongoing commitment to an IDNYC that serves the best interests of New Yorkers. While we support the City's efforts to address the financial, medical, and transit needs of New Yorkers, we do not believe that integrating these functions into the IDNYC is a viable solution.

We continue to ask the City for more clarity on the privacy and surveillance risks before the City continues to move forward with this proposal. Some of the questions below were raised in the January 11, 2019, memo submitted by the NYC Municipal ID Coalition to the City, and some have been added based on consultation with privacy experts. In the spirit of ongoing community collaboration, we respectfully request responses to our questions raised in the memo as well as the questions below:

- Given our knowledge about security breaches of data, such as Equifax, why is the City confident that there is adequate security in place to protect IDNYC cardholders from a breach of data at the multiple points where data will be collected (e.g., transit, health services, financial services, homeless shelters)
- What data will be collected about IDNYC cardholders' activity? (transit, health services, homeless shelters, financial services)
 - What data is being stored?
 - Who will hold the data? (The City and/or a third-party vendor?)
 - How long will it be held?
 - Who will have access to the data?
 - What protections will be in place to limit access to the data?
 - What transparency will the City offer to cardholders around how personal information including how it will be collected, stored, and used, and who might have access to it?¹⁸
 - The negotiated acquisition solicitation specifically states that "data collected through the financial institution cannot be shared with any entity *other than the City of New York*." Why does the City want access to this data?
- Would NYPD or other law enforcement agencies, such as ICE, be able to access the data? If so, what procedures would be required for them to do so?
- How have your agencies engaged NYPD or other law enforcement agencies in the smart chip research/planning process?, to date?
- What protections would be available to cardholders if a federal government agency demanded data/information/analysis from the City or the vendor?
- When and how would the City be made aware of any data requests made to the private vendor and whether or not they were fulfilled?
- Will the City include provisions to assure that anyone who has an IDNYC has the right to gain access to any data collected about them through the ID and then subsequently, the right to correct or delete any information they wish?
- How will the City publicize and inform cardholders about which local, state, and federal agencies have access to their data and when new agencies gain access.

¹⁸ Example from UK: <https://tfl.gov.uk/corporate/privacy-and-cookies/zip-oyster-photocard#on-this-page-8>

- What mechanism will the City create to ensure the right to be notified and contest any decisions made about benefits based on data gathered through the IDNYC? For example, if their IDNYC data is used related to employment, education, access to healthcare, etc., people should have basic due process and equal protection rights to understand and challenge such decisions.

Our concerns are not unfounded or overly cautious. What we know is that data breaches and the collecting and sharing of personal data is highly profitable and a key focus of financial corporations, such as MasterCard, companies such as Facebook and Google, as well as cyber hackers. We also know that ICE is focused on gathering all forms of personal data to fuel their deportation machine and that other global efforts to expand ID systems, such as in Ireland and India, have led to serious privacy violations.

In contrast to the European Union, the United States does not have comprehensive legal protections for personal data, despite record-breaking data breaches and inadequate data-protection practices.¹⁹ Given a political climate that is hostile to the rights of immigrants, LGBTQ people, certain political activists, people of color, and low-income people, the unnecessary collection of data of IDNYC cardholders is a grave concern.

No other municipal ID program in the U.S. has implemented the kind of technology and integration that NYC is now considering. Chicago opted for minimal data retention with their municipal ID card—in addition to not retaining any supporting documents, the system does not retain names or addresses. The transit card function to Chicago's municipal ID is completely optional, as the City offers metro cards that are not linked to the ID. Also, Chicago decided against including a financial services function to their municipal ID due to concerns about data collection as well the exorbitant fees typically charged by the financial services providers.

For these reasons, we are extremely concerned that the proposed changes to the IDNYC are an unnecessary dangerous experimentation with big data collection, and urge the City to reexamine their consideration of this proposal and instead, to pursue progressive solutions that are grounded in maximum privacy and security protections for New Yorkers.

¹⁹ “In 2017, there was a disastrous breach at Equifax, Yahoo’s admission that billions of its email accounts were compromised, Deep Root Analytics’ accidental leak of personal details of nearly two hundred million U.S. voters, and Uber’s attempt to conceal a breach that affected fifty-seven million accounts. Individuals are left stymied about what action they can take, if any, to protect their digital assets and identity.” <https://www.cfr.org/report/reforming-us-approach-data-protection>

December 26, 2018

[Resubmitted on January 11, 2019 with additional signatories]

Mayor Bill de Blasio
City Hall
New York, NY 10007

Dear Mayor de Blasio:

The undersigned organizations write to express our serious concerns about the City of New York's plan to implement "smart chip" technology and a financial services component on NYC's municipal identification (IDNYC) cards. The proposed changes raise a host of privacy, security, consumer protection, and other questions and concerns, which we have attempted to raise with the City agencies coordinating this process. While the City has elicited proposals from a number of financial services providers, it has failed to meaningfully engage our public interest organizations or the 1.2 million IDNYC cardholders that stand to be affected, or to substantively address concerns we have raised. With so much at stake for the undocumented, homeless, and other New Yorkers who rely on IDNYC in their daily lives, we urge the City to change course.

We call on the City to immediately halt the IDNYC "smart chip" procurement process and to conduct public hearings about this proposal, at which the public and subject matter experts may testify. The City must engage in a transparent, accountable process and ensure that the IDNYC program does not inadvertently expose New Yorkers to serious privacy and financial risks, as well as increased vulnerability due to potential surveillance.

Given the Trump administration's ongoing assault on immigrants, including heightened threat from Immigration and Customs Enforcement (ICE) and other Department of Homeland Security (DHS) agencies -- not to mention the long list of data breaches in the financial services arena -- there is clearly a tremendous amount at stake for New Yorkers with this proposal. The incorporation of the smart chip, and the City's intention to enable multiple uses for the IDNYC, has the potential to expose New Yorkers to a wide range of privacy and surveillance risks. The City's interest in including a small dollar loan feature in the card raises additional red flags, as this could make IDNYC cardholders vulnerable to high-cost loans and other abuses. These are threshold concerns that call for careful scrutiny; the process should not be rushed or allowed to bypass meaningful public input.

Our organizations include key members of the city-wide coalition that was instrumental in shaping and building support for the IDNYC program, in 2014, as well as community development credit unions that readily accept IDNYC to open accounts and provide loans and other vital financial services to New Yorkers. Collectively, we represent hundreds of thousands of immigrant, senior, homeless, and other New Yorkers who have benefited tremendously from the IDNYC program. We are grateful to you and to New York City for initiating IDNYC, which has grown to become the

largest municipal ID program in the country. We are pleased that since the program's inception, the City has made changes to IDNYC to strengthen privacy protections and expand access to the ID. We trust that we share the overarching goal of advancing New Yorkers' security and access to the City. We appreciate also the administration's interest in increasing financial options for underserved New Yorkers. The current proposal, however, presents risks that far outweigh any potential benefits.

Collectively, our organizations have decades of expertise in a range of privacy, financial inclusion, regulatory, consumer protection, immigration, DHS and ICE surveillance and deportation practices, and other relevant matters, which form the basis of our concerns regarding the current proposal. We are troubled also by the lack of transparency and meaningful public engagement that such a large-scale and far-reaching proposal warrants. The participatory process in which the City engaged when designing IDNYC was critical to ensuring that the program met New Yorkers' needs, and to building widespread trust and buy-in for the program. A similar process must be instituted now.

Our organizations learned that the City was seeking a financial services partner after it issued a Request for Expressions of Interest (RFEI), on May 30, 2018, regarding an "IDNYC Dual Interface Card Payments Initiative." Several of our groups immediately contacted the Mayor's Office of Immigrant Affairs, Human Resources Administration, and the office of the Deputy Mayor for Strategic Initiatives to express our concerns.

After consistently telling groups for months that the RFEI was merely exploratory, and that there would be ample time and a process for our organizations to provide input, the City recently indicated that it is on a fast track to implementing the chip-embedded cards. A single meeting was convened with groups, in August, to address this proposal. The City has not yet followed through on commitments to provide greater details and to bring other stakeholders into the conversation. Just last week, the City released a Negotiated Acquisition solicitation, directed at financial services providers, with responses due by January 8, 2019. (We must note that the timeline for the solicitation coincides with the end-of-year holidays -- another indication of flawed process.)

We look forward to discussing in greater detail our organizations' serious concerns relating to cardholder privacy, data collection and sharing, surveillance, consumer protection, financial technology, fair lending, and equity issues associated with the smart chip proposal. We remain eager to work with the City to address financial access barriers that immigrant, senior, and other low-income New Yorkers face, and to develop solutions that ensure equity and fairness.

For further information, please feel free to contact Mizue Aizeki, Deputy Director, Immigrant Defense Project (maizeki@immigrantdefenseproject.org); Theo Oshiro, Deputy Director, Make the Road New York (theo.oshiro@maketheroadny.org); Deyanira Del Rio, Co-Director, New Economy Project (dey@neweconomynyc.org); or Betsy Plum, Vice President of Policy, New York Immigration Coalition (eplum@nyic.org).

Sincerely,

Arab American Association of New York
Asian American Federation

Brooklyn Cooperative Federal Credit Union
Center for Popular Democracy
Families for Freedom
Immigrant Defense Project
Inclusiv (formerly National Federation of Community Development Credit Unions)
Lower East Side People's Federal Credit Union
Make the Road NY
MinKwon Center for Community Action
Neighborhood Trust Federal Credit Union
New Economy Project
New Sanctuary Coalition
New York Civil Liberties Union (NYCLU)
New York Immigration Coalition
Northern Manhattan Coalition for Immigrant Rights

Cc:

NYC Council Speaker Corey Johnson
NYC Council Member Daniel Dromm
NYC Council Member Carlos Menchaca

Commissioner Steven Banks, Human Resources Administration (HRA)
Commissioner Bitta Mostofi, Mayor's Office of Immigrant Affairs
Laura Negrón, Chief Privacy Officer for the City of New York
Nicole Perry, Deputy Commissioner for Office of Financial Empowerment, DCA
Commissioner Lorelei Salas, Department of Consumer Affairs (DCA)
Colette Samman, IDNYC Executive Director, HRA
J. Phillip Thompson, Deputy Mayor for Strategic Initiatives

MEMORANDUM

To: Commissioner Bitta Mostofi, MOIA; Colette Samman, IDNYC Executive Director, HRA;
J. Phillip Thompson, Deputy Mayor for Strategic Policy Initiatives
Cc: NYC Council Speaker Corey Johnson; Council Member Carlos Menchaca; Council
Member Daniel Dromm
From: NYC Municipal ID Coalition Members
Date: January 11, 2019
Re: Follow-up on IDNYC proposed changes

Thank you for meeting with us on January 7, 2019 to further discuss the administration's interest in partnering with a financial services provider to implement a smart chip on IDNYC identification cards. Our organizations have outlined our serious concerns about this proposal and process, in prior conversations and in a joint letter dated December 26, 2018 (reattached here). Although we appreciated the opportunity to meet this week, we remain deeply concerned that the City is considering making major, unprecedented changes to the IDNYC program that could expose New Yorkers to serious privacy, surveillance, and financial risks, and undermine public trust in the program. As organizations that have been instrumental in shaping and building support for IDNYC since 2014, we remain committed to the principles of inclusivity, equity, and security on which IDNYC was built. We appreciate your attention and responsiveness to community concerns.

