NEW YORK CITY COUNCIL

TESTIMONY FROM JOHN FEINBLATT,

CHIEF ADVISOR TO THE MAYOR FOR POLICY AND STRATEGIC PLANNING

Committee on Immigration

January 25, 2013

Good morning Chairman Dromm, and Members of the Immigration Committee. I am John Feinblatt, Chief Advisor to the Mayor for Policy and Strategic Planning and I am joined by Assistant Commissioner Sue Petito and Deputy Chief William Matusiak from the New York Police Department and from the Department of Correction, First Deputy Commissioner Lew Finkelman and Assistant Deputy Warden Joseph Vasaturo.

I am here today to testify on two proposed laws-- one for Department of Correction and one for the Police Department – that will update the City's guidelines for detainers issued by the federal agency of Immigration and Customs Enforcement, or ICE -- a change necessitated by the federal introduction of the program Secure Communities. First let me say that policy work at the intersection of immigration and law enforcement is never easy, so I want to thank the Speaker and her staff, Council Member Viverito, Chair Dromm and members of this committee, and the representatives from the City's immigrant community – all of

whom contributed to reaching this agreement. Our goal, as it has always been, is to protect public safety and national security, while ensuring that New York City remains the most immigrant-friendly city in the nation. I believe these new bills continue to strike that balance.

Why did the bill need to be updated? The original bill was developed when ICE detainers were only issued to those already held at Rikers on criminal charges. And the reports issued by DOC reflects the results – with over 80 percent of ICE detainers honored, but those with no convictions, criminal charges or other threats to public safety or national security being released. But this summer, the Department of Homeland Security – with no consultation with the State or City – introduced Secure Communities, and as a result, many more ICE detainers started to be issued before even arraignment. We know that the arraignment population is different than the population at Rikers. For example, compared to the select group held at Rikers as a result of bail or sentencing, those in the entire arraignment population are 66 percent more likely to have no criminal conviction of any type. Given that secure communities casts a broader net, it only made sense to rethink our rules and see what, if any, adjustments made sense to our guidelines regarding ICE detainers.

In many ways the new bills continue the basic principles of the existing law. Like the existing law, the new bills recognize the importance of our

longstanding relationships with other jurisdictions—including Federal law enforcement—in maintaining a safe city. And the bills rightfully continue to focus enforcement on those who have a recent or serious criminal history, have a history of immigration violations or are identified as suspected terrorists or known gang members. But there are also some reasonable changes.

- At arraignments are individuals with no criminal record facing only a single misdemeanor charge.
- If we know that the misdemeanor doesn't involve sex crimes, guns, violence or driving while intoxicated,
- And we know that the person is not a possible terrorist or gang member and has no history of egregious immigration violations.
- And we know that the judge and prosecutor see no threat to public safety that compels them to hold the defendant on bail,
- Then it makes sense to see if there is a criminal conviction before choosing to honor a federal detainer.

Under the existing law, such a person would have been held, but the proposed bills makes reasonable changes to accommodate for such cases. These new guidelines not only make sense, but are in line with our goal of cooperating with the federal government on issues of public safety and national-security. In summer of 2011 the federal government, outlined policy priorities – further

clarified this December – that deportation efforts should focus on those who pose a risk to public safety or national security, those who have committed crimes or are subject to warrants, gang members, and those who have more serious violations of immigration law. I am confident that the new bills for the City match these federal priorities.

To conclude, I want to reiterate that I appreciate the time, patience and steady negotiation of the Speaker and the Council on finding this careful balance. I also want to recognize the work of New York City Department of Correction Commissioner Dora Schriro and her staff and Police Commissioner Ray Kelly and his staff who have been instrumental in reaching this agreement and will be vital to its implementation. I am happy to say that together, I think we are working hard to craft bills that are both sensible and sound on this complicated issue. I look forward to working with the Council on finalizing the guidelines and reporting requirements of these bills and then working with the Correction and Police Departments and the Courts on implementing these important policies. Thank you and we would be happy to answer any questions you may have.

Testimony of

Robert M. Morgenthau

New York City Council

January 25, 2013

Thank you for your invitation to speak before you today. I wholeheartedly support your proposals to place sensible limitations on the use of federal immigration detainers in our jails. In essence, the proposed laws will direct the Department of Corrections and the Police Department not to detain a New Yorker on immigration charges unless the person has been convicted of a felony or misdemeanor, or is awaiting trial on such a charge, or is a gang member or is on a terrorist watch list. If enacted, these laws will focus law enforcement resources where they belong - on those who pose a significant threat to society - rather than cast a wide net that would ensnare the law-abiding and the rehabilitated.

I have been around long enough to know that when it comes to public policy, there are no final victories. As Andrew Jackson said, eternal vigilance is the price of liberty. Certainly, this is true in immigration policy. We are all aware that the struggle that brings us here today was fought once before, when the City Council successfully imposed limits on detainers with

respect to the Criminal Alien Program. Today, similar limits are just as urgently required with respect to Secure Communities.

If anything, the need for reform is now even more compelling. The Secure Communities Program will go down in history as one of the worst bait-and-switch policy initiatives in our history. The Department of Homeland Security marketed the program as a voluntary partnership between localities and the federal government, a program that would target serious criminals who were in our country in violation of immigration laws. Both of those representations turned out to be fraudulent.

We would not be here today if the program were truly voluntary. Instead, once Governor Cuomo wisely decided to opt out of the voluntary partnership, the program became mandatory. Even worse, not only did Homeland Security go back on its word, it lied about it, and denied that the program had ever been voluntary. To my thinking, this just compounded the offense. As a federal judge found, "there is ample evidence that ICE and DHS have gone out of their way to mislead the public about Secure Communities. In particular, these agencies have failed to acknowledge a shift in policy when it is patently obvious...that there has been one."

Homeland Security's other promise – that the program would target serious criminals – proved to be equally misleading. In fact, most of those who are deported pursuant to Secure Communities – fully 60 percent – either had no criminal conviction, or at most misdemeanor convictions, when they were ordered to leave our shores.

Homeland Security did manage to accomplish one thing through its bait-and-switch, though: it generated business. By making the voluntary program mandatory, and by expanding the program far beyond reasonable limits, Homeland Security was able to lodge a lot more detainers. In fiscal year 2009, ICE lodged about 20,000 detainers pursuant to Secure Communities. That's a lot of detainers, but by the next fiscal year, 2010, the figure exploded by a factor of more than five – in that one year, over 111,000 detainers were lodged.

Yet the madness didn't stop there. Those cases went to Immigration Courts, perhaps the most overburdened judicial forum in our nation. Every year the backlog breaks the record of the year before, and by the end of calendar year 2012, the backlog in New York was so severe that the average case lingered on the docket for 592 days.

What's even worse: In New York, the Immigration Court backlog

for serious cases - those accused of crimes, threats to national security, or outright terrorism - had grown to 679 days. I can't think of a more ill-advised policy than one that focuses on non-criminals, and low-level misdemeanants, while terrorism cases linger for year after year.

Periodically, through four Presidential administrations, we have been assured that our immigration officials will exercise sound discretion, and will focus scarce resources on removing the worst of the worst, on real criminals and terrorists; time and again, our top immigration officials have issued measured policy statements promising to set careful priorities in enforcing immigration laws; but every year, we get an even larger deluge of deportation cases with little or no justification from a public safety standpoint.

That's why I strongly believe that by passing this proposed legislation, the City Council will not be frustrating federal policy, but will be implementing it. For years the federal government has promised to focus on deporting those who pose a genuine threat to public safety. But I have come to see that only if sensible legislation is passed, such as the legislation before you today, will the federal government ever get down to business and truly

implement its own priorities. Until then, federal immigration policy will continue to function beyond reason.

We are, nearly all of us, immigrants or the children or grandchildren of immigrants. My paternal grandfather came to these shores 150 years ago, not speaking the language. The nation welcomed him, its schools educated him, and its laws protected him. We must provide the same blessings for today's immigrants.

I began by quoting Andrew Jackson's farewell speech, in which he said that eternal vigilance is the price of liberty. Many recall those words, but few remember the words that followed. He continued, "it behooves you, therefore, to be watchful in your States as well as in the Federal Government."

Let us here in New York continue to be watchful, aware of how much is at stake in protecting a vulnerable population. I strongly urge you to adopt the proposed legislation.

EMERALD ISLE IMMIGRATION CENTER
Meeting the Needs of Immigrants

**Testimony Submitted to the New York City Council,
Committee on Immigration
In support of
Int. No. 982 and Int. No. 989**

Local Law to Amend the Administrative Code of the City of New York, in relation to Persons Not to be Detained and Persons Not to be Detained by the Department of Correction

January 25, 2013

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Major funding received from NYC Department for the Aging, New York City Council, Immigrant Opportunity Initiatives, Dept. of Foreign Affairs
http://www.eiic.org

The Emerald Isle Immigration Center is a 501(c) (3) organization providing immigration, social services and employment related services to immigrants through its offices in Woodside, Queens, and Woodlawn in the Bronx. We assist more than 20,000 clients annually by providing case assistance, information and referrals. The EIIC offers legal counseling on immigration and naturalization matters to needy immigrants and New York City residents.

The EIIC would like to thank the New York City Council Committee on Immigration for the opportunity to submit testimony today on the proposed Local Laws to amend the Administrative Code of the City of New York, in relation to persons not to be detained and in relation to persons not to be detained by the Department of Correction.

We also thank Chairperson Daniel Dromm and the Committee on Immigration and the New York City Council for their continued support of our work to assist the New York City immigrant community through the Immigrant Opportunities Initiative (IOI).

The EIIC supports the amendments of administrative code of the city of New York, in relation to persons not to be detained.

The Criminal Alien Program, Secure Communities and 287(g) are programs in which the collaboration between local law enforcement and Immigration and Customs Enforcement (ICE) has caused an erosion between the cooperation of local law enforcement and the immigrant community with local police becoming the gateway to deportation.

In particular, undocumented immigrants who are victims of crimes and especially domestic violence victims will be hesitant to come forward for fear of deportation for themselves and their abusers. What undocumented immigrants fear the most are ICE's immigration detainer. This detainer asks local officials to detain an individual in their custody for 48 hours longer than

they would otherwise, in order to facilitate transfer to ICE. Regardless of booking charge, ICE issues holds for any person booked into jail who ICE considers to be potentially deportable. The reality for undocumented immigrants is the potential of months in detention followed by deportation for an otherwise minor offense that would have been resolved within a few hours of jail time.

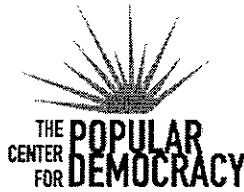
As confirmed by federal courts and ICE itself, detainers are not mandatory, merely requests. Since detainers are not mandatory, local governments have to analyze how their communities will bear the costs of facilitating deportations through their participation. Specifically a study performed in 2010 by Aarti Shahani, Justice Stategies, New York City Enforcement of Immigration Detainers demonstrated that individuals with ICE detainers spend an average of 73 more days in jail than similarly situated individuals without ICE holds. In these situations, New York City is subject to unnecessary economic costs.

The Warren Institute at Berkeley Law School released a report titled "Secure Communities by the Numbers." It examines the profile of individuals who have been apprehended through the program and funneled through the system. The report finds that Secure Communities, (1) **Leads to costly mistakes**: Approximately 3,600 U.S. citizens have been arrested by ICE through the program, (2) **Affects American families**: More than 1/3 of those arrested through the program have a US citizen spouse or child, (3) **Disproportionately affects Latinos**: Latinos make up 93% of those arrested through S-Comm.—disproportionately more than their 77% of the unauthorized population, (4) **Results in a lack of due process and violation of civil rights**: Only 24% of those arrested through **Secure Communities** who had an immigration hearing were represented by an attorney—far less than the 41% of all immigrants in immigration court who have lawyers. They are more likely to be placed in detention, spend more

time in detention and are unlikely to get out on bond and (5) **Does not result in relief**: Only 2% of those arrested through S-Comm. were granted some form of relief from deportation, compared to 14% of all immigrants in immigration court who are granted relief.

The Police Executive Research Forum's Police & Immigration: How Chiefs are leading their communities through challenges reveals how undocumented immigrants are easily victimized. The report indicates undocumented immigrant workers are who work in jobs such as landscaping are targets of daily robbery and lose all their equipment to provide for their families. On the other spectrum, an undocumented woman immigrant is slapped and choked by her husband. Due to her immigration status, she is unwilling to report incident to the police. Her main fear is to be taken away by ICE and be separated from her young daughter.

EIIC would like to continue to advocate for the protection of all New Yorkers, specifically the most vulnerable undocumented immigrants and allow New York City to be a place where all can come out of the shadows.



Testimony of Nisha S. Agarwal
Deputy Director, Center for Popular Democracy

Testimony in Support of Int. No. 982 and Int. No. 989 – Related to Persons Not to Be Held on Immigration Detainers

January 25, 2013

Good morning and thank you for the opportunity to testify in strong support of the two bills being considered today: Intro 982, introduced by City Council Speaker Quinn, and 989, introduced by Councilmember Mark-Viverito, both of which will limit the circumstances under which the NYPD and Department of Corrections (DOC) will honor civil immigration detainers. I am Nisha Agarwal, the Deputy Director of the Center for Popular Democracy (CPD) based here in New York City. CPD is the national sister organization of Make the Road New York (MRNY). We partner with community-based organizations, progressive unions and allies in government to advance a pro-worker, pro-immigrant racial justice agenda at the state and local level across the country. A significant portion of our work is focused on efforts by local and state governments to resist the harsh and negative impacts of federal immigration enforcement practices in their local communities.