We respectfully request the administration's responses, in writing, to our organizations' outstanding concerns and questions, below, by next Friday, January 17, 2019. Concrete answers to these questions and concerns are necessary to fully understand and address specific risks presented by the potential addition of a smart chip to IDNYC cards.

We additionally ask your agencies to commit to holding public hearings on proposed IDNYC changes. We were pleased to hear from MOIA, at this week's meeting, that the City has not decided whether it will move forward with an IDNYC smart chip. However, the administration has moved forward significantly and quickly, without sufficient engagement of community groups, advocates, City Council Members, or the general public.¹ With so much at stake, the City must conduct hearings and ensure a thorough, transparent public process.

Our concerns and questions about the IDNYC smart chip proposal include:

Unclear rationale and motivation for the change, given the risks to vulnerable NYers. The administration has cited multiple, distinct reasons for incorporating EMV/RFID smart chip technology on IDNYC cards. These include a desire to address "banking deserts" in NYC; to integrate IDNYC with MTA's planned contactless card payment system; to integrate IDNYC with other city agencies and services, such as DHS shelters and NYC Health + Hospitals; and to ensure IDNYC's longevity and continued appeal, including in the event that NYS driver licenses become available to undocumented immigrants. No other municipal ID program, to our knowledge, has implemented the kind of technology and broad integration that NYC is now considering. Particularly in the current political context, unnecessary data collection on immigrant,

¹ The City issued a Request for Expressions of Interest (RFEI) in an "IDNYC Dual Interface Card Payment Initiative" on May 30, 2018, with responses from financial services providers due by June 29, 2018. In mid-December, the City issued a solicitation for negotiated acquisition, with responses from financial services providers due on January 8, 2019 (the deadline has since been extended by 10 days).

homeless, and other New Yorkers is of grave concern. The proposed changes raise risks that outweigh any potential benefits, and could chill uptake and renewal of IDNYC cards among populations it was designed to serve.

Questions:

- Can you describe the administration's due diligence in crafting, and evaluating responses to, the IDNYC smart chip RFEI and its privacy and technological criteria? With which entities (technology, privacy, and financial services experts, regulators, and others) has the City consulted? What examples have you identified of successful municipal ID/financial services/technology partnerships, and what were their outcomes?
- Would the City collect smart chip data, either individually or in the aggregate, about IDNYC cardholders' activity? (The negotiated acquisition solicitation specifically states that "data collected through the financial institution cannot be shared with any entity *other than the City of New York.*")
- What do you project would be the City's annual cost to contract with a financial services provider to host and execute a smart chip? Is the City seeking to generate revenue from any of the proposed smart card features?

Privacy and surveillance risks, particularly those associated with RFID technology and data collection. Possible RFID harms are significant, and the potential for harm is unclear from the City's statements and RFEI. Specifically:

- RFID is not a standard but rather a collection of terms for different wireless identification technologies. Security of wireless transmission and encryption protocols depends on vendor and model. The RFEI only calls for ISO 7816 (contact), 14443 A/B (contactless), and 7813 (magnetic stripe) standards, which by themselves do not implement security or privacy features. Some products are highly insecure and have been hacked or cloned in the past.²
- Potential identification of IDNYC cardholders would be dependent on RFID implementation. The RFID technology could reveal from a distance whether someone is carrying an IDNYC card. Some RFID cards are readable with widely accessible technology from distances of more than 200 feet, without the cardholder's knowledge.³ It is unclear how the chosen technology would transmit information, and whether it would allow for the distinction/tracking of IDNYC cards specifically. Regardless of encryption protocol, a RFID wireless implementation is passively powered by induction response, which allows for card visibility to transmitters and could make the IDNYC appear—based on frequency, communication, or response—unique compared to other RFID chip cards.
- Cardholders would not be able to "opt in" to or "opt out" of the RFID technology. The administration has emphasized that IDNYC cardholders would have the option to activate (or not) the financial services and other features. However, RFID cannot be turned on or off, and all IDNYC cardholders would be exposed to the risks associated with this technology—even if they did not opt in to the financial services, MTA, or other features.

² RFID/NFC- A Pentesters Perspective by Gerhard Klostermeier:
<https://media.ccc.de/v/ggn18-79-rfid-nfc-grundlagen-a-pentesters-perspective#t=333>

³ The 900MHz EPC Gen2 tag (found in Enhanced Drivers Licenses and some passports) is readable from 30 feet with off-the-shelf equipment. Without amplifying the signal from a commercial reader the tag can be read from 69 feet, and with less than \$1000 of radio equipment it can be read from 217 feet away. See: DEF CON 18 - Chris Paget - Extreme-Range RFID Tracking: https://www.youtube.com/watch?v=q9_8F_BKeto

Questions:

- What are the privacy risks to which the RFID chip would expose IDNYC cardholders?
 - Specifically, what type of data would be collected with the use of this technology? Would the card or RFID chip vendor, MTA, or any other entity collect location/usage data from the contactless cards?
 - From what distance could the contactless RFID cards be read? How would the public check to verify that any RFID cannot be tracked from a distance without the cardholder's knowledge?
 - What measures would the City implement to prevent city or federal agencies, or hackers, from being able to track the location of the IDNYC RFID cards?
 - What disclosures would vendors be required to share with the City and the public about how they implement any new or contactless features?
 - Would RFID implementation make the IDNYC appear—based on frequency, communication, response—unique compared to other RFID chip cards?
- Would NYPD or other law enforcement agencies be able to access the data? If so, what procedures would be required for them to do so? How have your agencies engaged NYPD or other law enforcement agencies in the smart chip research/planning, to date?
- What protections would be available to cardholders if a federal government agency demanded data/information/analysis from the City or the RFID chip vendor?
- When and how would the City be made aware of any data requests made to the private vendor and whether or not they were fulfilled?

Concerns regarding IDNYC integration with financial services and fintech companies. The City's RFEI seeks a financial services provider to host and execute a dual interface smart chip on IDNYC cards. The financial services entity would also provide what we understand to be a reloadable prepaid debit account or similar payment option for "unbanked" cardholders. Cities that have previously attempted to incorporate (or considered incorporating) financial services directly into their municipal ID cards have ceased to do so, because of widespread problems.⁴ Local advocates strongly opposed a similar proposal when IDNYC was created in 2014.⁵

There are myriad privacy and financial risks to equipping an identity card, such as IDNYC, that contains a wealth of sensitive personal information about the cardholder—including name, address, date of birth, and ID number—with the functionality to carry out routine financial transactions. Many credit card companies have rules that prohibit merchants from requiring cardholders to provide additional identification when making purchases, precisely to guard against identity theft and other risks.⁶ In the IDNYC smart chip scenario, the identification and payment card would be one and the same, depriving cardholders of these protections. Problems associated with hybrid student ID-debit cards may also be instructive: students have

⁴ <https://www.sfgate.com/bayarea/article/Oakland-debit-card-fees-draw-criticism-4368734.php#ixzz2O5Nxfka>; <https://www.consumerfinance.gov/policy-compliance/enforcement/actions/unirush-llc-and-mastercard-international-incorporated/> and <https://www.ftc.gov/news-events/press-releases/2016/11/ftc-charges-prepaid-card-company-deceptively-marketed-reloadable>

⁵ The Center for Popular Democracy's *Building Identity: A Toolkit for Designing and Implementing a Successful Municipal ID Program* recommends against inclusion of a reloadable debit card feature on municipal IDs. https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf

⁶ See, e.g., MasterCard Rules, dated December 18, 2018, at <https://www.mastercard.us/content/dam/mccom/global/documents/mastercard-rules.pdf>, at p. 93, section 5.10.4; and Visa Core Rules and Visa Product and Service Rules, dated October 13, 2018, at p. 100, section 1.5.5.3

been hard-hit with overdraft and other fees; and the exclusive partnerships between colleges and financial institutions have exposed students to aggressive marketing by the financial partners.⁷

Additional concerns include:

- Widespread problems associated with the financial technology (fintech) industry, which includes companies that rely on broad and invasive data collection, and that often attempt to circumvent state fair lending and consumer protection laws.⁸ Under the Trump administration, federal regulators are actively seeking to exempt fintech companies from key consumer protection rules.⁹
- Prepaid debit cards and fintech products and services often carry high and hidden fees and are not uniformly covered by strong federal consumer protections that apply to bank and credit union accounts—reinforcing a two-tiered system in which the poor pay more for less advantageous (and sometimes predatory) services.
- The administration has previously stated to advocates that it is interested in making credit available to IDNYC cardholders through a smart chip—a dangerous move that could open the door to usurious lending and other abuses that are currently illegal in NYS. (We were informed by MOIA, at our January 7, 2019 meeting, that loans are not currently a priority.)

Questions:

- Has the administration consulted with credit unions and banks that accept IDNYC, about ways to expand responsible financial services access to underserved populations?
- What steps has the administration undertaken to secure broader acceptance of IDNYC—including by Designated Banks that hold municipal deposits? Have you consulted with advocates, regulators, and elected officials regarding ways to increase bank acceptance?
- We understand that one of the administration's priorities is to increase access to banking for New Yorkers through IDNYC. Can you clarify how a smart chip would directly allow IDNYC cardholders to open bank accounts?
- Federal Know-Your-Customer rules require financial institutions to retain customers' identification and other underlying documents used to open accounts, while an account is open and for 5 years after an account is closed. Could this jeopardize in any way IDNYC's commitment to not retain cardholders' personal background documents? How would the City's agreement with a financial entity be structured to avoid conflicts between local and federal law? Could someone's records held by a smart chip provider be subject to Freedom of Information Law (if not, please explain why not)?

Thank you for your time and consideration. If the City requires additional time to answer some of our questions, please provide as much information as you are able, and a timeframe for answers to the remaining questions, by Friday, January 17, 2019. For further info, please contact Mizue Aizeki (maizeki@immigrantdefenseproject.org); Deyanira Del Rio (dey@neweconomynyc.org); Jonathan Stribling-Uss (jstriblinguss@nyclu.org); or Betsy Plum (eplum@nyc.org).

⁷ See Center for Responsible Lending, *Overdraft U.: Student Bank Accounts Often Loaded with High Overdraft Fees*, March 2015, http://www.responsiblelending.org/student-loans/research-policy/overdraft_u_final.pdf.