New York City is at the forefront when it comes to attracting talented and hard-working people from around the world. The diversity of newcomers and longstanding residents is what gives New York City its one-of-a-kind energy and helps our economy to grow. Immigrants comprise close to half of the City's workforce and, in 2009, immigrants

accounted for $215 billion in economic activity—that is, nearly 1 in every 3 dollars the City brought in that year.[1]

This economic growth and vibrancy has not come about by accident. New York City has been a national leader in enacting policies that enable immigrant families to live, work and thrive – from landmark laws that promote multilingual access to government services, to policies that protect the privacy of immigration status information in city hospitals. Importantly, the City has repeatedly taken a stand against the punitive and harsh immigration enforcement practices of the federal government, which have resulted in record numbers of deportations in the past four years, torn families apart and devastated immigrant communities that help sustain the local economy – enforcement practices that are NOT likely to be addressed or remedied in federal immigration reform efforts without cities and communities like New York taking a stand against them.

For example, in 2011, New York City enacted a law that would prevent DOC from honoring immigration detainers at Riker's Island in a range of circumstances. Before this law went into effect, thousands of immigrant New Yorkers were held at Riker's Island every year in order to be turned over to Immigration Customs and Enforcement (ICE) for eventual deportation. The impact of deportations on New York's families is devastating. Between 2005 and 2010, federal immigration enforcement agents arrested the parents of over 13,000 U.S. citizen children in New York City and more than 10,000 of them had parents who were detained during their removal proceedings.[2] Data show that in 87% of cases commenced against parents of U.S. citizen children the parent is deported; as a

[1] New York State Office of the State Comptroller, "The Role of Immigrants in the New York City Economy" (January 2010), *available at:* http://www.osc.state.ny.us/osdc/rpt17-2010.pdf
[2] NYU SCH. OF LAW IMMIGRANTS' RIGHTS CLINIC, *ET AL.*, INSECURE COMMUNITIES, DEVASTATED FAMILIES at 3 (2012).

result, at more than 7,000 U.S. citizen children in New York City lost a parent to deportation between 2005 and 2010.[3] Losing a parent has concrete costs: it forces children into foster care, pushes families onto public benefit systems, and takes a well-documented emotional and psychological toll on children.

Immigration detainers aid and abet the process of detention and deportation that damage New York City's families. They are also very expensive. The City spent nearly $20 million a year to hold individuals in custody on behalf of ICE, past the point when doing so served any criminal justice purpose and despite the fact that the City is under no legal obligation to honor detainers, which are, by law, merely hold "requests" from the federal government to the locality.

The 2011 DOC law ended this practice, and the bills before you today build upon its accomplishments. Intro 989 strengthens the prior DOC bill by expanding the circumstances in which DOC will exercise discretion with respect to detainer requests and, importantly, Intro 982 will extend the policy of detainer discretion to the NYPD as well. The focus on the NYPD is particularly critical because ICE has, through programs like Secure Communities, started to issue detainer requests much faster and earlier in the law enforcement process than ever before, undermining the efforts of cities like New York to protect their families from the devastation caused by mass detention and deportation. Including NYPD within the ambit of New York City's prior policy, and expanding the scope of that policy, is an important next step in the process of creating truly secure, thriving, welcoming communities.

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[3] *Id.*

I will close by saying that the bills before you are not just important for New York City. They are essential and important next steps in the national struggle to end the entanglement of civil immigration enforcement with criminal justice. New York is leading the way along with jurisdictions around the country—Washington, DC; Chicago, IL; and next door in Connecticut, to name a few—that are taking a stand against the unfair and unjust criminalization of immigrant communities. These powerful local and state voices are needed as national attention turns to federal immigration reform. The problem of mass detention and deportation will not be addressed adequately, if at all, in the national policy discussions if cities like New York do speak out against an immigration enforcement scheme that has run amok. To that end, the Center for Popular Democracy, on behalf of the many immigrant communities we partner with here in New York and elsewhere, urge you to vote in favor of Intros 982 and 989.

Thank you.

NEW YORK STATE INTERFAITH NETWORK FOR IMMIGRATION REFORM

Contact: Diane Steinman, Director
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TESTIMONY OF DIANE STEINMAN, DIRECTOR

New York City Council
Committee on Immigration Hearing
Regarding Int. 982 and Int.989
January 25, 2013

I'm Diane Steinman, Director of the NYS Interfaith Network for Immigration Reform, a network of more than 100 faith community leaders and organizations formed in 2009 to advocate for just and humane immigration reform that provides a path to citizenship for undocumented immigrants, promotes family unity, and protects worker rights as well as due process, civil and human rights for all.

The Network reflects New York's racial, ethnic and religious diversity - an example of what Mayor Dinkins used to call the gorgeous mosaic. Our purpose is to promote the shared moral vision of Buddhists, Catholics, Hindus, Jews, Muslims, mainline and Evangelical Protestants, and Sikhs – as well as of secular New Yorkers for whom moral values are of paramount importance –a vision grounded in the belief in the inherent dignity of every human being. This belief leads us to reject the very notion of a person as "illegal," and to repudiate an immigration policy that shatters immigrant lives and families through detention and deportation; tramples their due process, civil and human rights; and allows for the exploitation of their labor and their relegation to the shadows of our communities. Inspired by our shared commitment to welcome the stranger, and to treat all those who live among us as we ourselves would wish to be treated, our mission is to strive to ensure that our society and its laws reflect these values and principles.

The legislation that is the subject of today's hearing is clearly aligned with these values, and we thank the City Council for considering legislation that would put restraints on the implementation of Secure Communities (S-Comm) in NYC by protecting immigrants who represent no threat to public safety from America's draconian detention and deportation system. S-Comm has been a major focus of faith-community concern nationally and in New York, and in April, 2011, the Network sent a letter to the Governor, signed by more than 100 faith leaders around the state, in which we argued that:

- S-Comm is an immoral program that destroys immigrant lives and families in New York and around the country through the detention and deportation of immigrants caught in its web - most of whom do not represent a threat to public safety; are often sent to detention centers in places that are far from home and family, unable to access to legal representation; and are then deported to countries where they have often have no ties and no future.
- Though it is *meant* to make the rest of us safer, because S-Communities makes immigrants fearful of local law enforcement and reluctant to cooperate, it is actually inimical to public safety;
- And it encourages racial and ethnic profiling by law enforcement, undermining NY's culture of tolerance and inclusion.

(over)

We all know how the story ends: though the Governor did the right thing and terminated New York's participation in the program, this was to no avail, because DHS announced thereafter that participation is mandatory. We commend the City Council for stepping into the breach with this law to amend the Administrative Code of the City of New York in relation to persons not to be detained by NYPD and DOC, in an effort the ensure that only those immigrants who can be reasonably deemed to be a threat to public safety will be subject to S-Comm in NYC.

As a group of key Congressional Democrats and Republicans work to craft principles of comprehensive immigration reform, the timing of this bill could not be more propitious. As we know, CIR was declared a priority by President Obama during the election, and is a line-in-the-sand priority for immigrant communities and their advocates, including influential faith community leaders around the country. By passing this bill, the City Council would be making a clear statement to our nation: New York City, this city of immigrants whose enduring symbol is a statue that welcomes the tired, the poor and the downtrodden, declines to allow NYPD and the Department of Corrections to turn over to ICE for possible deportation immigrants who, as speaker Quinn put it at the press conference about the bill on December 13, are "good New Yorkers and pose no danger to New York City residents." These New Yorkers, the bill implies, *deserve* to remain among us, with the right to participate freely and fully in the mainstream of our communities. It is worthy of the Council's enthusiastic support.

Testimony for the New York City Council Committee on Immigration
SEIU Local 32BJ
January 25, 2012

Good morning, Chairman Dromm and members of the City Council's Committee on Immigration, and thank you for inviting me to speak to you on these important pieces of legislation.

My name is **Brunilda Leon and** I am member of the Service Employees International Union (SEIU) Local 32BJ. 32BJ members come from 64 different countries, speak 28 different languages, and represent workers—immigrant and nonimmigrant—throughout the East Coast. 32BJ represents over 70,000 members in New York.

Our members, who include commercial office cleaners, security officers, building engineers, and maintenance workers, keep buildings and institutions running throughout the state. It is on behalf of our members, and in recognition of their diversity and the important contributions they make to New York's economy and communities, that I am here to testify today.

The two bills before you are a proper response to the federal government's notorious Secure Communities program, known as S-Comm. By passing these bills, the City Council would reaffirm our city's reputation as one of the most immigration-friendly cities in America

As an immigrant from the Dominican Republic, I came here over 30 years ago looking for a better life, looking to fulfill the Americans dream that all Americans, including immigrants, deserve to have.As a mother of two, I raised my boys in this country because I wanted them to have the same opportunities that I had and that all people deserve. To me, it is important for families to stay together and for hard working people to be allowed to live their lives.

Families provide security and work to support each other and make our communities stronger. Breaking up families is like crushing dreams and hopes. And that's why it's so important for you to act now. These two bills before you would limit the city's cooperation with federal authorities looking to deport people who pose no risk to society.

These bills are another important step toward protecting hard working families. Unnecessary collaboration between local law enforcement and ICE jeopardizes public safety for ALL of us. Put simply: It is bad public policy. We are committed to continuing the fight to make sure that S-Comm is terminated nationally.

This issue is very important to 32BJ. We have passed a law in DC, are advocating in Maryland, and are working with the governor's office in Connecticut. Here in NYC, the City Council's bill takes an important step to help limit ICE's reach, protect immigrants, and help keep families together. That is why, on behalf of my union, I urge you to pass these bills.

They are important steps that will work to keep our families together and prevent immigrants from being wrongfully harassed. All people, including immigrants, deserve to have the freedom to walk down a street without fearing harassment or being stopped by Police for no reason.

S-Comm is not just unfair, it is plain wrong. NYC is better than that. We are a city of immigrants that celebrate diversity.

I thank you for your time.

Neighborhood Defender Service of Harlem

Rick Jones
Executive Director

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Written Comments of the Neighborhood Defender Service of Harlem

New York City Council Committee on Immigration and Committee on Fire and Criminal Justice Services Oversight Hearing

January 25, 2013

Good morning. My name is Rachel Kling and I am a staff attorney at the Neighborhood Defender Service of Harlem (NDS), a neighborhood-based criminal defense office in Northern Manhattan. I'd like to thank the City Council for the opportunity to testify today. At NDS, we serve the residents of Harlem, Washington Heights, and Inwood, which includes a large immigrant population from all corners of the world. The policy before the Council today deeply impacts the lives of our non-citizen clients and their loved ones. As attorneys representing non-citizen defendants in the criminal justice system, we have seen firsthand the ways that ICE's secure communities program infringes upon our clients' basic rights to due process and humane treatment. We applaud the City Council for taking further steps to protect immigrant New Yorkers from our broken immigration system.

How has the implementation of Secure Communities affected New York City residents? And how will this legislation limit some of its damaging effects?

Because of the Secure Communities program, when an individual is arrested and fingerprinted, their information is given to Immigration and Customs Enforcement. If ICE thinks the person might be subject to deportation, they issue a detainer. It doesn't matter if the arrest is for a minor offense, or if the case is not ultimately prosecuted. ICE does not take into consideration how long the person has lived in the United States, how strong their family ties are, or whether they have dependent family members here.

When a detainer is issued, we are typically notified as we are appearing with the client at arraignment. There is no procedure by which the detainer can be challenged, even where, as we saw in one case, it has been mistakenly lodged against a United States citizen.

Once the detainer is issued, everything changes. The individual cannot be released on their own recognizance or by paying bail. They must remain in DOC custody throughout the duration of their case. When the case ends,

Neighborhood Defender Service of Harlem

Rick Jones
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even if it is dismissed, the individual must remain incarcerated for an additional 24 to 48 hours, until they are transferred to ICE custody for further detention and immigration proceedings. This additional incarceration, both during and after the case, is unfair to our clients and their families, it is inhumane, and it is a drain on the city's resources. It does nothing to further the safety of New York City residents.

The policy proposed today, of further limiting when New York City agencies will honor these ICE detainers, will have a large impact on our clients. It will give power back to the criminal court judges to release defendants during the pendency of their case.

Moreover, it will prevent more of our clients from being funneled into an immigration system that is unfair. Once in the system, New York City residents are frequently transferred to detention centers thousands of miles away from their families, in states such as Louisiana and Texas. They have no right to counsel at their immigration hearings, and few are able to access pro bono attorneys. For many of these individuals, their cases end in deportation.

The Department of Homeland Security has recently issued guidance to its officers, recommending that they exercise discretion when lodging detainers. This is a positive sign that the agency understands that Secure Communities is casting too wide of a net. But it does not negate the importance of passing the legislation before you today. The guidance issued by the Department of Homeland Security is not mandatory, and there is no way to guarantee that it will be fully implemented on the ground. The policy before you is an important, necessary step in protecting New York City residents from the negative consequences of the Secure Communities program.