⁸ https://www.google.com/url?q=https://www.banking.senate.gov/download/pasquale-testimony-9-12-17pdf&sa=D&ust=1546531847924000&usq=AFQjCNEuinJk00_U_5hFPUZQLfQ7oyVGA;

⁹ <https://news.bloomberglaw.com/banking-law/2019-outlook-cfpb-innovation-policies-may-face-state-challenges> and <https://www.americanbanker.com/opinion/cfpbs-disclosure-sandbox-puts-consumers-at-risk> and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-dfs.pdf> and <https://www.occ.treas.gov/topics/responsible-innovation/comments/comment-ny-atly-general.pdf>

FOR THE RECORD



AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2019-2020

Executive Committee

Sylvia Livit Ayass
Chair
Livits Ayass PLLC
469 Seventh Ave., 7th Floor
New York, NY 10018
Tel. (212) 500-1223
sylvia@livits-ayass.com

Randall Chamberlain
First Vice Chair
Law Office of Randall Chamberlain PLLC
150 Broadway, Suite 1001
New York, NY 10038
Tel: (212) 988-5806
randall@rcimmigrationlaw.com

Cory Forman
Second Vice Chair
Cohen Forman Barone LLP
950 Third Ave., 11th Floor
New York, NY 10022
Tel. (212) 766-9111
cory@cfblaw.com

Rosanna Fox
Treasurer
Lepore Taylor Fox I.L.P.
61 S. Paramus Road, Suite 422
Paramus, NJ 07652
Tel (908) 873-1801
rosanna@lrf-law.com

Kushal Patel
Secretary
Laura Devine Attorneys
95 Madison Avenue, 44th Floor
New York, NY 10017
Tel. (212) 661 5401
Kushal.Patel@lauradevine.com

Past Chapter Chairs

Rachel Baskin
Jennifer Durkin
Neena Dutta
Amy Fallon

October 2, 2019

The New York City Council
250 Broadway
New York NY 10007

Re: Hearing on IDNYC Smart Chip

Dear City Council Members.

We are submitting this testimony on behalf of the New York Chapter of the American Immigration Lawyers Association (AILA), the nation's largest professional organization of immigration lawyers. We thank you for the opportunity to contribute to this forum.

AILA has over 13,000 members nationwide, with more than 1,500 members in New York whose practices span the entire scope of immigration law. Because of our knowledge, experience and expertise in immigration law – including dealing with the impact and effects of data collection and sharing of information between government agencies and private actors – we are well-positioned to discuss the Council's proposal to prohibit the addition of a "smart chip" to the municipal identification cards, otherwise known as IDNYC. Given the unknown security risks and privacy concerns that can imperil undocumented immigrant holders of a smart chipped IDNYC, and the devastating humanitarian toll on immigrants and their families, AILA-NY is extremely pleased that the City Council is taking a stand against adding smart chips to the IDNYC. We fully support the City Council's effort to prohibit the New York City's government from adding a smartchip to the IDNYC.

There are a number of legal, policy and humanitarian reasons why it is critical for New York City to stop adding smart chips to the IDNYC.

A. Lack of Privacy Safeguards Prohibiting the Sharing of Information with Government Agencies Hostile to Undocumented Immigrants

The IDNYC has been marketed as a form of identification safe for undocumented immigrants, and has been meant to allow undocumented immigrants access to interact with city agencies and move more freely through the five boroughs.¹ In a recent interview, an undocumented immigrant mentioned that the municipal ID has made it easy to enroll his children in school and to access libraries.² Moreover, obtaining an IDNYC became more desirable to undocumented immigrants after the state Supreme Court ruled that New York City could destroy the personal documents of the applicants for IDNYC, like copies of foreign passports and other documents used to verify a person's identity, ensuring further protection for undocumented immigrant IDNYC holders.³

However, the addition of a smart chip in the IDNYC would require New York City to partner with third party financial services companies, who could not ensure the same level of protection for card holders. Such companies offering financial services are not subject to the data restriction imposed by the State Supreme Court, and instead are bound by federal laws requiring the financial companies to store, collect and retain data. Thus, adding a smart chip to the IDNYC would automatically diminish privacy rights currently guaranteed by a "chip-less" card and would result in a massive data sweep and collection for all card holders. Such a data sweep is even more critical as the smart chip could track a person's location, which may be enough to expose a person's identity.⁴

In light of the fact that a smart chip is proposed to be added to IDNYC cards at a time when the federal government has been so openly hostile towards immigrant rights is most concerning given the fact that the information may be freely shared with government agencies actively engaged in removing immigrants from the United States.

In documents obtained via a Freedom of Information Act request to determine how state driver's license agencies share information with U.S. Immigration and Customs Enforcement (ICE) and ICE Removal Operations (ERO), we have learned information may be shared with Immigration and Customs Enforcement or other agents who may contact immigration authorities to report undocumented persons, or even persons believed to be undocumented.⁵ We have learned that ICE collaborates with DMVs to collect information and locate people for immigration enforcement purposes.

Given how easily ICE can access such information and collaborate with DMVs to enforce actions against immigrants, at least the IDNYC currently has a state-court imposed protection on the data of cardholders.

However, as previously mentioned, any third-party financial service company contracted with for the purpose of adding smart chips to the IDNYC will not have such safeguards in place, and it is conceivable that a private agency would more readily share information with ICE and other government agencies.

¹ <https://www.governing.com/news/headlines/New-York-City-Council-Nixes-Smart-Chips-from-City-ID-Cards-over-Immigration-Concerns.html>

² <https://citylimits.org/2019/09/30/amidst-idnyc-smart-chip-debate-immigrants-complain-of-cards-limited-benefits/>

³ <https://www.nytimes.com/2017/04/07/nyregion/new-york-can-destroy-documents-judge-rules-in-municipal-id-case.html?module=inline>

⁴ <https://www.govtech.com/security/Advocates-Take-Issue-with-IDNYC-Card-Smart-Chips.html>

⁵ <https://www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information/>

Moreover, data hacks and breaches have become all too common, exposing the identity and financial information of all Americans, as evidenced by the data breaches from the large credit reporting agencies to smaller private companies. There is no guarantee that a third-party financial company will be able to keep any data it automatically stores safe, and no information has been provided about any security protocols.

Thus, little information has been provided about what safeguards will be put in place for cardholder information, and given the current hostile administration, the addition of a smart chip to the IDNYC will place immigrants at greater risk of being targeted by ICE for deportation.

B. Humanitarian Considerations

Should NYC immigrants be placed at greater risk of targeting by ICE due to more easily accessed information exposing their identities and locations, it will have a devastating human toll by tearing families apart. AILA-NY members witness the cruel and unjust impact of the United States' immigration system on a daily basis. We see how the combination of overly harsh rules, inflexible policy and nonsensical laws leads to massive suffering. This is why AILA-NY firmly believes that immigration detention should only be used in the rarest of cases – for individuals who are a safety risk. Immigration detention should not simply be a second punishment.

Every father or mother who is removed means a child grows up without a parent. Every breadwinner who remains locked away increases the likelihood that family members will go hungry. And every additional immigration detainee means one more person on the government's intractable pipeline to deportation. There are real, human victims to DHS' overreach – who suffer the agonizing emotional, psychological and physical trauma that can last a lifetime (and which the City will likely need to address in other areas).

Far too many noncitizens – both longtime permanent residents and individuals without immigration status – have been swept up by an overzealous immigration enforcement system that does not see them as individuals deserving of rights and respect.⁶

We echo the findings of the Insecure Communities, Devastated Families report noting the extreme stress that immigrant families suffer in the wake of the immigration enforcement actions and deportation system:

"ICE's policies have devastating effects on families in New York City. U.S. Citizen children are forced to endure the trauma of possibly permanent separation from a parent. Parents risk losing their parental rights while in detention. The city is forced to pay millions in additional social services when families lose economic support. According to the Applied Research Center, when parents of U.S. citizen children are detained, their children can end up in the care of local child welfare departments, like New York City's Administration for Children's Services. In every case that was studied, parents detained

⁶ "From October 2005 through December 2010, the parents of 13,521 U.S. citizen children were apprehended in New York. This data is often not obtained by the agency, so the actual number is likely much higher. The parents of at least 7,111 U.S. citizen children were deported during this same period. The parents of at least 10,208 U.S. citizen children were detained without bond. At least 7,186 New Yorkers detained by ICE had U.S. citizen children. 87% of the resolved cases of individuals with U.S. citizen children have resulted in deportation." INSECURE COMMUNITIES, DEVASTATED FAMILIES: New Data on Immigrant Detention and Deportation Practices in New York City. NYU School of Law Immigrant Rights Clinic, Immigrant Defense Project, Families for Freedom. July 23, 2012. Available at http://familiesforfreedom.org/sites/default/files/resources/NYC%20FOIA%20Re_n%202012%20FINAL_1_.if

by ICE were unable to appear at dependency hearings, even when detained in the same jurisdiction as those hearings. On top of the burdens of physical incarceration itself, ICE's 'inconsistent' policy of providing phone access to parents for a telephonic appearance causes detainees to miss important hearings vital to the maintenance of their parental rights. ICE detention on its own, even without deportation, 'can result in children moving into permanent placements and ultimately into adoption.' The study also emphasized the 'traumatic effects on both parent and child' of separation due to immigration detention."⁷

In sum, AILA supports the efforts of the City Council to limit the use of smart chips in the IDNYC overall cooperation with ICE and DHS. Significantly, the Constitution, federal courts, human rights and sound public policy all support this position as well. We commend the City Council for taking concrete steps to ensure that immigrants feel welcomed, protected and safe in New York City.

Thank you.



Sylvia Livits-Ayass
Chapter Chair

⁷ INSECURE COMMUNITIES, DEVASTATED FAMILIES. *New Data on Immigrant Detention and Deportation Practices in New York City.*

FOR THE RECORD



**FAMILIES FOR
FREEDOM**

35 West 31st Street #702 New York NY 10001
Ph. 646.290.8720 Fax 800.895.4454
www.familiesforfreedom.org

October 2, 2019.

To members of the New York City Council Immigration Committee:

Families for Freedom is a membership-led organization by people impacted by the criminal punishment and immigration systems. Our members have first-hand experience with the surveillance state. We know what it's like to be targeted and exposed and we know what it's like to be hunted and captured by the state. The IDNYC card provided some benefits to our people without the need to disclose legal status or criminal history. How will this city's government help ensure that our members will be safe and that their privacy will not be compromised?

IDNYC was launched in 2015 to the benefit of New Yorkers in many different communities. The smart chip was considered when IDNYC was proposed in 2014, but it wasn't implemented. IDNYC will no longer serve its purpose of protecting New York City's undocumented population once the smart chip is implemented. The changes will instead put an identifiable electronic signature in every New Yorker's wallet and add them into a mass surveillance system that is ever growing in the metropolis. People can become targets, particularly undocumented immigrants who will be vulnerable to ICE if misused. The uncertainty surrounding who's collecting the data is problematic for us. How will the city ensure that IDNYC data is non-identifiable? How will the city ensure that the data they collected will be destroyed after the intended period? Why can't they be destroyed immediately instead for the safety of the people it was supposed to protect? And how does it ensure the RFID/EMV chip can't be picked up by random scanners and surveillance equipment? Does the RFID/EMV chip have security or privacy features to protect against this?