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Making Justice a Reality for those Farthest from its Reach

TESTIMONY

Local Law to Amend the Administrative Code of New York City, in Relation to Persons Detained by the Department of Correction

New York City Council

Committee on Immigration

199 Water Street
New York, NY 10038

January 25, 2013

Contact: Ward Oliver (212) 577- 3393; woliver@legal-aid.org
The Legal Aid Society, Civil Practice, Immigration Law Unit

TESTIMONY
PRESENTED ON 01/25/2013

Good Morning. My name is Ward Oliver. I am a Supervising Attorney of the Immigration Law Unit at The Legal Aid Society and I submit this testimony on behalf of The Legal Aid Society. We want to once again thank the New York City Council for its continued attention to the manner in which the federal "Secure Communities" program has impacted the immigrant communities in New York City. Just over a year ago the City Council passed legislation that limits the cooperation between the New York City Department Of Correction ("DOC") and the United States Immigration and Customs Enforcement ("ICE"). In doing so, the Council recognized that such cooperation erodes trust between immigrant communities and law enforcement, and has a chilling effect on immigrants, including non-citizen survivors of domestic violence, crime victims, and trafficking victims. Since the City law on detainers went into effect last year, the criminal defense lawyers of The Legal Aid Society have assisted many immigrant clients to secure their release from the Department of Correction and to return to their communities in New York City despite the federal immigration warrants that had been lodged against them. Let us assure you that our communities are in many ways safer because of their release, which has preserved the stability of substantial numbers of families. On behalf of these clients, we thank the Council for this law that has done much to protect the immigrant families of this City. We are honored that the Committee has once again invited the Society to participate in the hearing of these important issues.

The Legal Aid Society supports the New York City Council's proposed amendments to the New York City Administrative Code, which expand the protections offered in last year's bill and contained in the current law. New York

City has always been cognizant of the needs of its vibrant but vulnerable immigrant population. Immigrants add to the creativity, and social and economic fabric of this vibrant City and the Society is pleased that the City Council is committed to providing a protective barrier that will prevent many vulnerable immigrants from being swept into the inhumane pipeline between the criminal justice system and the federal immigration removal apparatus. We also congratulate the Council on its accomplishments in this area.

The Legal Aid Society

The Legal Aid Society, originally founded in 1876 to provide comprehensive services to New York City's immigrant community, is the nation's oldest and largest non-profit legal service provider of legal help for vulnerable low-income children and adults. The Legal Aid Society is organized into three practice areas: Civil, Juvenile Rights and Criminal Defense. Each year, the Society's staff provides free legal services in over 300,000 legal matters involving indigent families and individuals in all five boroughs of New York City. The Legal Aid Society's experience and knowledge, makes it uniquely qualified to address the issues before the Council.

Since 1965, The Legal Aid Society has served as the primary defender for persons accused of crimes in New York City who cannot afford counsel. With criminal defense trial offices in all five boroughs of New York City, The Legal Aid Society represents indigent defendants accused of crimes ranging in seriousness from disorderly conduct to first degree murder. The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, trafficking victims, mental illness and juvenile offenders to consulting regularly with State and City officials on policy

issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State. The Criminal Practice handles over 220,000 trial level, appellate and post-conviction cases each year.

The Society's Civil Practice provides comprehensive legal assistance in legal matters involving housing, foreclosure and homelessness; family law and domestic violence; income and economic security assistance (such as unemployment insurance benefits, federal disability benefits, food stamps, and public assistance); health law; immigration; HIV/AIDS and chronic diseases; elder law for senior citizens; low-wage worker problems; tax law for low-income workers; consumer law; education law; community development opportunities to help clients move out of poverty; and reentry and reintegration matters for clients returning to the community from correctional facilities. Typically, clients seek assistance from the Civil Practice after exhausting all other avenues for assistance. The Society's Civil Practice is the safety net when all other safety nets fail. During the past year, our Civil Practice worked on over 43,000 individual cases and legal matters, benefiting nearly 100,000 low-income children and adults, with an additional two million low-income New Yorkers benefiting from our law reform and class action litigation.

The Society has always maintained a robust and nationally recognized Immigration Law Unit that specializes in representing non-citizens with criminal convictions in removal proceedings in New York immigration courts. We are frequently the only source of information and free lawyers for such New Yorkers who are detained by Immigration officials. The Immigration Law Unit's experienced staff also represents immigrants before the United States Citizenship

and Immigration Services, in federal court, and on appeals. The staff of the Immigration Law Unit partners with the criminal defense practice to provide advice to criminal defense attorneys regarding the immigration consequences of criminal court convictions and to represent current and former clients in their immigration removal proceedings.

In addition, the Society's citywide Family Law Practice includes a Domestic Violence Project which provides legal representation regarding custody, orders of protection, child support, divorce, economic justice and immigration remedies for non-citizen survivors of domestic violence. Our Domestic Violence Project staff often works in close collaboration with other areas of the Society's Civil Practice to comprehensively address the myriad of legal issues faced by immigrant survivors of domestic violence, in particular access to housing, public benefits and health care.

As you know, the Council has provided funding through the IOI initiative to support our front-line expert immigration services, including back-up and training for community-based organizations. We are very grateful for this essential Council support for our comprehensive legal assistance for immigrants in all five boroughs.

New York City's Immigrant Population

The Society has for many years maintained that the cooperation between the New York City Department of Correction and the United States Immigration and Customs Enforcement is inconsistent with the City's sensitivity to immigration issues, and tremendously impacts on the criminal justice system, New York City immigrants and our communities. New York City is a diverse multicultural city. Over three million immigrants currently reside in the City and represent more than 36 percent of the City's entire population and 43 percent of the City's workforce. It has been estimated that during the past five years immigrants accounted for

approximately 32 percent of the gross product of the City.[1] Moreover, over half (fifty-seven percent) of children in New York City live in a family with at least one foreign-born adult.[2]

New York City has always been cognizant of the needs of its vibrant but vulnerable immigrant population. Mayor Michael Bloomberg's enactment of Executive Law 41 with Council support and the City's language access program are just two examples of the City's sensitivity to immigration issues. However, the City Department of Correction's once unlimited cooperation with the United States Immigration and Customs Enforcement served to tarnish the City's record on immigration because it lacked transparency, interfered with law enforcement and public safety, and hurt immigrant communities and families. In 2011, the City Council amended the Administrative Code to curtail the Department of Corrections' cooperation with Immigration and Customs Enforcement. Because of the Society's status as the primary provider of criminal defense as well as comprehensive civil legal assistance, we appreciate the impact of that law and recognize that it was a significant step in the right direction.

Impact on Criminal Justice System

At least as far back as the late 1990's, the New York City Department of Correction has cooperated in and facilitated the deportation of immigrant residents of New York City. As the primary defender of indigent people prosecuted in the State court system, The Legal Aid Society has first-hand knowledge of the devastating

[1] Role of Immigrants in the New York City Economy, Ibid.
[2] FISCAL POLICY INST., WORKING FOR A BETTER LIFE; A PROFILE OF IMMIGRANTS IN THE NEW YORK STATE ECONOMY 11 (2007), available at http://www.fiscalpolicy.org/pubications2007/FPI_ImmReport_Workingfora BetterLife.pdf.

impact of ICE detainers on immigrant families. Instead of resulting in the deportation of immigrants convicted of serious felonies, the stated purpose of the Secure Communities Program, more often this cooperation results in the removal of undocumented individuals with insignificant or no criminal record or lawful permanent residents with minor convictions that other criminal defense lawyers neglected to warn them about. As our recent history demonstrates, the bail set in a criminal proceeding, and an impoverished client's inability to post it, is very often more determinative of the client's fate than the seriousness or the merit of the criminal case for which he was arrested.

The 2011 amendments to the Administrative Code, which were implemented by the Department of Correction in March, 2012, have had a significant impact in ameliorating the harsh consequences of "Secure Communities" within our City. As a result, the Department of Correction has been required to release a number of immigrants whose criminal cases were either dismissed or resolved with non-criminal offenses: An illustrative example will serve to show how important this law has been to the immigrant families of New York City::

Jorge is a 19 year old student who immigrated from Mexico at a young age and lives with his family in Queens. In addition to attending high school, he works part-time in the afternoon and evenings. He was arrested for allegedly stealing an I-Phone from a stranger. At his criminal court arraignments, the Judge set bail. Because Jorge's family could not afford the bail, Jorge was committed to the custody of the New York City Department of Correction, and Immigration and Customs Enforcement lodged a warrant against him. Impressed with her client's remorse for his crime, and mindful of his potential eligibility for Deferred Action under President Obama's executive order, Jorge's Legal Aid Society attorney arranged a meeting between Jorge and the District Attorney's Office. At the meeting, the prosecutors were so

impressed by Jorge that they decided to dismiss all criminal charges against him. Upon dismissal of the criminal case, City law mandated that the Department of Correction disregard the ICE detainer and release Jorge to the community. As a result, Jorge was able to return home to his parents and two sisters in time for the Christmas holidays and was able to apply for Deferred Action for Childhood Arrivals under the new federal program.

We believe that with the proposed amendments to the Administrative Code § 9-131, the Council is taking another important step forward toward limiting the Secure Communities Program to its professed objective: deporting truly violent felony offenders from the United States. If this bill is passed, we look forward to working with the Council to ensure that the Department of Correction and the Police Department implement the legislation to protect immigrants to the fullest extent that the Council intends. We believe that, in particular, the present bill will assist undocumented immigrants who are eligible or may be eligible for future immigration benefits, but are at particular risk of deportation when they become entangled in the criminal justice system as a result of false charges and other conduct by their abusers and exploiters.

Of course, in the future, as our experience continues to demonstrate that limiting Secure Communities to its stated purpose does not compromise the safety of our communities, we stand ready to work with the Council to continue to develop such further refinements of this law as the Council may determine are needed based on its ongoing oversight. For example, there are a number of innocuous misdemeanor offenses – such as theft of services or unlicensed general vending – which the Council may want to address in further refinements since a

conviction for such offenses disqualifies an individual from release. Unfortunately both offenses are fairly common within some of our immigrant communities.

Furthermore, in light of the City's recent proposal to address the needs of criminal defendants with mental illness, we also recommend that the City Council consider refining the protections for non-citizens with mental illness who often have complicated criminal and immigration histories. These individuals are the most vulnerable to removal from the United States because of their incapacities and inability to report their personal histories. Removal proceedings are complex and adversarial, yet there is no right to appointed counsel even for those with mental disabilities. For non-citizens with mental disabilities, the lack of representation places them in an even more precarious position. One estimate is that 15% of immigrants detained by the Department of Homeland Security pending removal have mental disabilities. In 2008, DHS estimated that up to 18,929 immigration detainees suffered from serious and persistent mental illness.[3] Immigration Judges often proceed with removal proceedings ignoring the non-citizens' mental illness or grant several continuances with the hope that a legal service provider will eventually provide representation. Forced to proceed on their own, mentally ill non-citizens are unable to defend their interests against well-trained government attorneys. This leads to disastrous results. Reevaluating the need for further protections for immigrants with mental illness will afford them the opportunity to receive urgent care, as opposed to forcing them to relocate to their countries of origin, where such care is usually not available.

[3] Selected responses from Immigration and Customs Enforcement to questions posed by The Washington Post regarding the provision of health care to immigration detainees, May 2008, http://media.washington.com/wp.srv/nation/specials/imigration/documents/day3_ice_mentalhealth.gif (accessed November 18, 2011). Deportation by Default: Mental Disability, Unfair Hearings, and Indefinite Detention in the US Immigration System, at 3, available at http://www.hrw.org/en/reports/2010/07/26/deportation-default-0.

Notwithstanding these two suggestions for further refinements as the Council's oversight in this area continues, we urge that this amendment be enacted because it is yet another step forward in the effort to protect immigrants in New York City. We continue to strongly support the Council's leadership on these issues.

Conclusion

Thank you for the opportunity to testify on this important issue and we greatly appreciate the Council's efforts to amend this legislation to protect our immigrant clients. We welcome any questions from the panel.

The Legal Aid Society

By: Ward Oliver

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

TESTIMONY OF MANHATTAN BOROUGH PRESIDENT SCOTT M. STRINGER

BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION

Oversight Hearing Examining Proposed Local Laws Int. 982 and Int. 989 to amend the administrative code of the city of New York.
Friday, January 25, 2013

I thank the Committee on Immigration and Chair Council Member Dromm and the lead bill sponsors Speaker Quinn and Council Member Mark-Viverito for the opportunity to testify today on the proposed Local Laws to amend the Administrative Code of the City of New York and further limit the participation of the New York Police Department (NYPD) and Department of Correction (DOC) in unjust immigration enforcement and to expand the reporting requirements in relation to persons not to be detained.

These bills are necessary because under current federal, state and city law and policy, many New Yorkers remain vulnerable to inhumane immigration detention conditions and eventually deportation regardless of whether they pose a serious threat to public safety.

In 2010, I began to address my concerns on the collaboration of the DOC with Immigration Customs and Enforcement (ICE) to the Mayor and City Council through letters, testimony and a New York Times Op-Ed in partnership with Make the Road New York asking that the City adopt a policy clearly separating ICE operations from Riker's Island. I again commend the City Council and Mayor for passing critical legislation to finally end a major part of one of New York's most anti-immigrant policies.