With the city's interest to expand the utilities of the IDNYC card, we have concerns about who is actually benefiting or profiting from this. Financial technology companies don't have the same restrictions or regulations applied to them as banks. They can release/sell data as data blocks for advertising agencies, and even to agencies related to ICE. It can be accessed through a judicial warrant or a subpoena. Given that, how safe is the data?

Some of our people are already on electronic shackles and are being monitored on a daily basis. Many of our members know what it's like to be surveilled through electronic shackles.

FOR THE RECORD

Implementing a smart-chip like this in the form of ID is an evolution of what the shackles are right now, and the target audience is the general public. This is a form of surveillance technology, no matter how you dress it up with words such as “financially beneficial”. Who is really financially benefiting from it at the end? It certainly isn’t for the people.

Regarding the implementation of the chip, what changed between when it was first being considered in 2014 and now? Why is the city so set on pushing the implementation of the chip now, especially with other examples of it not doing well like in Oakland and Chicago. If it really is to address the issue of banking deserts, there are better alternative solutions. Can the smart chip be used for MTA services outside of the city? The MTA’s MetroNorth system runs outside of the city as well. Will people still be able to pay for tickets using the card at stations outside of the five boroughs? Some of the proposed uses for the smart chip do not address any concerns that people who hold an IDNYC card have, such as access to city housing, which is very important to members of our communities. If the city wants to implement any changes to the IDNYC card, the opinions of those who hold the cards and are affected by those changes must be considered. Most people are not even aware of this plan to implement the smart chip. Why is that? The city must be completely transparent about this process, who it is partnering with, and who is gaining financially from this.

While the city purports that adding a “smart” chip to the IDNYC will be beneficial to its holders, we ask what value will it add to the living experience of those same holders?

Families for Freedom

FOR THE RECORD



**FAMILIES FOR
FREEDOM**

35 West 31st Street #702 New York NY 10001
Ph. 646.290.8720 Fax 800.895.4454
www.familiesforfreedom.org

Cardholder's statement:

It has come to my attention that there is a discussion about having our official NYC IDs linked to our every day MetroCard and bank accounts all in one card. Hearing this news made me very skeptical and for good reason, too. Having all these things in one card could lead to people being scammed out of all their money. Like the reputation that MTA vending machines uphold, which is when you put a dollar in a vending machine, it steals your money. You took the chance, regardless of knowing that the dollar might be stolen. This would be the same risk that you would be taking swiping at a turnstile. All of your money is linked to a card that also serves as a metrocard. Another reason to doubt this idea is once you lose this card, how are you going to be traveling in New York without a MetroCard? Getting your new official ID when you lose it takes almost 2 weeks. In the end, I am definitely not on board with this idea to link our IDs to the only way that we pay for our daily necessities and nor should anyone else.

-- Yeiris Santos

Families for Freedom member



URBAN UPBOUND

teaching poverty, changing lives

TESTIMONY OF

Urban Upbound

PRESENTED TO

Committee on Immigration

New York City Council

Wednesday, October 2, 2019

Bishop Mitchell Taylor

Chief Executive Officer

Urban Upbound
12-11 40th Avenue
Long Island City, NY 11101
Phone: 718-784-0877

Opening

Good afternoon Chairperson Menchaca and distinguished members of the NYC Council Committee on Immigration. On behalf of Urban Upbound, I, Bishop Mitchell Taylor, Founder and CEO, would like to thank you for this opportunity to speak about the benefits of adding a smart chip to the New York City I.D. card.

Urban Upbound works to break cycles of poverty in New York City Housing Authority developments and surrounding low-income areas in Queens and Manhattan by providing employment services, financial counseling, income supports access, entrepreneurship development, and access to safe and affordable banking. We work with NYCHA residents, many of whom are unbanked -- as much as 40 %. Many NYCHA residents spend in a lifetime, on average, \$40,000 on transaction fees processed by local check cashers for purchases of everyday items like groceries and Metrocards, as well as paying rent and utility bills.

To increase residents' financial capabilities, we opened the Urban Upbound Federal Credit Union in 2010, to provide a critical connection to the U.S. financial system. Today, we have over 1,500 members. Last year, the Credit Union processed \$2.5 million in NYCHA rent payments at no cost to community residents, saving them hundreds of thousands in transaction fees.

Testimony

Hence, we are in support of initiatives, like the smart chip on the NYC I.D., that will save residents money and restore faith in the U.S. financial system. Our beneficiaries trust the I.D. system put in place by the City, which has facilitated access to critical programs and services and municipal buildings. When Urban Upbound opened an NYC I.D. processing center last June, we



URBAN UPBOUND

teaching poverty; changing lives.

helped more than 1,200 Queensbridge and Ravenswood Houses residents get an I.D. in less than a month. By adding a smart chip to the NYC I.D. card, two important things happen:

- First, we quickly scale the number of people who are participating in the U.S. financial system.
- And second, we make it easier and less costly for low-income and NYCHA residents to pay bills and conduct financial affairs.

For residents who are not trusting of commercial financial institutions, the smart chip would bring a level of confidence so that people do participate in the financial system.

Conclusion

On behalf of Urban Upbound, I want to thank the New York City Council Committee on Immigration for the opportunity to testify. We hope you consider this testimony in your deliberations.

We look forward to working closely with you to ensure NYCHA and low-income individuals and families have the resources and opportunities needed to achieve economic prosperity.

Testimony: Susanna Saul, Managing Attorney (written only; will not be testifying in person)
Hearing: Int 1706 In relation to prohibiting a smart chip from being added to New York City Identity card
Cohosted: Committee on Immigration
Date: Wednesday October 2, 2019

FOR THE RECORD

Her Justice is a nonprofit organization that takes a pro bono first approach to provide free legal services to women living in poverty in New York City. We train and mentor volunteer lawyers from the City's premiere law firms who enable our clients to access the legal system and obtain the justice they so deserve. We practice in the areas of family, matrimonial and immigration law. Our clients come from all five boroughs of New York City. Approximately 80% of our clients are domestic violence survivors and three-quarters of our clients are mothers. 70% of our clients were born abroad. Her Justice is extremely concerned about the proposal to add a smart chip to the New York City Identity Card ("IDNYC") because of the increased risk for our clients from both the federal government and from abusers.

The IDNYC program has been a wonderful asset for our clients who are immigrant survivors of domestic violence. Many of them have been told repeatedly by their abusers that they have no value because they are undocumented. This message has been amplified and reinforced through the anti-immigrant rhetoric repeatedly demonstrated and explicitly expressed by the federal government. Having a government issued identification card that is not linked to their immigration status has given immigrant survivors significant access and made them feel included in their communities. We would like to be able to continue to advise these survivors that the IDNYC is safe, secure and beneficial. However, because immigrant survivors must be vigilant about attacks both by their abusers and by the federal government, we have serious concerns about the proposal to add a chip to the card if, through that chip, either the government or private actors would be able to track their locations and financial dealings.

Immigrant survivors of domestic violence are often subjected to financial abuse by their intimate partners and are struggling to build or rebuild their own credit histories and financial stability. They are subjected to identity theft, stalking and surveillance by their abusers and must be vigilant about their privacy and security. Our clients must often change their entire lives and go into the domestic violence shelter system in order to seek safety. We have seen financial institutions somehow address notices to clients at their confidential domestic violence (DV) shelter addresses, despite the fact that clients use post office boxes while in a DV shelter and the city does not share the actual addresses with other agencies or even advocates. This indicates that the existing data infrastructure is already inadequate to protect the confidential information of domestic violence survivors. Abusive partners and stalkers are often relentless



about tracking their targets and we cannot underestimate their ability to hack into computer systems to find information. Adding a chip to the IDNYC would add further risks for survivors seeking to escape their abusers.

Immigrant survivors are also increasingly and reasonably wary of the federal government, which is actively hostile to their presence in the US. We support efforts for immigrants to have access to secure banking, credit lines and other benefits of financial institutions. However, adding a chip to the card does not open up a range of banking options for clients to choose, but rather requires a linkage between an important identification document with a financial service. This is yet another form of coercion—one that involves financial services and exposes our clients to risks. A chip in the IDNYC would give the federal government, and potentially private citizens who are actively targeting survivors, access to information that could be used to further harm them.

Thank you very much for your consideration of these comments.



THE LEGAL AID SOCIETY
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3300

TESTIMONY OF THE LEGAL AID SOCIETY BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION ON INT. 1706-2019

October 2, 2019

Introduction

Thank you Chairperson Carlos Menchaca and members of the Committee on Immigration for the opportunity to testify today on behalf of The Legal Aid Society (“the Society”), the nation’s oldest and largest not-for-profit legal services organization. The Society is more than a law firm for clients who cannot afford counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. It has performed this role in city, state and federal courts since 1876. The Society’s unique value is in its ability to go beyond any one case in order to create more equitable outcomes for individuals, and facilitate broader, more powerful systemic changes for society as a whole. Through a network of borough, neighborhood, and courthouse-based offices in 26 locations in New York City, and more than 2,000 attorneys, paralegals, social workers, investigators and support staff, along with volunteer help coordinated by the Society’s *Pro Bono* program, we provide comprehensive legal services to fulfill our mission that no New Yorker should be denied access to justice because of poverty. Through three major practices —

Civil, Criminal, and Juvenile Rights — the Society handles approximately 300,000 cases a year in city, state, and federal courts. This includes over 50,000 individual civil matters and law reform cases which benefit over 2 million low-income families and individuals. The Society acts as one of New York City's first responders, protecting and enforcing the legal rights of families and individuals through long-time advocacy for the right to counsel in criminal defense or juvenile justice issues, and by directly addressing the emergent and systemic issues our client communities face.

The Society's Civil Practice improves the lives of low-income New Yorkers who struggle daily to buy food, pay rent, achieve or maintain self-sufficiency, and keep their families healthy and safe. The Civil Practice addresses a broad range of legal problems, including; housing, homelessness prevention, and foreclosure prevention; family law and domestic violence; employment issues faced by low-wage workers; public assistance; Supplemental Nutrition Assistance Program (SNAP) benefits; disability-related assistance; health law; HIV/AIDS and chronic diseases; elder law; tax law for low-income workers; consumer law; education law; immigration law; community development legal assistance; and reentry and reintegration matters for formerly incarcerated clients. Through sixteen neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low income individuals. In addition to individual assistance, the Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance to community organizations.

The Society commends the Committee on Immigration for holding today's hearing on this bill, which prohibits the inclusion of smart chips to New York City's municipal identification (IDNYC) cards. The Society strongly supports the passage of this bill and opposes

the administration's efforts to integrate financial services with IDNYC. Furthermore, the Society has concerns about plans to incorporate other agency services into the program.

The City's planned integration of IDNYC with financial services through the use of smart chips is deeply concerning. The proposals being raised go far beyond IDNYC's original intent of providing safe, government-issued photo identification to immigrants, the homeless, and other New Yorkers. It is critical that the City Council understand how dangerous the administration's proposals are for the most vulnerable New Yorkers, especially in the current political climate. The City's proposal would expose undocumented and other vulnerable New Yorkers to financial, surveillance, and privacy risks, without expanding equitable access to banking.

There are approximately 1.2 million registered IDNYC cardholders, and a substantial number of them are undocumented immigrants.¹ IDNYC provides undocumented immigrants the previously-unavailable option of legally engaging with local resources and agencies, and empowers cardholders by helping them to feel safe and welcome. Many of the over one million undocumented immigrants who live in the New York City metropolitan area previously did not have access to any form of identification issued by government agencies in this country—and often do not possess a foreign passport or birth certificate.²

When the IDNYC program was originally developed and launched in 2015, the Society was encouraged by the measures the City took to ensure that the rights of undocumented immigrants and other vulnerable New Yorkers were protected, such as allowing the use of foreign identification and other documents for application purposes. Subsequently, the City also

1 City of New York, Human Resources Administration. "New York City Identity Card Program Quarterly Report October 1, 2018 – December 31, 2018." 12/31/2018. <https://www1.nyc.gov/assets/idnyc/downloads/pdf/quarterly-report-20181231.pdf>

2 Passel, Jeffrey S. & Cohn, D'Vera. "20 metro areas are home to six-in-ten unauthorized immigrants in U.S." Pew Research Center. 06/12/2019. <https://www.pewresearch.org/fact-tank/2019/03/11/us-metro-areas-unauthorized-immigrants/>

amended its protocol so that it would no longer maintain copies of cardholders' personal documents, and ultimately destroyed all such documents it had previously collected.³

The current proposal for the hybrid use of IDNYC cards through smart chips is a sharp departure from the prior practices and priorities of the administration regarding undocumented and other vulnerable New Yorkers. The City's proposed changes would create uncertainty and risk to those who are most in need of identification. In the current political climate, cardholders are at greater risk from federal authorities. The proposals present a clear risk that data created or gathered for the planned integration would lead to surveillance and exposure of vulnerable immigrants. Recent efforts in New York to obtain access to the personal information of IDNYC cardholders on national security grounds provide concrete examples of the vulnerability of cardholder data, and of why Int. 1706 is needed.⁴ Unlike the existing system where an IDNYC applicant's information is provided only to the City, there are no guarantees that with the introduction of smart chips, information shared with financial technology ("Fintech") providers and large national banks will not lead to data breaches and disclosures that would place cardholders at serious risk.

The City's plan would do nothing to expand access to banking for cardholders. There is a serious crisis regarding access to financial services in New York City, with 360,000 households that are unbanked and 780,000 that are underbanked.⁵ Linking IDNYC to banked cardholders' existing bank accounts would not expand access for this population. Currently, large national

³ City of New York, Human Resources Administration. "Retention of Copies of Records Provided By New York City Identity Card (IDNYC) Program Applicants to Prove Identity and Residency," HRA Executive Order No. E-739. 12/07/2016. <https://www1.nyc.gov/site/idnyc/about/legallibrary.page>.

⁴ *Castorina v. De Blasio*, 55 N.Y.S.3d 599, 615 (N.Y. Sup. Ct. 2017); Liz Robbins, "New York City Should Keep ID Data for Now, Judge Rules," N. Y. Times. 12/21/2016. <https://www.nytimes.com/2016/12/21/nyregion/new-york-city-should-keep-id-data-for-now-judgerules.html>.

⁵ Ratcliffe, Caroline. "Where Are the Unbanked and Underbanked in New York City?". Urban Institute. 09/01/2015. <https://www.urban.org/sites/default/files/publication/71511/2000430-Where-Are-the-Unbanked-and-Underbanked-in-New-York-City.pdf>

banks do not accept IDNYC, or accept it only as a secondary form of identification, despite federal regulators' acknowledgement that banks can accept IDNYC as valid government identification.⁶

The proposal to integrate a prepaid debit option with IDNYC would also likely not yield the benefits the City is touting. A prepaid debt option would allow cardholders to load money on their card for use potentially with retailers or with the Metropolitan Transit Authority. In other contexts, the use of a prepaid debit option has often resulted in high, multiple or confusing fees, inadequate protection against theft, and insufficient or nonexistence account insurance. As but one example, the municipal ID cards in Richmond, California that had such an option charged a monthly fee of as much as \$3.99, a \$0.50 inactivity fee, and \$1 fee, all on top of the general ATM withdrawal fee.⁷ For low-income New Yorkers, the cumulative effect of these small fees would amount to a significant financial burden. In effect, integrating the prepaid debt option would create a replacement financial service product and second-class tier of financial services, without expanding meaningful access to banking. To the extent that prepaid debit cards may be useful, they are already readily available at numerous local convenience stores, without any of the risks attendant to an IDNYC card with a smart chip.

Another serious concern with IDNYC's use of smart chips to offer financial services is the lack of clarity as to whether the cardholders' funds would be fully insured by federal deposit insurance, and whether state consumer protection laws would be preempted if the Fintech providers and national banks were involved in providing such services. Large banks that shy

⁶ 2 On April 30, 2015, the Federal Reserve and Treasury Department's Financial Crimes Enforcement Network, issued a joint letter confirming that banks may accept IDNYC as valid identification to open bank accounts.

⁷ Richmond City ID, "What is the Richmond City ID Prepaid MasterCard?" <http://www.richmondcityid.com/>; Deville, Nancy. "Richmond Rolls Out City ID Cards. Richmond Pulse." 10/20/2014. <https://richmondpulse.org/2014/10/20/richmond-rolls-out-city-id-cards/>

away from accepting IDNYC as a primary form of identification are unlikely to undertake higher risk.

The Society is concerned about the lack of transparency in the development of the City's plans to integrate a smart chip with access to financial and other services. We applauded Mayor De Blasio's initial development and launch of the IDNYC program, for which extensive input was sought and received from stakeholders, including community-based organizations, advocates, and financial institutions. The current plans have moved forward quickly without proper consultation or engagement with stakeholders and the public.⁸ The Society has long supported the expansion of access to financial services to unbanked and underbanked New Yorkers. Yet, any solution must be community-informed and prioritize equity and security, and must not expose cardholders to undue risk.

Even if the inclusion of smart chips in IDNYC were to be only optional for cardholders, many of the risks and harms would remain. By providing the option, the City would be tacitly endorsing the services to be provided, whether by specific Fintech providers or financial institutions. Given the position of a municipality as a trusted entity, cardholders are likely to opt-in for services that place them at greater risk without fully understanding those risks.

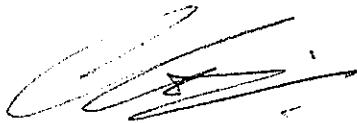
Conclusion

We urge the Council to pass Int. 1706, to ensure that the most vulnerable New Yorkers, for whom IDNYC was largely created, are protected. We encourage the expansion of access to banking and other services and the integration of services provided by city agencies, but not at

⁸ New York City, HRA. Request for Expressions of Interest (RFEI) in "IDNYC Dual Interface Card Payment Initiative." May 30, 2018. (responses due by June 29, 2018). <https://tech.cityofnewyork.us/wp-content/uploads/2018/06/IDNYC-Smart-Chip-RFI-1.pdf>; New York City, HRA. "Financial Services Provider to Host and Execute a Dual interface Smart Chip on IDNYC Card." 12/14/2019. <https://a856-cityrecord.nyc.gov/RequestDetail/20181217012>

the cost of the personal security and consumer rights of undocumented and low-income New Yorkers. The bill would ensure that the IDNYC program continues to benefit the populations that it was originally intended to assist. On behalf of the many low income consumers and immigrants we represent, thank you again for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tashi Lhewa', with a large, sweeping flourish at the end.

Tashi Lhewa, Esq.
The Legal Aid Society

Planned Parenthood of New York City

Planned Parenthood of New York City
Proposal to Ban Smart Chips in IDNYC Cards
Intro 1706-2019
October 2, 2019

Good Afternoon. My name is Sarah Sanchala, and I am the Director of Government Relations at Planned Parenthood of New York City (PPNYC). I would like to thank Chair Menchaca and the Committee on Immigration for the opportunity to submit testimony at this hearing. Planned Parenthood of New York City understands the importance of the New York City Identification Card (IDNYC) and as a result, we support Intro 1706-2019, which prohibits the addition of smart chips to IDNYC. Planned Parenthood of New York City (PPNYC) has been a leading provider of sexual and reproductive health services in New York City for more than 100 years, with over 90,000 appointments for New Yorkers annually. We believe that everyone deserves high quality, compassionate health care that is appropriate for their needs and concerns, regardless of age, immigration status, gender identity, or ability to pay.

Planned Parenthood of New York City opposes the addition of smart chips or financial technology in IDNYC cards. The addition of a smart chip could harm New Yorkers by creating a means through which people could be tracked, posing a threat to their safety and quality of life. This technology is also poses a concern about financial strains that result from the additional fees that will be associated with the IDNYC once the microchip is added¹. The intent of IDNYC cards is to increase access to government-issued identification, especially for those who are ineligible and/or unable to apply for other forms of identification. However, the proposed changes to the IDNYC would undermine equal access to government-issued identification and instill fear in our undocumented and immigrant patients. This fear that may manifests itself in our patients refusing to enroll in insurance or rejection of other services they may be eligible to receive.

With the addition of a smart chip, vulnerable New Yorkers could be tracked through their daily lives including by the MTA, financial institutions, private artificial intelligence companies, and the government, who in turn would be making a profit off them.

Additionally, with the New York Information of Freedom Law, the public can request information from the government, which could include IDNYC data, making people vulnerable to attacks². In New Haven, CT, the anti-immigrant group, Community Watchdog Project attempted to access the names of those who registered for the municipal ID³.

¹ Oakland debit card fees draw criticism. San Francisco Gate. Retrieved September 23, 2019, from <https://www.sfgate.com/bayarea/article/Oakland-debit-card-fees-draw-criticism-4368734.php#ixzz2O5Nxqfka>

² New York Information of Freedom Law. National Freedom of Information Coalition. Retrieved September 23, 2019 from <https://www.nfoic.org/coalitions/state-foi-resources/new-york-foia-laws>

³ Municipal ID cards as a strategy to promote belonging and shared community identity. The Center for Popular Democracy. Retrieved September 23 2019, from <https://populardemocracy.org/news/who-we-are-municipal-id-cards-local-strategy-promote-belonging-and-shared-community-identity>

The Center for Popular Democracy, strongly recommends avoiding connecting prepaid debit cards to any municipal ID's⁴. Instead, they suggest expanding partnerships and agreements with financial institutions so cardholders can access resources of their choosing⁵. With the Trump-Pence Administration's ongoing attacks on immigrants, we must do everything we can to protect immigrant families and their information so we do not inadvertently put them at risk for further discrimination and disproportionate access to services, including healthcare.