I am again expressing my support for Intros 982 and 989 presently before the Committee which will protect certain individuals from detention and deportation through ICE from City jails as well as further promote greater accountability with the NYPD and DOC for persons who are detained.

The proposed bills recognize that it is not in New York City's interest to detain many of the people that are being held on immigration detainers under the current law. The proposed legislation would be a good step forward because it would ensure that, in most cases, the NYPD and DOC not hold a person on an immigration detainer simply because

that person faces low-level charges. It recognizes that the current law is insufficient because it oftentimes results in people who face misdemeanor charges to be held solely based on those charges when, in truth, those people pose no threat to public safety. In addition, this legislation would ensure that people are not held on immigration detainers solely because of decades-old misdemeanor convictions. Furthermore, the bill would require that the City report a number of statistics related to detainers, which is critical to understanding exactly how much the City ends up having to pay to support this federal enforcement strategy. These measures help ensure that hard-working people who pose no serious threat to public safety are not unfairly detained and deported and that the City meets a new standard of transparency and accountability in its interactions with immigration enforcement.

Continuing certain practices of DOC's and NYPD's collaboration with ICE, particularly with the onset of Secure Communities, would only create a sense of fear and distrust of law enforcement and police among immigrant communities, and would cause these communities to be hesitant to call upon the police for assistance, as they may associate law enforcement with the threat of deportation.

Further, unnecessary collaboration with ICE is a wasteful use of the City's financial resources while the City faces large budget shortfalls.

New York is a city built by immigrants. 40% of our residents are foreign born, of which approximately half are noncitizens. This leaves approximately 20% or 1.6 million of the city's population potentially vulnerable to DOC's and NYPD's facilitation of ICE operations. Longtime immigrant residents who have contributed to our city should not be separated from their families, subjected to inhumane detention conditions and sent to countries where they may be at risk of persecution when they pose no safety threat to our community.

After ensuring the passage of these bills, we must do more to ensure that all New Yorkers are treated equally and fairly, communities are not broken and hard-working individuals who do not pose a serious threat to safety are not alienated by our society.

Ultimately, our local police are not to be in the business of immigration enforcement. With the two proposed Local Laws, we will further strengthen our City's immigrant policy. I look forward to continuing the necessary work with you and your committee to advance immigrant rights in our city.

Thank you.

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moving victims of violence from crisis to confidence

Testimony of

Lynn Neugebauer
Director, Immigration Law Project
Safe Horizon

On Intros. 982 & 989

Committee on Immigration
Hon. Daniel Dromm, Chair

New York City Council

January 25, 2013

Thank you, Chairman Dromm and members of the Committee, for the opportunity to testify before you today on Intros. 982 and 989, both of which are intended to mitigate the impact of the federal Secure Communities policy on innocent New Yorkers, including victims of domestic violence, trafficking and other crimes. My name is Lynn Neugebauer, and I am the Director of the Immigration Law Project for Safe Horizon, the nation's leading victim assistance organization and New York City's largest provider of services to victims of crime and abuse, their families and communities. Safe Horizon creates hope and opportunities for hundreds of thousands of New Yorkers each year whose lives are touched by violence.

Background

Safe Horizon's **Immigration Law Project (ILP)** provides expert legal counsel in immigration proceedings to victims of crime, torture and abuse. ILP represents thousands of battered immigrants in their VAWA and battered spouse self-petitions, and asylum cases. ILP also assists clients in many other areas of immigration law including securing U-Visas, permanent residency, naturalization and work-authorization applications as well as defense in deportation and removal proceedings.

Safe Horizon's **Anti Trafficking Program (ATP)** is one of the largest service providers for survivors of human trafficking in the United States. Our legal and social services are open to women, men, and children, including transgender individuals, who have been subjected to severe labor exploitation. Since its founding, ATP has assisted more than 500 adult survivors within and outside the New York metropolitan area, supporting survivors of human trafficking from over 60 countries.

In these and other programs that we operate across the five boroughs, we provide a diverse array of services to undocumented victims of crime. For the most part, these are extremely fearful individuals who are often reluctant to seek services and who are worried that their batterer will report them to immigration authorities if they seek help – from Safe Horizon, from law enforcement, from anyone.

Until the implementation of Secure Communities, we felt confident telling our undocumented clients that these threats were mostly idle. After all, Mayor Bloomberg made it clear after taking office in 2002 that in New York City, one's immigration status should not pose a barrier to obtaining education, healthcare or assistance from the police. In this atmosphere, we worked closely with our immigrant clients to provide social service and legal assistance, and with law enforcement to apprehend and prosecute the offenders.

But when the administration of former Governor David Paterson entered into a Memorandum of Agreement (MOA) with the Department of Homeland Security in 2010 to implement Secure Communities in New York State, the dynamic changed. We could no longer reassure our clients – a good number of whom were arrested in cross complaints, or while forced to engage in acts of prostitution or other crimes at the hands of their trafficker – that they would be spared detention or even deportation, even if the charges were eventually dropped. The threats from abusers immediately became even more potent, and our clients became even more vulnerable, fearful and isolated.

Shortly after the MOA was signed, we and other advocates met with the NYS Division of Criminal Justice Services in August 2010 and explained our concern about the impact of Secure Communities on undocumented victims of crime. We also shared our concerns with officials at the New York Police Department (NYPD), and wholeheartedly agreed with Police Commissioner Kelly who told the Daily News in December 2010 that "We want people to feel free to contact the police, to walk into police stations…to the extent that…[Secure Communities] may have some effect on that, that's problematic." We were heartened by the advocacy of the New York City Council for a resolution calling on the State to "immediately rescind the Secure Communities Memorandum of Agreement."

Moreover, we cheered Governor Cuomo for reversing his predecessor's position and affirmatively "opting out" of Secure Communities in June 2011, and applauded the *New York Times* editorial board for proclaiming in August 2011 that Secure Communities "erodes the trust and cooperation of crime victims and witnesses."

But as you know, last spring the federal government announced that Secure Communities would be implemented in New York over the objections of the Governor, once again putting our clients at significant risk. We immediately reached out to the Governor's office, the Mayor's Office, the District Attorney's Association and the NYPD to see how we might protect our clients from immigration implications.

We were encouraged by our discussions with senior officials in the NYPD who pledged to reinforce the need for officers to make primary aggressor determinations when responding to

domestic violence incidents to ensure the correct individual is arrested. Obviously our clients will be far less likely to suffer adverse immigration consequences if they can avoid being arrested in the first place, and we are grateful to Commissioner Kelly and his staff at the NYPD for their efforts to reiterate this policy across the Department.

But we can't rest until we take every available step to protect our clients. This past fall, Safe Horizon joined with others to ask the City Council to explore legislation that would exempt certain undocumented individuals who had been arrested from being detained in city jails for questioning and possible detention and deportation by the Department of Homeland Security. Specifically, we proposed relieving the NYPD of the obligation to detain individuals under Secure Communities unless there are prior violent felony convictions or pending violent felony charges. Exemptions should be made where there is reasonable probability that the defendant is a victim of domestic violence, human trafficking and other crimes.

We are so pleased that the City Council has responded with Intros. 982 & 989 which look to address this very issue, and we greatly appreciate the leadership of Speaker Quinn, Chairman Dromm and so many other members of the Council in recognizing the particular vulnerabilities that undocumented victims of crime face under Secure Communities. While we are supportive of the Council's efforts as a whole, we do have some recommendations for how the legislation might be strengthened to better protect our clients which I will outline below.

Recommendations

In order to strengthen this legislation and better protect undocumented victims of crime, we recommend expanding the list of exemptions of misdemeanor offenses that would trigger a detainer to at the very least include trespassing and petit larceny. We also recommend removing contempt and assault from the list of pending misdemeanors. Although the legislation exempts certain crimes that would trigger an ICE detainer, we fear the inclusion of crimes such as assault and criminal contempt will cast so broad a net that many of our clients will be affected, primarily in cases involving retaliatory arrests.

For example, one of our clients who has suffered egregious abuse – including being kicked, punched, assaulted with a wood block, threated with a gun and nearly stabbed with a pair of scissors -- filed police reports and received multiple criminal orders of protection, only to be arrested herself on two separate occasions after her abuser made cross complaints. One of the arrests was for criminal contempt, a pending charge that under the proposed City Council bill would not exempt her from an ICE detainer. Despite the fact that both arrests resulted in a dismissal our client might have been separated from her two U.S. citizen children, and would not be eligible for immigration relief.

Another of our clients recently requested and received a limited order of protection against her husband so that she would be able to continue to live in the home with the children. In retaliation, the abuser called the police on her and accused her of assaulting him and

trespassing on his property. Both of these charges – criminal contempt and trespassing – would leave our client vulnerable to an ICE detainer under the current legislation.

OTHER ISSUES

ICE Custody

Once our clients are in ICE custody, representing them effectively is exceedingly difficult and resource-intensive. One of our clients who was victimized repeatedly by her child's father, called the police for help. As sometimes may happen, both our client and her batterer were arrested. Told that all she would receive was probation, she pled guilty, not knowing that immigration relief such as a U-Visa may have been available to her. Years later, after being picked up for shoplifting, she was taken into immigration detention due to her prior conviction, where she remained for nearly two years. Safe Horizon was able to obtain her release a few months after she contacted us. We successfully filed a U Visa for her since she was certified as a crime victim who fully cooperated with law enforcement around one of the domestic violence cases where she was a victim. But it was only the merest chance that she came to our attention, and we in turn were fortunate that we had an eager, bright, energetic legal volunteer willing to put in extraordinary hours traveling to the New Jersey detention center to meet the client and start working on her legal case. Otherwise, Safe Horizon might not have been able to assist this crime victim at all. Detained immigration cases regularly take double to triple the resources for our attorneys.

Prosecution versus deportation

We recognize the need to stay vigilant against crime and to protect our clients. We also know that when ICE detains an individual it is very difficult for the district attorneys to prosecute the offender. While removing the offender from this country may seem like a fail-safe solution, our clients tell us they often receive threats from their abusers even after the deportation. Many clients don't believe, correctly, that authorities in the country of origin will protect their families. Also, the abusers threaten to enter across the border, and often do despite deportation, and the cycle starts again, but can be worse. In many cases, the best outcome is for the criminal prosecution to be completed without ICE's involvement.

Trafficking Victims and the need for training

Finally, we worry that the legislation may not adequately protect victims of human trafficking. It is the rare occurrence that a victim contacts our program without at least one previous interaction with law enforcement. In many cases, clients will be arrested for prostitution, theft, or other crimes that are compelled by the trafficker. As previously discussed, Intros. 982 & 989 allow for detainer exceptions where there are prostitution arrests but, given the experience of our clients and the frequency of other crimes incident to trafficking, these exceptions may need to be expanded to provide more protections for trafficking survivors. Specifically, we reiterate the importance of expanding exceptions to all misdemeanor theft crimes.

We also recognize the need for continued training of law enforcement and other entities to more accurately recognize victims of trafficking and refer them to appropriate services. Safe

Horizon continues to offer our assistance as a referral source and for future trainings and technical assistance.

We would like to reiterate our gratitude to the City Council for beginning this important step towards the protection of our clients. We thank you for considering our recommendations to strengthen the bills, which will keep our clients and indeed all New Yorkers safe.

Thank you, and I would be happy to answer any questions you may have.

CENTRAL AMERICAN LEGAL ASSISTANCE

Ayuda Legal Para Refugiados Salvadoreños y Guatemaltecos

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Testimony in Support of Legislation to Restrict Use of Immigration Detainers

Heather Yvonne Axford, Esq.

January 25, 2013

Central American Legal Assistance represents both detained and non-detained immigrants in both of New York City's immigration courts. We welcome the Committee's concern about the overly broad use of so-called "immigration detainers" to cause persons guilty of no crime or only a civil violation to be turned over to U.S. immigration removal agents. Those who are lucky enough to be able to pay a bond for their release from immigration detention, face lengthy "removal proceedings" and potentially permanent separation from their family and community. Those who are unable to pay such a bond, are detained by Immigration and Customs Enforcement, sometimes in jails in New Jersey, other times as far away as Louisiana, without adequate access to competent representation.

I am here today to give you a concrete example of the tragic consequences of the current policy, consequences that I believe will be remedied by this proposed legislation. We represent a gentleman, a resident of Queens, who has been in immigration detention in Gadsen Alabama since July 2011. Juan was one of many victims of a middle-of-the night warrantless raid on his home in Jamaica Queens conducted by ICE back in 2007. He and his roommates were arrested, processed and released pending their removal proceedings. They were not detained and were released on their own recognizance. We represented the household of six men. We requested the Immigration Court to terminate proceedings against these men because their arrest by ICE was so egregiously unconstitutional. The Immigration Judge agreed and proceedings against them were terminated. The Government appealed and at the appellate stage, the proceedings were reinstated. In order to challenge this ruling in federal court (which we are currently doing), we had to go back to the Immigration Court, take a final order of removal and then seek review in the U.S. Court of Appeals. It was during this 30 day period between the court issuing their orders of removal and our filing the case in the Second Circuit that Juan was picked up by the NYPD for having an open can of beer in a park in Jamaica, Queens.

The NYPD contacted immigration even though Juan was only facing a violation. ICE (Immigration & Customs Enforcement) took him into custody because, according to their records, he had a final order for removal. Even when we showed ICE that the case was still on-going because a Petition for Review had been filed in the U.S. Court of Appeals,

ICE refused to release Juan. *He is still detained today, in Gadsen Alabama. He has been in detention since July 2011.*

This is an incredible waste of taxpayers' funds. While ICE may have the legal right to detain a person with a final order, they never would have done so (and did not act to do so for the other five co-respondents with whom Juan lived) had not NYPD held this man and called ICE.

As I read the proposed legislation, the proposed definition of a "pending criminal case" would exclude persons such as Juan where the highest charge is not even a crime, but rather a violation. It would avoid the situation at hand, where a man must sit in a jail in Alabama for well over a year, as the price for having his constitutional rights be vindicated in federal court.

In light of this situation, we commend your proposed legislation, but also urge you to add language to proposed subpart 2(ii)(B). in No.982. We suggest it read:

B. is or has previously been subject to a final removal order pursuant to 8 C.F.R. 1241.4 *that is not subject to any pending appeal or Petition for Review in federal court.*

This would ensure the protection of those who are unlucky enough to encounter the NYPD during the time that they may have a final order of removal (a requirement for seeking federal review of their case) but have not yet had their claim heard by federal court.

Thank you.

The New York City Council
Committee on Transportation

Hearing RE: Int. No. 982, A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained and Int. No. 989, A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the Department of Correction.

Testimony of Lynly Egyes, Esq.
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Friday, January 25, 2013 at 10:00 a.m.

250 Broadway, 16th FL, New York, NY 10007

Good morning, Council Member Dromm and members of the Committee on Immigration.

The Sex Workers Project at the Urban Justice Center very much appreciates the opportunity to offer comment on these proposed changes to administrative law. My name is Lynly Egyes and I am an attorney at the Sex Workers Project.

I'd like to start with a personal story. My father always told me that the way a community treats its most vulnerable members illustrates the values and principles of the community as a whole. My father told me the story of how different European countries treated the Jews during the Holocaust. Belgium is considered a one of the few European countries that tried to protect Jews within its borders. Hungary, on the other hand, willingly handed over Jews to be sent to concentration camps. Most of my father's family were Hungarian Jews, killed in these camps because their country failed to protect them. Knowing this history has led to a passion to

protect the most vulnerable in my society from danger, and to ask our government to do the same.

As an attorney, I represent some of the most vulnerable populations in New York. I represent people who are involved in the sex industry, often out of a need to survive, and often because they are forced by violent traffickers to engage in prostitution. A large portion of my clients are lesbian, gay, bisexual, and transgender individuals. For many of my clients, deportation does not only mean removal from the home they know, it can mean being forced back into a situation of forced prostitution. It can mean persecution and death. Secure Communities, if fully implemented in New York City, would be sure to lead to danger and suffering for my clients.

The legislation being discussed here today seeks to limit the impact of Secure Communities by asserting local authority over which immigrants will be turned over to the federal government for detention and possible deportation. I believe the intent of this legislation is to protect the most vulnerable members of our community, including sex workers, victims of human trafficking, and LGBT individuals. For example, the law exempts individuals with prior arrests or convictions for the crimes of Prostitution and for Loitering for the Purposes of Prostitution. Our research and experience has shown that victims of trafficking and LGBT individuals are routinely arrested on these charges. Unfortunately, under our current system, defendants often plead guilty even when they are not guilty or were forced to commit the crime. Traffickers often hire private defense attorneys to represent their victims when they are arrested, who coerce them into pleading guilty, in order to force them back into work more quickly. LGBT immigrants in particular, are often terrified to be sent to Riker's Island, where until now, they faced certain immigration detention and possible removal, in addition to mistreatment. A transgender woman, knowing she will be housed in a male unit at Riker's and fearful of rape and abuse, will likely plead guilty just to be set free.

However, I have three suggestions for how this bill could be expanded to fully protect our community's most vulnerable members.

This bill as written would still have New York City honor ICE detainers when a person has any other prior misdemeanor conviction in the past ten years, or when a person has two or more pending misdemeanor arrests. This allows unnecessary deference to ICE. In the past few weeks, ICE issued its own policy instructing its officers not to issue detainers if the defendant only has two prior misdemeanor convictions. Our City Council, attempting to protect city residents from Secure Communities, should at least reach the standard that has been acknowledged as reasonable by ICE. My first suggestion is that the bill be expanded to protect those who have two or less prior misdemeanor convictions. My second suggestion is to expand the bill to protect individuals who have pending misdemeanors charges.

It is important to know that survivors of trafficking and vulnerable members of the LGBT community frequently have misdemeanor arrests and convictions for a variety of low-level crimes, directly due to being exploited, profiled or falsely arrested. Our clients who are survivors of trafficking have prostitution crimes on their records, but also have convictions for trespass, low-level drug possession, and petty larceny, just to name a few. For example, my client who I will call "Allison," was trafficked into stealing. Every day, Allison was forced to go into stores and steal baby formula and powdered milk, she thinks so that her traffickers could mix these substances with drugs for sale. She was also forced into prostitution. A case like this could easily result in a trafficking victim having two pending misdemeanor charges for petty larceny. Another client of my project, Lucille, was forced by her trafficker to purchase drugs for his use, and sustained a low-level drug conviction. The same pressures that lead my clients to plead guilty to prostitution, lead them to plead guilty to these other crimes. The Criminal Court, recognizing Lucille's exploitation, vacated her criminal record. Allison and Lucille are both living safely in the US with T-visas. But under the proposed law, victims like them would be placed into deportation proceedings before they are even convicted of these charges, or have a chance to be identified as a trafficking victim.

I would also respectfully suggest to the Committee that the carve-out currently applied to prostitution should at least expand to include trespass. Immigration attorneys and well-trained criminal defense attorneys know that "trespass" is a safe plea to take if you are an immigrant, because it has no immigration consequences. Often when faced with the possibility of being sent to Riker's or pleading guilty to trespass, immigrant defendants will reasonably choose the guilty plea. District Attorneys will accept these pleas because they are misdemeanors. I have advised criminal defense attorneys that trespass is a "safe" plea for their immigrant clients, including victims of trafficking. Now all of these individuals will be subject to detainer should they be arrested again. Trespass is a low-level, nonviolent crime and is a logical addition to offenses that do not trigger a detainer.

My client "Allen" was young gay man who had suffered horrific child abuse by his own family due to his sexual orientation, after being brought to the US. At 19 he was living in a state-run HIV housing program, where his older roommate soon began physically and sexually abused him. Although my client repeatedly reported this abuse to the housing program nothing was done to protect him. Allen even called the police but was told if they arrested his abuser, they would have to arrest him too. Allen knew if he left the housing program he would be homeless and so he stayed. But then his roommate had him arrested numerous times on false allegations, where untrained police officers did not see him as a victim of domestic violence. This is not uncommon in LGBT domestic violence situations, where the abuser manipulates the situation and has the victim arrested. Although clearly eligible for multiple forms of immigration relief, he was sent to immigration detention. Luckily, Allen was a current client

and we acted immediately before he was transferred to an immigration detention in Texas. However, it still took months before Allen was released from immigration detention, during which time he became very sick because the detention center refused to give him the HIV medication prescribed for him. Allen eventually plead guilty to trespass, a safe plea for immigration purposes at the time. While Allen now has his green card, domestic violence survivors like him are common, many of whom of plead guilty to crimes like trespass or have multiple pending criminal charges.

The undocumented individuals I represent often have many forms of immigration status available to them in theory, such as asylum, T-visas, U-visas, or Special Immigrant Juvenile Status. Unfortunately, Secure Communities operates to deprive vulnerable individuals of the opportunity to have legal status. There is no right to counsel in removal proceedings, and there are no detention facilities in New York. Once someone is placed in immigration detention, they are quickly transferred to Louisiana or Texas. There, they have no family, no friends, and no one to secure any limited pro bono legal counsel that might exist. The immigration court or prosecutors do not screen them for possible remedies, but quickly deport them.

That is exactly what happened to my client "Shelia." Shelia, a transgender woman, experienced extreme violence and persecution in her home country because of her gender identity and was forced by a trafficker into prostitution. She luckily escaped the trafficker and fled to New York. Here, she was arrested several times for prostitution and pled guilty each time to avoid being sent to Riker's. After her third arrest, she was flagged for immigration detention, and rapidly transferred to Louisiana. In Louisiana, she was horribly mistreated in immigration detention, subjected to extreme isolation, and she became very sick and not given medical attention and told she would be left there to die if she did not agree to voluntarily depart the United States. Shelia consented and within an hour inside her country, she was arrested for being transgender, beaten and threatened with death by the police. Once again she found the strength to escape to the United States. Vulnerable and fearful, she fell victim to her smuggler who trafficked her into sex slavery for several days. Finally, she escaped and made her way home, to New York, where she finally connected with the Sex Workers Project. This story is not uncommon among my clients. Immigration law tries to protect victims of violence and persecution by offering remedies, but once people are placed in detention and taken so far away, they have no real access to help.

I'd like to return to the story of Belgium and Hungary during the holocaust. Many do not know that of the Jews that Belgium protected only six percent were Belgian. The rest were stateless people, refugees seeking safety, protection and a home. I believe New York City and this City Council want to provide that same safety, even to those who are not US citizens. I commend

the City Council for creating this legislation to protect my clients, and believe that my three suggestions will help the City Council to fully realize its intent.

SYLVIA RIVERA LAW PROJECT

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New York City Council Committee on Immigration
January 25, 2013 Hearing
Int. No. 982 & Int. No. 989

Dear Members of the Council of the City of New York:

Thank you for the opportunity to address you today. I am a Director of Immigrant Justice at the Sylvia Rivera Law Project (SRLP). SRLP is a community based organization that provides free legal services to low-income people and people of color who are transgender, intersex and/or gender nonconforming. Through our legal services program, we work with hundreds of transgender immigrants each year who are caught at the intersections of our criminal and immigration enforcement systems. Many of our clients have experienced violence in their home countries as well as violence here in New York City, often at the hands of law enforcement. From engaging in this work for the past ten years, we know that our communities will not be safe until all ICE/ police collaborations end.

We are grateful that the City Council is considering limiting the reach of collaboration between the NYPD and ICE following the activation of Secure Communities. However, the proposed City Council bill expanding the Detainer Discretion law has raised several concerns for our organization regarding the impact of the bill on the communities that we serve. Because of the ways in which low income transgender immigrant communities are criminalized in New York City, **our organization cannot support any legislation that limits protection to individuals who have no misdemeanor convictions in the past 10 years other than the limited carve outs.** Such a proposal will not help the vast majority of our immigrant clients who are profiled and targeted because of their transgender and gender non-conforming statuses and who are regularly forced to take unfavorable pleas in the wake of false and often violent arrests. Although the legislation carves out specific misdemeanor convictions from its ten year restriction, these carve outs do not extend far enough. Our clients are routinely falsely arrested for loitering for the purposes of prostitution, promoting prostitution, public lewdness (PL 245.00), trespassing (PL 140.15), criminal possession of marijuana (PL 221.10) and various assault charges. These false arrests happen because of prevailing stereotypes about transgender and gender nonconforming people as suspicious and / or engaging in criminal activity.

The proposal to limit protection to individuals without any misdemeanor convictions in the 10 years prior to the issuance of the ICE Detainer leaves behind the immigrant transgender community. As the recent changes to the NYPD Patrol Guide make clear, there has been a long history of unaccountability and abuses of transgender individuals by police officers in New York City. Many of our clients have been harassed on the street, sexually assaulted, and chained to benches for over 24 hours while being made spectacles for the "amusement" of police and other individuals in the precinct. Our clients are regularly and publicly strip-searched for the sole purposes of "determining" or in some cases, mocking their "genital status." After experiences

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such as these, our clients feel pressured to accept unfavorable pleas, such as a plea to the charge, at arraignment rather than risk the violence and humiliation of returning to custody (if the choice is between a plea to the charge and community service or bail being set and being sent to DOC). Many of our clients also face discrimination by the judges, DA's and defenders assigned to defend them in their criminal cases. Multiple clients in the past month have reported public defenders and ADAs dismissing and mocking their gender identity by refusing to call them by their preferred name and gender pronouns or otherwise treat them as they identify. This creates an additional level to the humiliation that is attendant to all criminal proceedings. This feeling of alienation compounded by a lack of understanding of the criminal system and its processes leaves many transgender criminal defendants without the same access to favorable outcomes that might be available to similarly situated defendants. A final problem unique to our client population is that many "diversion" programs such as prostitution programs, drug programs and mental health programs discriminate against transgender participants either by outright refusing to accept them into the programs or by creating hostile and untenable environments for the individual in the program – such as refusing to allow them to use a bathroom that matches their gender identity. This means that many transgender defendants end up with a conviction to the top charge rather than an ACD or violation that would have been available upon completion of the program. For transgender immigrants who face the dual stigma and vulnerability of their transgender and immigration statuses, the likelihood of receiving a misdemeanor conviction on a first arrest is high and the ability to fight the discriminatory treatment and false arrests is almost impossible.

We have collected countless stories of clients who have been profiled and targeted by police officers and who have accumulated misdemeanor convictions as a result of such profiling and the failures of the court system to honor our clients' gender identities and experiences. Below please find a few illustrative examples.