As the IDNYC program stands currently, New York City residents are able to access a government-issued ID with any passport and proof of local residency, allowing for greatest access with the least number of barriers. We are proud to support Introduction 1706-2019 to ensure that the program remains safe for all to participate. Thank you for your time.

⁴ Building Identity: A Toolkit for Designing and Implementing a Successful Municipal ID Program. The Center for Popular Democracy. Retrieved on September 23, 2019 from https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf

⁵ Building Identity: A Toolkit for Designing and Implementing a Successful Municipal ID Program. The Center for Popular Democracy. Retrieved on September 23, 2019 from https://populardemocracy.org/sites/default/files/Municipal-ID-Report_WEB_Nov2015_0.pdf



Letter In Support of Expanded IDNYC Card with Financial Services

October 2, 2019

To The Honorable New York City Councilmembers:

Ariva, Inc, a nonprofit financial capabilities provider headquartered in the South Bronx and serving over 15,000 New York City residents a year, supports the expansion of the IDNYC card to include an electronic debit/checkless checking function.

We share the concerns of some advocates in the immigrant rights community about protecting the privacy of undocumented immigrant New Yorkers; we urge the development of a product that addresses those concerns and that also gives New Yorkers, regardless of immigration status, a choice in using an IDNYC card with or without the financial services option. There is a great need for additional safe and affordable alternative banking and savings products for low and moderate income Bronx residents; offering this service through the IDNYC card would help expand access to mainstream financial services to those members of our community who experience the greatest barriers to that access.

About Ariva

Ariva's mission is to empower low-wealth New Yorkers with effective tools and resources so they can make informed financial decisions and achieve economic stability.

We were founded in 2003 to respond to the financial services and access needs of limited-income and low-wealth individuals in the South Bronx. We are still headquartered in the South Bronx today and our programs continue to have a strong emphasis on serving Bronx residents. While maintaining our special commitment to the Bronx, we also operate programs throughout New York City. We provide free on-site financial counseling and free tax preparation services in underserved communities and to underserved people in Manhattan, Brooklyn and Queens, in addition to our programs in the Bronx.

Who We Work With

Our free income tax preparation (VITA) program will assist at least 11,500 New Yorkers in the coming year. All but one of our 13 tax sites are located in low- and moderate-income Bronx neighborhoods (the other is at the Mexican Consulate in Manhattan). Our free financial counseling program will work with about 3,500 New Yorkers in the next year. Some of its initiatives serve all New York City residents, others are dedicated to Bronx residents or provide specialized expertise to a diverse range of people with particular financial circumstances and priorities, such as people who are recent immigrants, people with disabilities, New Yorkers seeking affordable apartments, people at risk of homelessness and microentrepreneurs.

Based on information tracked in our free tax program:

- Most of our clients are working people
- 94% of our clients are low-income, earning less than \$40,000 (31% earn less than \$10,000)
- 98% are people of color (62% Hispanic)

- 57% speak a language other than English as their primary language (close to 56% speak Spanish at home)
- **Of 9,644 tax filers surveyed at our tax sites last filing season, only 7,155 or 74% reported having a checking or savings account.** A number of filers who declined to answer the survey may in fact have a bank account, but we estimate that at least 15% to 20% of our filers at most of our tax sites are unbanked or underbanked.

The Need

A core part of Ariva's work is to help our unbanked and underbanked clients acquire safe, affordable financial products and services. Building savings and establishing credit are fundamental requirements to enter the financial mainstream and pursue financial security and prosperity. This is true for everyone, but especially so for the large number of immigrants we work with who are trying to establish a new life here in New York City.

But while the need for safe, affordable financial products is great, the challenges are equally so. Large sections of the Bronx, including Highbridge where we are headquartered, have few retail bank branches; many of our clients are not walking distance to a bank. Banks remain strongly reluctant to open new branches in lower income Bronx neighborhoods.

Some point out that the future of banking is digital, but Ariva's clients face challenges in accessing online products as well. The existing financial products and services available in our communities are not meeting the needs of all our residents; we lack many products and services, or there are often inflexible requirements to access the ones available. Ariva currently has plans underway to gauge interest of a small sample of our unbanked clients in using a subsidized prepaid card as a first step to banking. This initiative is completely unrelated to the

expanded IDNYC Card; it came from internal conversations on how to respond to the large number of people we meet in our programs who do not have bank accounts. We also believe that diversity promotes financial inclusion; and that diversity includes a diversity of products that are innovative and that reduce barriers for those who would like to access the mainstream market.

A few years back, we were excited by a new retirement product sponsored by the Treasury Department, myRA, an IRA retirement account for people who did not have access to one at work. The account could be opened by young people under 18 and also by people who did not have social security cards (ITIN filers.) We work with a lot of ITIN filers (we prepared 715 ITIN application or returns last filing season) and we were eager to help our clients open these new accounts. Unfortunately, despite its claims, hardly any of our clients were able to open a myRA account; though technically eligible, most did not have enough publicly available information to answer the out-of-wallet questions which were a precondition to opening the account. The myRA program was later discontinued.

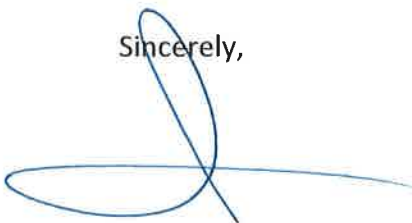
The current IDNYC card has already helped to expand access to banking services. Credit unions and a few community banks will now accept IDNYC to open accounts; these institutions are doing wonderful work to expand access, but they are few in number and the need remains overwhelming.

Conclusion

Expanded access to safe and affordable financial products is particularly critical in the New York City neighborhoods where Ariva works. Our clients are more vulnerable to predatory practices and have disproportionately high usage of fringe and expensive products. We support the expansion of the IDNYC card to include an affordable, safe, reloadable savings account. We believe the IDNYC card is uniquely effective in reaching people who face the most barriers in accessing safe and mainstream financial services. We also believe New Yorkers should have choices and we are confident the City of New York can work successfully with all stakeholders to protect cardholders privacy and security and can ensure that those who wish to have a banking/debit card component to their IDNYC card can do so, and those who do not, can have a card without that function.

We have seen how impactful it can be when local government, private companies, nonprofit providers and community advocates get together at the same table to solve problems and create solutions. Together, we can create powerful tools that strengthen and empower our communities.

Sincerely,



Irene Baldwin
Executive Director
Ariva, Inc
69 East 167 Street, 2nd Floor
Bronx, NY 10452

October 2, 2019

New York City Council
Committee on Immigration
Carlos Menchaca (Chair)
Margaret S. Chin
Mark Gjonaj
Francisco Moya
Daniel Dromm
I. Daneek Miller
Mathieu Eugene

New York City Hall
City Hall Park
New York, NY 10007

Dear Members of the Committee on Immigration,

The proposed bill to prohibit a smart chip from being added to the New York City identity card (IDNYC) is a well-intentioned but misguided attempt at protecting New Yorkers from the risks of the digital ecosystem. If passed, IDNYC will fail to achieve its vision of being a driving force for inclusion, ultimately becoming a less useful and impactful tool for your citizens.

Many of the concerns raised by members of the committee regarding the safety and security of IDNYC cardholders, particularly undocumented immigrants, are valid and should be considered seriously. Every step forward into the digital ecosystem—from creating a Facebook account to purchasing products with a debit card linked to an IDNYC smart card—exposes a user to the risk of harm perpetuated by nefarious actors. For people living in fear of persecution, by the federal government or other actors, data privacy is especially important. For these reasons, I empathize with the concerns that brought this bill to your committee. Nevertheless, prohibiting a smart chip in IDNYC will do little to mitigate the risks citizens are exposed to while increasing obstacles to their inclusion in society.

We are exposed to the risks of the digital ecosystem every day: mobile service providers log every call we make, financial service providers report transaction patterns to government authorities, and grocery stores assess our movements in every aisle and then analyze our purchases at check-out. These digital records are purchased, hacked, or subpoenaed regardless of what ID card the person who generated that data holds. Conscientious participants in this ecosystem constantly calculate the risk and reward of their interactions in this environment and act accordingly. Even with the best of precautions against digital security risks, the best a person can hope for is mitigation. Unfortunately, prohibiting a smart chip in IDNYC would do little to protect citizens who are already participating in this digital ecosystem.

Instead, the committee should consider whether IDNYC can minimize risk for cardholders while providing them meaningful benefits. To date, the answer is a resounding “yes.” IDNYC has already taken many steps toward protecting users. As you know, the underlying documents used to issue the card are not stored, providing a critical layer of security for vulnerable groups, particularly undocumented immigrants. Additionally, IDNYC’s proposed smart chip offering provides citizens with the ability to opt-in. Providing informed consent is a reasoned compromise, allowing citizens who are especially concerned about data privacy to avoid additional exposure. Rather than focusing the committee’s energy on preventing the

inclusion of these chips, I encourage you to explore how you can ensure that benefits and risks are clearly and transparently communicated to potential cardholders prior to them opting-in.

Furthermore, a smart chip embedded in IDNYC has the potential for unleashing numerous benefits for cardholders. The most obvious and immediate is promoting financial inclusion: IDNYC aims to partner with a financial institution to offer digital banking service to cardholders. This access can play a critical role in improving people's lives. People need safe, affordable, and appropriate facilities in which to save or borrow in order to pursue their dreams, respond to emergencies, and manage day-to-day needs. The fact that this financial product will be offered in partnership with city government is monumental: IDNYC is uniquely positioned to negotiate a safe and secure financial service because of its scale. Embedding a smart chip also opens a world of additional possibilities to improve service delivery of social services, transportation, and healthcare for vulnerable groups, possibilities that will not be explored if smart chips are prohibited.

My sincere hope is that citizens will have the opportunity to make the choice about whether to embed their IDNYC card with a smart chip after being fully informed of its potential benefits and risks. I encourage the committee to devote its energies to supporting those efforts rather than eliminating the choice entirely.

Sincerely,



Mr. Eric Noggle

ABOUT ERIC NOGGLE

Eric is the Senior Director Research at the Center for Financial Inclusion at Accion (CFI). Eric leads a team of researchers who study consumer behavior, digital financial services, financial capability and health, and other innovations in the sector. His team is currently studying municipal IDs and their role in promoting inclusive societies. Previously, Eric was the Research Director at Microfinance Opportunities, leading studies examining the financial behavior of low-income households in partnership with banks, impact investors, mobile operators, and others. He holds a Master in Public Administration and undergraduate degrees in economics and political science.

ABOUT THE CENTER FOR FINANCIAL INCLUSION

The Center for Financial Inclusion at Accion (CFI) is an action-oriented think tank that engages and challenges the industry to better serve, protect, and empower clients. We develop insights, advocate on behalf of clients, and collaborate with stakeholders to achieve a comprehensive vision for financial inclusion. We are dedicated to enabling 3 billion people who are left out of – or poorly served by – the financial sector to improve their lives.