Client Stories

The following two clients would not be protected from deportation under the proposed bill and would be forced into removal proceedings.

One client, a transgender woman from Colombia was granted her asylee status in 2004 because of the extreme abuse and harassment she endured by the Colombian government because of her gender identity and sexual orientation. In 2008, she got into an abusive relationship, and she called the police. When they arrived, her abuser told the police that she assaulted him first and that she had a knife. The police asked her if this was true and then for her ID. They then asked her why she had an "M" gender marker on her passport. She told them she was a transgender woman. They arrested her and charged her with felony assault. At her arraignment, she took a plea to misdemeanor assault because she feared abuse in jail. ICE identified our client while she was in Rikers and she is currently fighting her deportation.

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Two transgender clients, both from Mexico, were walking home one night and were assaulted on the street by a man they both knew and who had attacked them in the past. In self-defense, the two women fought back but only our clients were arrested. The police assumed that the trans women were the perpetrators despite our client's statements to the contrary and refused to interview any other witnesses. The two women were charged with Felony Assault, held in on high bail and both received ICE detainers. Neither woman had any prior convictions and both were trafficking victims. The case went on for almost 2 years before the charges were dropped and both women released from DOC and ICE custody. While incarcerated both women experienced ongoing physical and sexual violence. They are now both fighting their removal cases.

Both of the above stories illustrate transgender immigrants who were targeted by the NYPD because of their identities and are currently – through no fault of their own – facing violence, harassment, discrimination and deportation. We respectfully ask that you reconsider the limitations of this bill so that it ensures actual safety for all immigrant communities.

NEW YORK CITY BAR

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TESTIMONY OF ALINA DAS, MEMBER, CRIMINAL COURTS COMMITTEE OF THE NEW YORK CITY BAR ASSOCIATION

NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION HEARING REGARDING INT. 982 AND INT. 989 January 25, 2013

My name is Alina Das, and I am a member on the Criminal Courts Committee of the New York City Bar Association. I am testifying on behalf of the Criminal Courts Committee, Civil Rights Committee, Corrections and Community Reentry Committee, Domestic Violence Committee, and Immigration and Nationality Law Committee of the New York City Bar Association.

The New York City Bar Association applauds the City Council for taking on this important issue and supports Int. 982 and Int. 989, which mark an important step in limiting the Department of Correction's (DOC) and New York Police Department's (NYPD) collaboration with U.S. Immigration and Customs Enforcement (ICE) in our City. Moreover, based on our collective view of the scope of the problems posed by the current ICE detainer policy, our committees would support even more robust measures to limit this collaboration in light of the harm it causes New York immigrants and the criminal justice system as a whole.

As our committees expressed in our letter to the Honorable Christine Quinn earlier this month,[1] we believe that the NYPD's and DOC's current collaboration policy with ICE imposes significant harms on our City's residents and exacts a high financial burden on the City's budget. As a bar association that is representative of a broad cross-section of the legal community—defense attorneys and prosecutors, judges, professors, and lawyers who practice in immigration law, domestic violence prevention and law, civil rights, community reentry, and corrections law—we base our concerns in the real impact that the current detainer policy has in thousands of cases each year.[2]

First, we note that we support this legislation because a change in detainer policy is timely and justified. The City Council's attention to the adverse effects of ICE's presence and activities throughout the criminal justice system comes at a critical time. On May 15, 2012, ICE implemented "Secure Communities" in New York City, despite both the City Council's and the New York State Governor's opposition to the implementation of this program in New York.

Under Secure Communities, fingerprint information collected at arrest and booking is automatically shared with the U.S. Department of Homeland Security. Based on this information, ICE will lodge a

[1] Letter of the New York City Bar Association to Hon. Christine Quinn, Speaker, New York City Council (Jan. 9, 2013), *available at* http://www2.nycbar.org/pdf/report/uploads/20072375-PersonsNottoBeDetained ICECollaboration.pdf (copy attached).
[2] Judges on our committees are non-voting and did not take part in the drafting of this testimony or our previous letter regarding this legislation.

detainer on anyone it believes is removable, regardless of whether that person has a substantial challenge to the removal charges or is eligible for discretionary relief from removal. ICE has long issued detainers in cases involving individuals in Department of Correction ("DOC") custody (at a rate of 3,000-4,000 New Yorkers each year).[3] But as a result of Secure Communities, ICE is now additionally lodging detainers for individuals held by the New York City Police Department ("NYPD") at booking, before those individuals enter into DOC custody. ICE is also appearing at arraignments to detain individuals who otherwise would have been released.

Collaboration with ICE detainer policy is inconsistent with New York City's interests in protecting due process and other rights of its immigrant residents. These New Yorkers subjected to immigration detention are detained at far greater rates (80% denied bail entirely) than those in criminal proceedings (68% released on recognizance).[4] Thus, New Yorkers subjected to ICE detainers are routinely separated from their families and homes in the City, and forced to defend themselves while detained in facilities as remote as Louisiana and Texas - often without access to counsel, evidence, and witnesses.[5] Unsurprisingly, detained and unrepresented immigrants commonly lose their deportation cases. Only 3% of noncitizens apprehended in New York who are detained and unrepresented had a favorable outcome, compared to 74% of noncitizens apprehended in New York who are released (or never detained) and represented.[6]

Criticism of ICE detainer policy has prompted many localities, including this City, to take action. The leadership of the City and these other localities has in turn prompted ICE to issue guidance to its officers, urging greater prosecutorial discretion in the issuance of detainers.[7] However, ICE's new guidance "does not create or confer any right or benefit" to immigrants affected by detainer policy and is subject to discretion of local officers.[8] The City Council's continuing leadership is therefore needed to ensure that immigrant New Yorkers remain protected from the harms caused by detainers.

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[3] *See* ICE FOIA Response Letter to Prof. Nancy Morawetz, New York University School of Law, dated Dec. 12, 2008.

[4] NYU Immigrant Rights Clinic & Families for Freedom, *Insecure Communities, Devastated Families: New Data on Immigration Detention and Deportation Practices in New York City* 9-10 (July 23, 2012) (1 percent of New Yorkers in New York City Criminal Courts are denied bail entirely), *available at* http://familiesforfreedom.org/sites/default/files/resources/NYC%20FOIA%20Report%202012%20FINAL_1.pdf (last visited January 7, 2012). Moreover, even when ICE sets bond, it is often prohibitively high. 75% of bond settings are $5,000 and up, with 35% $10,000 and up. This contrasts with New York criminal pretrial detention RATES, where 80% of bail settings are $1,000 or below. *Id.* at 11.

[5] Nationally, only 22% of detained immigrants had counsel, with much lower rates of representation in some detention centers. *See* Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication, at* Appendix 3 (June 2012) available at http://www.acus.gov/wp-content/uploads/downloads/2012/06/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf. *See also* Human Rights Watch. *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2, 2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (Nov. 2009); *Report on the Right to Counsel for Detained Individuals in Removal Proceedings*, New York City Bar Association (August 2009) available at http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf (last visited January 7, 2012).

[6] Steering Comm. of the N.Y. Immigrant Representation Study Report, *New York Immigrant Representation Study Report, Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt. 1), 33 CARDOZO L. REV. 357, 363-64 (2011).

[7] *See supra* note 7.

[8] *See id.* at 3.

The City Council's new proposed legislation takes some important steps towards addressing these concerns. These developments are significant and will have a substantial impact on many New Yorkers' lives.

Current law, while providing some limitations on the use of detainers for certain New Yorkers, applies only to people held in DOC custody. Moreover, the current law applies only to people with no criminal record. The proposed legislation would ensure that New Yorkers held at earlier stages of the criminal process will also benefit from limitations on the scope of detainers. The proposed legislation also would expand these limitations to apply to individuals with minor criminal records, namely individuals who have never been convicted of a felony and who have not been convicted of a misdemeanor offense within the last 10 years or whose minor misdemeanor offenses fall within certain specified categories.[9] Finally, the new proposed legislation would also apply to individuals who have certain pending misdemeanor cases, giving them an opportunity to be released on bail.[10] These are welcome changes given the significant harms that detainers cause to our city and its residents.

Second, we respectfully ask the City Council to consider the follow changes to enhance the legislation.

Changes Are Needed to Better Address the Adverse Effect of Detainers on Individuals with Pending Criminal Cases

The legislation should be expanded to cover individuals with pending criminal cases. As it stands under the proposed legislation, individuals facing certain criminal charges[11] may be subject to a detainer (and therefore transferred into ICE custody) *even if* the criminal court would otherwise release the individual on bail or on his or her own recognizance or *even if* all entities involved—prosecutors, judges, and defense attorneys—agree that the individual should participate in one of the

[9] Individuals who have misdemeanor convictions for unlicensed driving (NYVTL §§ 511(1), 511 (2)(a)(i), or 511(2)(a)(iv)), prostitution (NYPL § 230.00), and loitering for the purposes of prostitution (NYPL § 240.37) will not trigger NYPD or DOC to honor a detainer regardless of whether they have been convicted of such offenses within the past 10 years. In this respect, the proposed legislation is more expansive than ICE's new discretionary guidance, which would generally require that detainers be lodged in cases involving three or more prior misdemeanor convictions (other than traffic offenses and other relatively minor misdemeanor offenses), even if such convictions occurred more than ten years ago. *See supra* note 7, at 2.However, ICE's discretionary guidance is more favorable for individuals who do have certain types of misdemeanors on their record in the last ten years. For example, ICE guidance suggests that no detainer should be lodged for an individual who has a single misdemeanor conviction for petit larceny in the last ten years, but the proposed legislation would honor a detainer in such a case.

[10] Individuals who have only one pending misdemeanor charge will not trigger NYPD or DOC to honor a detainer unless the charge involves firearm possession (NYPL § 265.01); criminal contempt (NYPL § 215.50), unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; assault (NYPL § 120.00), unless the defendant is released upon failure to replace the misdemeanor complaint with an information pursuant to section 170.70 of the criminal procedure law; sexual offenses (NYPL art. 130); or alcohol and drug related vehicular offenses (NYVTL art. 31). Two or more of any pending misdemeanor charges will result in a detainer except where those charges are either unlicensed driving (NYVTL §§ 511(1), 511 (2)(a)(i), or 511(2)(a)(iv)), prostitution (NYPL § 230.00), and/or loitering for the purposes of prostitution (NYPL § 240.37) . In these respects, there are differences between this proposed legislation and ICE's new discretionary guidance—in some cases, ICE's new discretionary guidance is more favorable to immigrant New Yorkers. For example, the new ICE discretionary guidance suggests that a detainer should not be lodged against an immigrant facing misdemeanor charges of both simple marijuana possession and criminal trespass, whereas the proposed legislation would allow NYPD or DOC to honor such a detainer.

[11] *See* supra note 10 (explaining which pending cases will still trigger a detainer under the proposed legislation).

City's renowned alternative to incarceration programs. As a result, individuals must either face ICE detention in a far-away jail or private prison, or they must remain in criminal custody in New York without bail or release. For this reason, collaboration with ICE has cost the City millions of unreimbursed dollars every year, as individuals are held in city jails for an average of 73 days longer when detainers are issued.[12] By expanding the category of people with pending cases exempt from ICE detainers, legislation could further reduce the amount of wasted City resources and promote criminal justice.

Changes Are Needed to Better Address the Adverse Effect of Detainers on People with Past Criminal Records Who May Nonetheless Be Eligible for Relief from Removal

Our concerns about due process, public safety, and community trust in the criminal justice system extend not only to individuals with no conviction histories, but also to the many lawful permanent residents, refugees, and other immigrants who may have conviction histories, but have a substantial challenge to removal or would be eligible for waivers of deportation if given the chance to defend their immigration cases close to family and counsel here in the City. As noted above, New Yorkers are far more likely to find counsel and successfully defend their cases if they are able to remain in New York and are not detained during their removal proceedings. We therefore support the expansion of the current detainer policy to cover individuals with conviction histories more expansively defined than in the proposed legislation, along the lines of our previous communications on this matter.[13]

Changes Are Needed to Better Address the Unintended Consequences of ICE Collaboration on Public Safety and Community Trust

The impact of Secure Communities and the increased use of detainers prior to an individual's transfer into DOC custody raise additional concerns. As a matter of public safety, the City's police and prosecutors have cultivated a relationship of trust with the immigrant communities.[14] The increased ICE presence and collaboration at NYPD precincts and at court arraignments undermines the ability of the police and the courts to build community trust and promote public safety. While the proposed legislation will ensure that the NYPD is covered by this city's detainer policy, the detainer policy itself only applies in limited cases. The NYPD's ability to foster community trust is therefore similarly limited. The perception that a criminal arrest will automatically lead to immigration detention and deportation can have a chilling effect on immigrant New Yorkers who may wish to report a crime for fear that any interaction with police and the courts will result in the deportation of their immigrant family member or loved one. Immigrants' fear of coming forward to report a crime will result in a less safe New York.

[12] Justice Strategies, *New York City Enforcement of Immigration Detainers, Preliminary Findings* (October 2010).
[13] *Id.*
[14] As part of this effort, for example, District Attorneys' offices make no distinction between crime victims who are citizens and those who are not (except when they may assist undocumented crime victims to achieve certain immigration protections).

Changes Are Needed to Avoid the Counterproductive and Harmful Effects Caused by Specific Carve-Outs

Finally, we note that two of the carve-outs in the current law and proposed legislation exacerbate these concerns discussed above. First, the carve-outs for people with prior assault and/or contempt charges in the proposed legislation are harmful to immigrant domestic violence victims, who are especially vulnerable to manipulation of the legal system by abusers, and to mistaken arrests by law enforcement. We urge that these carve-outs be eliminated, and that detainers not be honored for people with prior assault or contempt charges. Alternatively, we suggest, at a minimum, additional safeguards to help identify immigrants whose prior assault or contempt charges may have been part of a pattern of abuse. For example, the legislation could place an affirmative duty of inquiry on the NYPD or DOC to determine whether the individual is a victim of domestic violence and/or trafficking, before honoring an ICE detainer. Officers are already trained to recognize domestic violence and identify primary aggressors and true victims. Otherwise, to eliminate the need for subjective discretion, the laws could state that NYPD and DOC will honor the ICE detainer for individuals with prior charges of assault and/or contempt, *unless* that individual also had an order of protection in their favor against someone else (suggesting a cross order of protection situation).[15]

Second, another problematic carve-out in both current law and the proposed legislation is the exception permitting detainers to be lodged on "known gang members" and individuals "identified as a possible match in the terrorist screening database." Reliance on the use of gang and terrorist databases raises serious civil liberties concerns, which have been well documented.[16] Problems include, but are not limited to: inaccurate identification methods, erroneous and outdated records, lack of due process for providing notice or a mechanism for challenging inclusion in the databases, the disproportionate inclusion of Black, Latino and Asian youth, and the negative impact inclusion in the databases has on pre-trial release and case outcomes. For these reasons, such automatic carve-outs based on these inaccurate and problematic databases should be eliminated. Again, nothing prevents ICE from initiating removal proceedings against those individuals for whom it can support its charges of removability.

In summary, the New York City Bar Association recognizes the important steps already taken by the City Council in addressing the harmful and costly detainer policy in our city, and we further urge the City Council to consider our suggestions for even stronger limitations on DOC and NYPD collaboration with ICE given detainers' adverse effects on the criminal justice system as a whole. In addressing these issues, the City would save valuable resources for which it is not reimbursed by the federal government, while ensuring that there are restraints in place that protect immigrant New Yorkers from a federal immigration enforcement policy that does not serve the ends of justice.

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[15] These proposed additional safeguards will not protect every domestic violence victim from an ICE detainer, especially those victims who are reluctant to self-report, which is why we urge City Council to eliminate the assault and contempt carve-outs altogether. For additional explanation, please refer to our January 2, 2013 letter, attached.

[16] *See generally,* Joshua D. Wright, *The Constitutional Failure of Gang Databases,* 2 Stan. J.C.R. & C.L. 115 (Nov. 2005); K. Babe Howell, *Gang Databases: Labeled for Life,* The Champion (Jul.-Aug. 2011); Stacey Leyton, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases,* in CRIME CONTROL AND SOCIAL JUSTICE : THE DELICATE BALANCE (Westport, CT: 2003); US Department of Justice, *The FBI's Terrorist Threat and Suspicious Incident Tracking System,* Office of Inspector General Audit 09-02 (November 2008).

NEW YORK
CITY BAR

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January 9, 2013

The Honorable Christine C. Quinn
Speaker
New York City Council
250 Broadway, Suite 1856
New York, NY 10007

Re: Legislation on Persons Not to Be Detained With Respect to Collaboration with Immigration and Customs Enforcement (ICE)

Dear Speaker Quinn:

On behalf of the New York City Bar Association's Criminal Courts Committee, Civil Rights Committee, Corrections and Community Reentry Committee, Domestic Violence Committee, and Immigration and Nationality Law Committee, we write in support of the City Council's efforts to strengthen current limitations on the City's collaboration with U.S. Immigration and Customs Enforcement ("ICE") with respect to the holding of immigrant New Yorkers subject to ICE detainers. We moreover urge the City Council to consider further changes.

As we have previously expressed, and as the City Council has already recognized, ICE detainers have caused great harm to New Yorkers in recent years - undermining basic principles of fairness and due process, eroding community trust and raising concerns of racial profiling, interfering with the workings of the criminal justice system, and endangering New York's large, vital immigrant community.[1] Moreover, collaboration with ICE has cost the City millions of unreimbursed dollars every year, as individuals are held in city jails for an average of 73 days longer when detainers are issued.[2] Some may have valid claims to U.S. citizenship.[3] In light of

[1] *See* Letter of the New York City Bar Association to Hon. Christine Quinn, Speaker, New York City Counsel (Feb. 3, 2011), *available at* http://www.nycbar.org/pdf/report/uploads/20072056-LettertoSpeakerQuinnRePorposaltoLimitCollaborationBetweenDOCandICE.pdf; The New York City Bar Association, Report on Legislation in Support of City Council Int. 656-2011 (Sept. 14, 2011), *available at* http://www2.nycbar.org/pdf/report/uploads/1_20072182-Int.656-2011amendingcitycoderegardingdetention.pdf; Testimony of Alina Das, Member, Criminal Courts Committee of the New York City Bar Association, in Support of City Council Int. 656-2011 (October 3, 2011), *available at* http://www2.nycbar.org/pdf/report/uploads/20072186-CriminalCourttestimony insupportofInt.656-2011.pdf.

[2] Justice Strategies, *New York City Enforcement of Immigration Detainers, Preliminary Findings* (October 2010).

[3] Because immigration detainers are often issued based on incomplete information, foreign-born U.S. citizens are frequently erroneously detained. Many New York residents acquired citizenship derivatively through a parent's

these harms, New York City is well within its rights to place stronger limitations on the use of ICE detainers in its city jail and precincts. As ICE publicly acknowledges, its civil detainers are *requests* - not mandates - to local law enforcement agencies to detain named individuals for up to 48 hours after they would otherwise be released from criminal custody, to allow ICE the opportunity to take these individuals into immigration custody.[4] New York City is not legally obligated to collaborate with federal immigration detention requests.

The City Council's 2011 legislation (Int. 656-2011), which limited the Department of Correction's collaboration with ICE in certain cases, was an important first step in addressing the serious harms from detainers. Since then, however, ICE has implemented "Secure Communities" throughout New York City, causing an attendant increase in ICE presence and the use of detainers earlier in the criminal justice process, including at booking and arraignments. The harms mentioned above have thus expanded, with more individuals affected by detainers throughout New York City. The two recently introduced pieces of legislation (Int. 0982-2012 and Int. 0989-2012) address some of these additional concerns. However, as noted below, more must be done to alleviate the adverse effects of detainers.

We therefore urge the City Council to pass expanded legislation. Such an expansion would be in line with the City Council's interest in protecting immigrant New Yorkers and their families, but would not serve as a legal impediment to ICE's power to place any individual in removal proceedings.[5] Moreover, it would conform with ICE's own recent clarification that its use of detainers should be limited.[6]

Action to Expand Limitations on Collaboration with ICE Is Timely and Justified

The City Council's attention to the adverse effects of ICE's presence and activities throughout the criminal justice system comes at a critical time. On May 15, 2012, ICE implemented "Secure Communities" in New York City, despite both the City Council's and the New York State Governor's opposition to the implementation of this program in New York.

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naturalization, which agency records may not reflect. *See* Jacqueline Stevens, U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens, 18 Va. J. Soc. Pol'y & L. 606 (2011).

[4] See, e.g., Letter from David Venturella, Assistant Director of ICE, to Miguel Martinez, County Counsel, County of Santa Clara, California, in or about September 2010.

[5] ICE initiates removal proceedings against an individual by serving him or her with a Notice to Appear or other charging document and filing that document with an immigration court. A decision to lodge or lift a detainer does not affect ICE's ability to initiate removal proceedings.

[6] ICE recently issued guidance limiting the use of detainers in certain cases, in response to leadership by the City and other localities across the country. *See* Secretary John Morton, *Immigration and Customs Enforcement, Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems* (Dec. 21, 2012), *available at* http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf. (Last visited January 7, 2012). As noted below, this guidance - while a welcome policy development - is purely discretionary and unenforceable, thus local legislation is still necessary to protect immigrant New Yorkers from the harms caused by detainers.

Under Secure Communities, fingerprint information collected at arrest and booking is automatically shared with the U.S. Department of Homeland Security. Based on this information, ICE will lodge a detainer on anyone it believes is removable, regardless of whether that person has a substantial challenge to the removal charges or is eligible for discretionary relief from removal. ICE has long issued detainers in cases involving individuals in Department of Correction ("DOC") custody (at a rate of 3,000-4,000 New Yorkers each year).[7] But as a result of Secure Communities, ICE is now additionally lodging detainers for individuals held by the New York City Police Department ("NYPD") at booking, before those individuals enter into DOC custody. ICE is also appearing at arraignments to detain individuals who otherwise would have been released.

Collaboration with ICE detainer policy is inconsistent with New York City's interests in protecting due process and other rights of its immigrant residents. These New Yorkers subjected to immigration detention are detained at far greater rates (80% denied bail entirely) than those in criminal proceedings (68% released on recognizance).[8] Thus, New Yorkers subjected to ICE detainers are routinely separated from their families and homes in the City, and forced to defend themselves while detained in facilities as remote as Louisiana and Texas - often without access to counsel, evidence, and witnesses.[9] Unsurprisingly, detained and unrepresented immigrants commonly lose their deportation cases. Only 3% of noncitizens apprehended in New York who are detained and unrepresented had a favorable outcome, compared to 74% of noncitizens apprehended in New York who are released (or never detained) and represented.[10]

Criticism of ICE detainer policy has prompted many localities, including this City, to take action. The leadership of the City and these other localities has in turn prompted ICE to issue guidance

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[7] *See* ICE FOIA Response Letter to Prof. Nancy Morawetz, New York University School of Law, dated Dec. 12, 2008.

[8] NYU Immigrant Rights Clinic & Families for Freedom, *Insecure Communities, Devastated Families: New Data on Immigration Detention and Deportation Practices in New York City* 9-10 (July 23, 2012) (1 percent of New Yorkers in New York City Criminal Courts are denied bail entirely) *available at* http://familiesforfreedom.org/sites/default/files/resources/NYC%20FOIA%20Report%202012%20FINAL_1.pdf. (Last visited January 7, 2012). Moreover, even when ICE sets bond, it is often prohibitively high. 75% of bond settings are $5,000 and up, with 35% $10,000 and up. This contrasts with New York criminal pretrial detention in, where 80% of bond settings are $1,000 or below. *Id.* at 11.

[9] Nationally, only 22% of detained immigrants had counsel, with much lower rates of representation in some detention centers. *See* Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication, at* Appendix 3 (June 2012) available at http://www.acus.gov/wp-content/uploads/downloads/2012/06/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf. *See also* Human Rights Watch. *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States* (Dec. 2, 2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (Nov. 2009); *Report on the Right to Counsel for Detained Individuals in Removal Proceedings*, New York City Bar Association (August 2009) available at http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf. (Last visited January 7, 2012).

[10] Steering Comm. of the N.Y. Immigrant Representation Study Report, *New York Immigrant Representation Study Report, Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt. 1), 33 CARDOZO L. REV. 357, 363-64 (2011).

to its officers, urging greater prosecutorial discretion in the issuance of detainers.[11] However, ICE's new guidance "does not create or confer any right or benefit" to immigrants affected by detainer policy and is subject to discretion of local officers.[12] The City Council's continuing leadership is therefore required to ensure that immigrant New Yorkers remain protected from the harms caused by detainers.

The City Council's new proposed legislation takes some important steps towards addressing these concerns. These developments are significant and will have a substantial impact on many New Yorkers' lives.

Current law, while providing some limitations on the use of detainers for certain New Yorkers, applies only to people held in DOC custody. Moreover, the current law applies only to people with no criminal record. The proposed legislation would ensure that New Yorkers held at earlier stages of the criminal process will also benefit from limitations on the scope of detainers. The proposed legislation also would expand these limitations to apply to individuals with minor criminal records, namely individuals who have never been convicted of a felony and who have not been convicted of almost any misdemeanor offense[13] within the last 10 years. Finally, the new proposed legislation would also apply to individuals who have certain pending misdemeanor cases, giving them an opportunity to be released on bail. These are welcome changes given the significant harms that detainers cause to our city and its residents.

More Expansive Changes are Required Due to the Significant Public Safety Concerns, Due Process and Civil Rights Implications, and Fiscal Costs of ICE Detainer Policy

The City's current detainer policy and its newly proposed legislation, while a step in the right direction, will have a limited impact in light of Secure Communities. For all individuals not covered by the limits on detainers discussed above - including those with no record but with pending cases involving certain charges specified by the legislation (and who would otherwise be released on bail but for the detainer), and those with criminal records not covered in the legislation (such as those with a felony conviction or a more recent but still nonviolent misdemeanor record) - ICE regularly lodges detainers and takes such people into their custody regardless of the resolution of their current criminal cases or any valid challenges to their removability.

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[11] *See supra* note 7.

[12] *See id.* at 3.