ABOUT ACCION

Accion is a global nonprofit committed to creating a financially inclusive world, with a pioneering legacy in microfinance and fintech impact investing. We catalyze financial service providers to deliver high-quality, affordable solutions at scale for the three billion people who are left out of — or poorly served by — the financial sector. For more than 50 years, Accion has helped tens of millions of people through our work with more than 110 partners in 50 countries. More at <http://www.accion.org>.



SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

HÉCTOR J. FIGUEROA
President

LARRY ENGELSTEIN
Executive Vice President

KYLE BRAGG
Secretary Treasurer

LENORE FRIEDLAENDER
Assistant to the President

VICE PRESIDENTS

SHIRLEY ALDEBOL
KEVIN BROWN
JAIME CONTRERAS
JUAN HERNANDEZ
ROB HILL
ALISON HIRSH
DENIS JOHNSTON
GABE MORGAN
MANNY PASTREICH
ROXANA RIVERA
JOHN SANTOS
JOHN THACKER

Capital Area District

Washington 202.387.3211
Baltimore 410.244.6299
Virginia 202.387.3211

Connecticut District

Hartford 860.560.8674
Stamford 203.674.9965

District 1201

215.923.5488

Florida District

305.672.7071

Hudson Valley District

914.328.3492

Mid-Atlantic District

215.226.3600

**National Conference of
Firemen and Oilers**

606.324.3445

New England District 615

617.523.6150

New Jersey District

973.824.3225

Western Pennsylvania District

412.471.0690

www.seiu32bj.org

Submitted to New York City Council Committee on Immigration

October 2nd, 2019

Statement of SEIU 32BJ

Thank you to the Committee for holding this hearing on Int 1706-2019. SEIU 32BJ is the largest property services union in the country representing over 170,000 members across 12 states and Washington DC, and 85,000 members in New York City. While we commend efforts to address banking deserts, these efforts should not be carried out in a way that would undermine other important City priorities. The New York City Identification Card (IDNYC) was originally created to address the needs of vulnerable populations such as undocumented immigrants, the homeless, and transgender people. The addition of a “smart chip” to the ID would risk discouraging these populations from obtaining the ID. Attempting to increase access to financial services might result in decreasing access to other crucial services such as SNAP, Cash Assistance, Section 8, NYC health services, library access, and so on. Those who continue to use the card may be putting their private information at risk, whether to hackers or to federal agencies like ICE. This is why multiple community groups have said that they would discourage the use of the IDNYC if a smart chip was added.

First, As of June 30, 2019 IDNYC, has issued 57,919 cards to minors yet the City’s procurement documents contain no mention about special protections for children.ⁱ The concerns about private information’s security are even more pressing when they were concern children. Children as young as 10 years old are eligible for an IDNYC Card.ⁱⁱ While applicants that are 10-13 years old may apply with caretakers’ consent, applicants that are 14 years and older need only produce a photo ID.ⁱⁱⁱ Has the City considered the practical and legal consequences of allowing young children to access, without parental supervision and consent, the type of card that it is proposing to create?

Second, the language contained in the bid solicitation is not reassuring with regards to the security of the information that would be in the hands of the third party. The December 14, 2018 notice of intent requires that “[t]he proposer must contractually commit to providing the City with notice of receipt of any subpoena, **where legally permissible**, for cardholder account information in order to **potentially** provide an **opportunity** for the City to intervene to protect cardholder information” (emphasis added). The presence of so many qualifiers does not provide a sense of security.

Third, It is worth remembering that New York City was the subject of an unsuccessful suit under the state freedom of information law seeking to preserve and access the records of those who obtained an IDNYC Card.^{iv} Eventually the City was allowed to not to retain records provided by applicants to prove identity and residency.^v Despite this experience the current smart chip proposal weakens privacy protections. The mere existence of this data will provide a target for those interested finding out the identities and locations of vulnerable populations.

For these reasons we respectfully ask you to vote in favor of prohibiting a smart chip from being added to the IDNYC.

ⁱ <https://www1.nyc.gov/assets/idnyc/downloads/pdf/quarterly-report-20190630.pdf>

ⁱⁱ <https://www1.nyc.gov/site/idnyc/benefits/kids-and-family.page>

ⁱⁱⁱ <https://www1.nyc.gov/site/idnyc/card/documentation.page>

^{iv} *Matter of Castorina v. de Blasio*, 56 Misc. 3d 413 (Sup. Ct. 2017).

^v Steve Banks, *Executive Order No. E-739: Retention of Copies of Records Provided by New York City Identity Card (IDNYC) Program Applicants to prove Identity and Residency*, New York City (Dec. 7, 2016),

https://www1.nyc.gov/assets/idnyc/downloads/pdf/eo_739_retention_120716.pdf



Legislative Affairs
One Whitehall Street
New York, NY 10004
212-607-3300
www.nyclu.org

**Testimony of Jonathan Stribling-Uss on Behalf of the New York Civil Liberties Union
Before the City Council Committee on Immigration
In Support of Intro. 1706 Prohibiting a Smart Chip
from Being Added to New York City Identity Card**

October 2nd, 2019

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony in support of Intro. 1706, which would prohibit the addition of a smart chip and financial technology to the New York City Identity (“IDNYC”) card.

The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

1) History of the IDNYC program

When the IDNYC bill was first proposed in July 2014, the NYCLU objected to the initial requirement that the City store New Yorkers’ personal documentation in a manner that could be accessed by law enforcement without a demonstration of probable cause.¹ Because of these concerns, when the card was launched in 2015, the City responded by ensuring that the IDNYC database does not retain individual documents.² The City deserves credit for acknowledging the potential risks of harm to card-holders – particularly those without documentation or in fluid citizenship status – and designing the IDNYC system to minimize those potential harms. The IDNYC program was therefore launched, and has been administered, in a manner that protects the privacy of card-holders. IDNYC has reached 1.2 million card-holders under a system in which each person knowingly consented to the City creating a unique card. Indeed, IDNYC requires that people show up *in person* at an office within city limits with physical documents – and then does not store those documents after the card is created. This eliminates the need for the city to maintain a vast database of personal documents that could be hacked

1 NYCLU, *Testimony in Opposition to Proposed Rules Governing The City Identification Card Program*, available at <https://www.nyclu.org/en/publications/testimony-opposition-proposed-rules-governing-city-identification-card-program> See also NYCLU, *Statement of the NYCLU Regarding the New York City Municipal ID Bill*, available at <https://www.nyclu.org/en/publications/statement-nyclu-regarding-new-york-city-municipal-id-bill> (last accessed 2/11/2019)

2 NYCLU, *City Can Reduce Risks that NYC IDs Pose for Undocumented New Yorkers*, available at <https://www.nyclu.org/en/press-releases/nyclu-city-can-reduce-risks-nyc-ids-pose-undocumented-new-yorkers> (last accessed 2/11/2019)

or breached.³ This physical contact is a solid strategy and is an excellent proxy for informed consent – that is, every card-holder knows precisely which information they’ve given to the City and that these documents are not digitally retained. Today, we are elated by the fact that the IDNYC now has helped over one million New Yorkers access basic services.⁴ And we believe that the success of the IDNYC program has achieved this success precisely *because* of the community’s trust in the card – card-holders and community advocates have been able to rely on the IDNYC program’s robust security and privacy safeguards. Unfortunately, the city has recently indicated an intention to divert from this privacy-driven approach and expand the IDNYC from an *identification* card into one that has digital financial technology (or “fintech” – which uses new technologies to acquire data about individuals to automate insurance, trading, banking services, and risk management industries) embedded into the card.

Financial technology is at odds with both the purposes of the card itself, and the wishes of IDNYC cardholders. We are therefore encouraged to see the City Council take up a bill which builds on these privacy concerns by prohibiting a smart chip from being added to New York City identity card, which would ensure that the card continues its existence as a vital and protective resource for all New Yorkers.

2) NYCLU support for Intro. 1706 prohibiting a smart chip in the IDNYC

Intro. 1706 is a straightforward bill that would require an IDNYC card to contain and transmit *only* the information that is visibly displayed on the face of the card. The bill states that an IDNYC “shall not contain or transmit any information other than that which is visibly displayed on the face of the card, or contain any additional device or mechanism for transmitting information.” With this change, Intro 1706 prohibits any financial technology or payment systems being imposed on the ID, now or in the future. Like the history and purpose of the IDNYC card, this bill would ensure that card holders know *precisely* which information the city, and the card, retain about them. Thus, this bill will ensure that card holders can continue to know with certainty just what information the city is taking and storing about them. In this manner, the IDNYC program can ensure that every card holder provides meaningful informed consent to the use and sharing of all the information they provide to the city.

The NYCLU supports Intro. 1706 because it ensures that the IDNYC cards do not contain any tracking or surveillance technology that could create grave risks for the vulnerable population served by the IDNYC. Its passage will help ensure that this government identification card continues to serve vulnerable communities by building on its most important asset – community trust.

3) Dangers of marrying government identification and banking in one card

Intro. 1706 ensures that we are not creating one ID for many functions. Government identity documents should be sacred – they are required to live, work, and move around freely in the world. Governments should therefore be very wary of attaching additional functionalities – and any associated risks – into such a vital identification document. Financial technology no more belongs on a municipal ID than a MasterCard logo belongs on our driver’s licenses.

3 City of New York, *New York City Identity Card Program Quarterly Report October 1, 2018 – December 31, 2018* available at <https://www1.nyc.gov/assets/idnyc/downloads/pdf/quarterly-report-20181231.pdf> (last accessed 2/11/2019)

4 City of New York, *New York City Identity Card Program Quarterly Report October 1, 2018 – December 31, 2018* available at <https://www1.nyc.gov/assets/idnyc/downloads/pdf/quarterly-report-20181231.pdf> (last accessed 2/11/2019)

Overlapping identity and financial identification systems increases data mining risks, especially for the vulnerable individuals whom the IDNYC was designed to serve. The data stored or recorded by an IDNYC could be overlaid with traffic or usage patterns to de-anonymize it (meaning a third party could use bits of ostensibly anonymous data to re-identify the person associated with the card's use). Academic studies have consistently shown that it only takes three pieces of known data to de-anonymize an individual in a whole data set.⁵ Even data that doesn't have any personal identifying information could still be correlated to connect a card or payment identifier. Just the time, place, sequence, or timing of IDNYC use would then allow an advertising company or government agency to undo the pseudonymous numerical identifier that the transit agency or payment company applied to each card. This would then allow them to go back in time, over all the travel or transaction data that they hold, and see details of all the purchases or travel that individual ever had in the system. The City has not given us enough information in writing to understand what exact technology will be included in the proposed standards and how this type of metadata collection could be avoided. Among the potential fintech the city is considering is "contactless" technology, which relies on RFID chips and remote readers to access information digitally stored on the card. We are very concerned that the City's recent proposal to utilize contactless RFID (Radio Frequency Identification) technology risks upending IDNYC's cautious, consensual, and low-risk approach.⁶ All contactless technology opens up the very real possibility that location, usage patterns, and IDNYC ownership can be remotely "sniffed" by third parties, creating acute new privacy risks for card-holders. "Contactless" technology means that information stored on the IDNYC – and without question, the existence and use of the card itself – could be revealed from a distance without the card-holder's knowledge or consent.⁷ This is not a worthwhile tradeoff for an ID that is designed to support the most vulnerable among us.

4) Responding to The City's "Smart Chip Exploratory study"

The City has claimed that the addition of the "smart chip" in the IDNYC card is in response to demands from card holders. However the City's own research, as articulated in the City's "April 17th, 2019 IDNYC Card & "Smart Chip" Exploratory Study" is profoundly limited and deeply divided. The research methods are a tiny sample, without statistical or scientific controls. Based in this small sample the City claims that a chip is needed for banking access in the card. But from the questions asked in the survey it is difficult to distinguish if the city is discussing access to a bank account, which is a request shared by many people in the survey, or if people are looking for a prepaid card with a "chip." The addition of a chip into the IDNYC does nothing to give unbanked people access to a bank account. Even after the addition of a chip into the IDNYC card many major banks will still refuse to allow it to be used as a primary ID for opening a bank account. The goal to increase financial equity for unbanked people is a worthy one, but adding intrusive financial tracking technology to a government ID is not the solution to this problem.

5 Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization* UCLA Law Review, Vol. 57, p. 1701, (2010) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1450006 (last accessed 2/11/2019) See also Philippe Golle, *Revisiting the Uniqueness of Simple Demographics in the US Population* available at <http://crypto.stanford.edu/~pgolle/papers/census.pdf> (last accessed 2/11/2019)

6 City of New York, *Request for Expressions of Interest (RFEI) IDNYC Dual Interface Card Payments Initiative*, available at <https://tech.cityofnewyork.us/wp-content/uploads/2018/05/IDNYC-Smart-Chip-RFEI.pdf> (last accessed 2/11/2019)

7 Chris Paget, *DEF CON 18 - Chris Paget - Extreme-Range RFID Tracking* available at <https://www.scribd.com/document/145653052/Extreme-range-RFID-hacking-by-Chris-now-Kristin-Paget> (last accessed 2/11/2019) See also *DEF CON 18 - Chris Paget - Extreme-Range RFID Tracking* available at https://www.youtube.com/watch?v=q9_8F_BKeto (last accessed 2/11/2019)

Indeed, the most broadly supported survey response is the significant concern cardholders have toward any tracking of their card use. The City’s April 17th, 2019 IDNYC Card & “Smart Chip” Exploratory Study articulates this need for robust privacy guarantees with a strong preference to resist any technology that could be used for tracking the cards. This is articulated as the *primary* worry of people utilizing the IDNYC card. Card holders’ concern over personal privacy should therefore be the starting point of analysis for any newly inserted design or technology elements. Utilizing the City’s own information presented in their exploratory study group in the criterion for smart chips, it is clear that contactless cards simply cannot meet this need for tracking minimization. Because RFID wireless implementation is passively powered by a secondary device (the device designed to read the card’s data), the ability to track it cannot be turned off. The person with the card reader controls the distance at which the card can be read – because the card is a tag that responds to radio waves.⁸ This enables any prospective card-reader (including hackers, law enforcement, or anyone else with the equipment and motivation) to access at least certain information from a card with contactless technology without the knowledge or consent of the cardholder. There is little question that among the data that could be “sniffed” remotely is the simple fact that a person carries an IDNYC card – data that itself may be of immense interest to immigration authorities, for example.⁹

5) Responding to The City’s claims about smart chip encryption

In addition, City staffers and third parties hired by the city have cited “encryption” as a less than specific buzzword to address any privacy or security concern advocates may have with the proposed changes to the card. The encryption on the card might protect certain information (e.g. Personally Identifiable Information, or PII), but will almost certainly broadcast that the user has an IDNYC card – a harmful revelation that could be weaponized by federal immigration authorities or hackers attempting to prey on vulnerable communities.

The unspecific and overbroad use of the term “encryption” to solve more serious privacy issues is an unfortunately common – but often hollow – refrain in many policy debates. The science of cryptography has provided many important benefits to modern technology and cryptography’s application, in the form of encryption, allows for many confidentiality, integrity and authentication functions that are necessary for everyday information systems, including banking, Wifi, and internet systems. However, invoking encryption to obscure difficult questions about functional electromagnetism is a misunderstanding of which branch in the tree of scientific knowledge a project rests on. Regardless of encryption protocol, RFID/NFC (Near-Field Communication) systems reveal their historical bytes to *all* interested transmitters, because the systems require physical power from the transmitter and must reply in some form to that power.¹⁰ Encryption simply cannot limit the ability for third parties to surreptitiously sniff RFID/NFC cards at a distance, an ability that will only increase over time, as transmitters become more ubiquitous and powerful.

The ISO (International Organization for Standardization) standardization specifications for NFC are helpful in understanding what the designers of NFC systems are hoping their systems achieve.

8 In an RFID system a reader includes a radio transmitter and receiver.

9 Renaud Lifchitz, *Hacking the NFC credit cards for fun and debit* Hackito Ergo Sum (2012) available at [https://deepsec.net/docs/Slides/2012/DeepSec_2012_Renaud_Lifchitz_-_Hacking_the_NFC_Credit_Cards_for_Fun_and_Debit_%3b\).pdf](https://deepsec.net/docs/Slides/2012/DeepSec_2012_Renaud_Lifchitz_-_Hacking_the_NFC_Credit_Cards_for_Fun_and_Debit_%3b).pdf) (last accessed 2/11/2019) see also Gerhard Klostermeier *RFID/NFC-Grundlagen - A Pentesters Perspective* available at <https://media.ccc.de/v/gpn18-79-rfid-nfc-grundlagen-a-pentesters-perspective#t=333> (last accessed 2/11/2019)

10 List of historical bytes and associated contactless cards: By Ludovic Rousseau <https://archive.fo/QXk2v>

However, standards are written ideals that do not fully represent how the final system operates in the physical world. NFC is a standard which is designed to have a smaller read range (3-5 cm) than the incredibly broad 250 foot range of normal RFID. That is the ideal in the NFC ISO standards. However in real life the NFC read range has been shown to be much farther; as much as 3-50 feet for sniffing or reading.¹¹ This read range is always controlled by the reader, not the card, which means that as transmitters become more technologically advanced the readers will have a more extreme range. This problem cannot be solved by encryption. It is a physics problem, to which the City can offer no technical solution other than the prohibition on this type of technology as contained within Intro. 1706.

6) Conclusion

The NYCLU supports an effective IDNYC card, without the risk of privacy harms, mass surveillance, or undermining the trust of vulnerable communities. Intro. 1706 honors the original purpose of IDNYC and will make it even more successful in the coming years by avoiding risky contactless RFID or tracking technology that could undermine the City's original purpose in creating the IDNYC.

¹¹ Renaud Lifchitz, *Hacking the NFC credit cards for fun and debit* Hackito Ergo Sum (2012) available at [https://deepsec.net/docs/Slides/2012/DeepSec_2012_Renaud_Lifchitz_-_Hacking_the_NFC_Credit_Cards_for_Fun_and_Debit_%3b\).pdf](https://deepsec.net/docs/Slides/2012/DeepSec_2012_Renaud_Lifchitz_-_Hacking_the_NFC_Credit_Cards_for_Fun_and_Debit_%3b).pdf) (last accessed 2/11/2019) See also Gerhard Klostermeier *RFID/NFC-Grundlagen - A Pentesters Perspective* available at <https://media.ccc.de/v/gpn18-79-rfid-nfc-grundlagen-a-pentesters-perspective#t=333> (last accessed 2/11/2019)

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Date: _____

(PLEASE PRINT)

Name: Bishop Mitchell Taylor

Address: _____

I represent: Urban Upbound

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Date: 10/2/19

(PLEASE PRINT)

Name: Commissioner Bitta Mostofi

Address: 253 Broadway, 14th Fl

I represent: NYC Mayor's Office of Immigrant Affairs

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____
 in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: TASHI LHEWA

Address: _____

I represent: THE LEGAL AID SOCIETY

Address: 157-01 JAMAICA AVE #202
JAMAICA, NY 11432

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Sam Solomon

Address: 255 Broadway 10th

I represent: Mayors Office of Info. Privacy

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1026 Res. No. _____

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: John Paul Farmer

Address: 255 Greenwich Street, NY, NY

I represent: the Mayor's Office of the Chief Technology Officer

Address: 255 Greenwich St
NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: Nicole Perry

Address: 42 Broadway

I represent: Dept. of Consumer and Worker Protection

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 10/02/19

(PLEASE PRINT)

Name: Fanta Fofana

Address: 35W 311st St, NY, NY 11226

I represent: Families for Freedom

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DEYANIRA DEL RIO

Address: _____

I represent: New Economy Project

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MIZUE AIZEKI

Address: _____

I represent: Immigrant Defense Project

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

in favor in opposition

Date: 10/2/2019

(PLEASE PRINT)

Name: NEENA DUTTA (AILA) NY

Address: 150 BROADWAY 1001

I represent: AMERICAN IMMIGRATION

Address: LAWYERS ASSOCIATION

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ^{CLIP} ~~1200~~ ^{Union} ~~70NYC~~ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Alicia Portada

Address: 47 F. Krausman Avenue, Apts.

I represent: Lower East Side People's FCU

Address: 37 Avenue B, NY NY 10009

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Natalia Anstizabal

Address: _____

I represent: Make the Road NY

Address: _____

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

1

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

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: Bishop Mitchell G. Taylor

Address: 12-11 40TH AVE L.I.C. N.Y. 11101

I represent: Urban Upbound

Address: 12-11 40TH AVE LIC NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: TASHI LHEWA

Address: THE LEGAL AID SOCIETY 153-01 JAMAICA AVE #202

I represent: THE LEGAL AID SOCIETY JAMAICA, NY 11432

Address: [Handwritten mark]

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: ALBERT FOX CAM, ESQ.

Address: _____

I represent: SURVEILLANCE TECH OVERSIGHT PROJECT

Address: 40 RECTORY ST 1004

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1706-2519 Res. No. _____

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: Jame Wesley

Address: 50 Broad St #1412

I represent: ANHD

Address: 50 Broad St #1412

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: Karen Gtoni

Address: _____

I represent: Linux Foundation

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: 10/2/19

(PLEASE PRINT)

Name: Jonathan S. Uss (NYCLU)

Address: 125 Broad St 18 Floor

I represent: Nyclu

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1706 Res. No. _____

in favor in opposition

Date: 10/02/2019

(PLEASE PRINT)

Name: Betsy Plurin, New York Immig Coalition

Address: 131 W 33rd St NY NY 10001

I represent: New York Immig Coalition

Address: _____

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