[13] Individuals who have misdemeanor convictions for unlicensed driving (though there remains a lack of clarity on what types of unlicensed driving charges will be excluded), prostitution (NYPL § 230.00), and loitering for the purposes of prostitution (NYPL § 240.37) will not trigger NYPD or DOC to honor a detainer regardless of whether they have been convicted of such offenses within the past 10 years. In this respect, the proposed legislation is more expansive than ICE's new discretionary guidance, which would generally require that detainers be lodged in cases involving three or more prior misdemeanor convictions (other than traffic offenses and other relatively minor misdemeanor offenses), even if such misdemeanors convictions occurred more than ten years ago. *See supra* note 7, at 2.

Changes Are Needed to Better Address the Adverse Effect of Detainers on Individuals with Pending Criminal Cases

As we have previously indicated, legislation should be expanded to cover individuals with pending criminal cases.[14] For example, we urge the City Council to consider the millions of dollars of unreimbursed cost to the City caused by the delayed justice that the current detainer policy creates for immigrants with pending criminal cases. The placement of immigration detainers in pending cases often complicates a plea bargaining resolution that would otherwise be straightforward, practical, and just for all stakeholders in the criminal justice system. Instead, the protracted resolution of these cases, resulting from collaboration with ICE, results in prolonged detention in City jails in instances when an individual would otherwise be released on bail; requires the City to pay for transportation of detainees to and from court; and extends case processing costs for District Attorneys' offices, public defense providers, and the courts.

In addition, immigration detainers often interfere with a defendant's ability to participate in the City's renowned alternative to incarceration programs, even when the judge, prosecutor, defense attorney, defendant, and other stakeholders *all* agree that this alternative would be the best course for the defendant and the community. For these individuals, and many others with pending cases, the current detainer policy burdens the criminal justice system as a whole. By expanding the category of people exempt from ICE detainers, legislation could further reduce the amount of wasted City resources and promote criminal justice.

Changes Are Needed to Better Address the Adverse Effect of Detainers on People with Past Criminal Records Who May Nonetheless Be Eligible for Relief from Removal

Moreover, we note that our concerns about due process, public safety, and community trust in the criminal justice system extend not only to individuals with no conviction histories, but also to the many lawful permanent residents, refugees, and other immigrants who may have conviction histories, but have a substantial challenge to removal or would be eligible for waivers of deportation if given the chance to defend their immigration cases close to family and counsel here in the City. As noted above, New Yorkers are far more likely to find counsel and successfully defend their cases if they are able to remain in New York and are not detained during their removal proceedings. We therefore support the expansion of the current detainer policy to cover individuals with conviction histories more expansively defined than in the proposed legislation, along the lines of our previous communications on this matter.[15]

Changes Are Needed to Better Address the Unintended Consequences of ICE Collaboration on Public Safety and Community Trust

The impact of Secure Communities and the increased use of detainers prior to an individual's transfer into DOC custody raise additional concerns. As a matter of public safety, the City's

[14] *See supra* note 1.

[15] *Id.*

police and prosecutors have cultivated a relationship of trust with the immigrant communities.[16] The increased ICE presence and collaboration at NYPD precincts and at court arraignments undermines the ability of the police and the courts to build community trust and promote public safety. While the proposed legislation will ensure that the NYPD is covered by this city's detainer policy, the detainer policy itself only applies in limited cases. The NYPD's ability to foster community trust is therefore similarly limited. The perception that a criminal arrest will automatically lead to immigration detention and deportation can have a chilling effect on immigrant New Yorkers who may wish to report a crime for fear that any interaction with police and the courts will result in the deportation of their immigrant family member or loved one. Immigrants' fear of coming forward to report a crime will result in a less safe New York.

Additionally, current law required the Department of Corrections to report statistics on its compliance with ICE detainers by September 30, 2012. We support the amendments that expand these reporting requirements in line with proposed changes. However, the Department should release complete statistics as soon as practicable so the public can evaluate the City's policy.

Changes Are Needed to Avoid the Counterproductive and Harmful Effects Caused by Specific Carve-Outs

Finally, we note that several of the carve-outs in the current law and proposed legislation exacerbate these concerns discussed above. For example, the carve-outs for people with prior assault and/or contempt charges in the proposed legislation are harmful to immigrant domestic violence victims, who are especially vulnerable to manipulation of the legal system by abusers, and to mistaken arrests by law enforcement. Abusers have always been adept at using the criminal justice and court systems against their victims. Secure Communities gives an abuser yet another tool to exert power and control over his victim, and gives weight to his threats that he can have her deported and separate her from her children.[17] Abusers routinely falsely accuse their victims of assault, often resulting in cross arrests and cross orders of protection. Immigrant New Yorkers who do not speak English are particularly susceptible to cross arrests and cross orders of protection, as they cannot explain their story to police at the scene. Cross orders of protection are also common in New York City Family Courts, where *pro se* victims are coerced by their batterers and the courts into agreeing to "settle" an order of protection on consent. After securing a consent order of protection, the abuser then promptly calls the police to falsely report a violation, initiating criminal contempt charges against his victim.

The assault and contempt carve-outs in the proposed legislation thus capture domestic violence victims in their net. We urge that these carve-outs be eliminated, and that detainers not be honored even for people with prior assault or contempt charges. Alternatively, we suggest, at a minimum, additional safeguards to help identify immigrants whose prior assault or contempt charges may have been part of a pattern of abuse. For example, the legislation could place an

[16] As part of this effort, for example, District Attorneys' offices make no distinction between crime victims who are citizens and those who are not (except when they may assist undocumented crime victims to achieve certain immigration protections).

[17] New York State Judicial Committee on Women and the Courts, *Immigration and Domestic Violence: A Short Guide for New York State Judges* (March 2004).

affirmative duty of inquiry on the NYPD or DOC to determine whether the individual is a victim of domestic violence and/or trafficking, before honoring an ICE detainer. Officers are already trained to recognize domestic violence and identify primary aggressors and true victims. Otherwise, to eliminate the need for subjective discretion, the laws could state that NYPD and DOC will honor the ICE detainer for individuals with prior charges of assault and/or contempt, *unless* that individual also had an order of protection in their favor against someone else (suggesting a cross order of protection situation).[18]

Another chilling effect of Secure Communities on domestic violence victims is that they may be reluctant to come forward to report abuse or to press charges if they fear that doing so will lead to their *abuser's* deportation, particularly if they have children with the abuser and/or he or she is the family's primary or sole provider.[19] The Secure Communities program strips victims of the power to decide how to deal with the abuse, whether to keep their families together, or how to separate from their abuser in the safest and most financially sound way possible.

Indeed, in other criminal contexts as well, if someone in a position to report a crime knows that NYPD and DOC collaboration with ICE will result in an immigration detainer against the perpetrator, there is a good chance that he or she will not want to get the police involved. This directly contravenes efforts by the City to encourage its residents to report crime and work with law enforcement officers to make communities safer.

Another problematic carve-out in both current law and the proposed legislation is the exception permitting detainers to be lodged on "known gang members" and individuals "identified as a possible match in the terrorist screening database." Reliance on the use of gang and terrorist databases raises serious civil liberties concerns, which have been well documented.[20] Problems include, but are not limited to: inaccurate identification methods, erroneous and outdated records, lack of due process for providing notice or a mechanism for challenging inclusion in the databases, the disproportionate inclusion of Black, Latino and Asian youth, and the negative impact inclusion in the databases has on pre-trial release and case outcomes. For these reasons, such automatic carve-outs based on these inaccurate and problematic databases should be eliminated. Again, nothing prevents ICE from initiating removal proceedings against those individuals for whom it can support its charges of removability.

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[18] These proposed additional safeguards will not protect every domestic violence victim from an ICE detainer, especially those victims who are reluctant to self-report, which is why we urge City Council to eliminate the assault and contempt carve-outs altogether.

[19] *See supra* note 15.

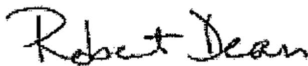
[20] *See generally,* Joshua D. Wright, *The Constitutional Failure of Gang Databases*, 2 Stan. J.C.R. & C.L. 115 (Nov. 2005); K. Babe Howell, *Gang Databases: Labeled for Life*, The Champion (Jul.-Aug. 2011); Stacey Leyton, *The New Blacklists: The Threat to Civil Liberties Posed by Gang Databases*, in CRIME CONTROL AND SOCIAL JUSTICE : THE DELICATE BALANCE (Westport, CT: 2003); US Department of Justice, *The FBI's Terrorist Threat and Suspicious Incident Tracking System,* Office of Inspector General Audit 09-02 (November 2008).

Conclusion

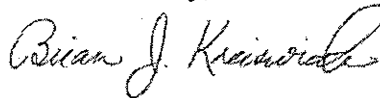
Other communities across the country have reacted to the concerns presented by detainers and Secure Communities by creating detainer limitation policies that cover a wider range of immigrant residents and ensure a clear division between the role that their local officials play in criminal justice enforcement versus immigration enforcement. Policies in Cook County, Illinois; Santa Clara County, California; and Washington, D.C., all provide more protective measures to address the negative impact of detainers on local residents.[21]

For these reasons and for the reasons outlined in our previous communications, we applaud the City Council's most recent proposals to strengthen the current law and respectfully ask the City Council to consider our committees' suggestions with respect to a more robust change to the detainer policy in New York.

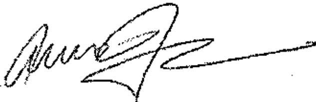
Sincerely,



Robert Dean, Chair
Criminal Courts Committee



Brian Kreiswirth, Chair
Civil Rights Committee



Anna Ognibene, Chair
Domestic Violence Committee

Sara Manaugh, Chair
Corrections & Community Reentry Committee

Lenni Benson, Chair
Immigration and Nationality Law Committee

cc: Councilmember Daniel Dromm
Councilmember Melissa Mark-Viverito

[21] *See, e.g.,* Cook County Code, Ch. 46 Law Enforcement, Sec. 46-37; Santa Clara County Board Policy Request 3.54 Relating to Civil Detainers; Washington, D.C., Immigration Detainer Compliance Amendment.

Testimony of Nicholas Katz, Staff Attorney
Make the Road New York
1/25/13

Testimony in Favor of Intros 982 and 989

Good morning. My name is Nicholas Katz and I am a staff attorney at Make the Road New York, New York state's largest participatory immigrants rights organization with over 12,000 members in New York City and Long Island. I want to thank Speaker Quinn and Councilmember Melissa Mark-Viverito for their leadership on this issue.

Over three years ago, Make the Road New York and other allies in this room started to work on the issue of detainers – the hold requests Immigration and Customs Enforcement places on individuals in Department of Corrections Custody. We were concerned when many of our members expressed concern about being deported after being arrested by the NYPD. After learning more and engaging many people around this issue we developed the Ice Out of Riker's Campaign, and worked with you all to pass legislation that limits New York City's collaboration with ICE.

We firmly believe that the city should take action to stop this collaboration because it has pernicious and wide-ranging effects on our community and city. The first bill was a strong initial step. These bills are another step forward, responding to the new reality in our city after the Secure Communities program was activated, over the protests of all of us, including Governor Cuomo, who suspended the program statewide in 2011.

Today in New York City, under Secure Communities, immigrants who are arrested and brought to precincts across the city often have detainers lodged against them by the time they see a judge for arraignment. This means that immigrants can be held and turned over to ICE for deportation proceedings before receiving a trial, while charges are still pending, and in many other instances that our allies will describe in their testimonies.

This is an affront to the criminal justice system that deprives immigrants of a fair day in court and tears families apart. Additionally, it drives a stake between immigrant communities and law enforcement that our coalition was working to rebuild with the passage of the first legislation in 2011. Immigrants now have additional reason to fear the NYPD – because any arrest for anything could end up in deportation – essentially casting an even larger dragnet than the original program ICE established in the Department of Corrections did.

We believe that the ideal outcome would be to terminate ICE's relationship with New York City, and we applaud the intros proposed today, which if passed would strengthen the bills passed in 2011 and combat the damaging effects of Secure Communities by moving the NYPD to not honor certain detainers as well. We have now proven beyond all doubt – and ICE itself even acknowledges it – that detainers are voluntary, and we look forward to continuing to work with our legislative leaders to keep New York families together.

New York must continue to take the lead nationally in stopping the over-aggressive enforcement policies that have led to a record number of deportations and devastated millions of families.

We look forward to working together with you to ensure that these bills pass. Thank you.

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Sonia R. Lin
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Lindsay C. Nash
Clinical Litigation/Liman Fellow

My name is Lindsay Nash and I am Liman Fellow attorney at the Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law. The Clinic was founded in 2008 to provide quality pro bono legal representation to indigent immigrants facing deportation. Under the supervision of experienced practitioners, law students represent individuals facing deportation and community-based organizations in public advocacy, media and litigation projects.

Thanks to the members of the Council, Speaker Quinn, and Chair Daniel Dromm for giving me the opportunity to speak today about the pending legislation. These bills represent an important step in our long-term goal of disentangling City functions from the tentacles of federal immigration enforcement programs. I know that, after the enactment of the Rikers bill about a year ago, you are all too familiar with the terrible costs, both financial and personal, that federal immigration detainers have had upon the City of New York. To protect our City and preserve our communities, this collaboration must end. \\I want to first commend the Council for enacting the Rikers law and highlight how this has been an important part of the movement by cities across the nation that have indicated that they, like New York City, are going to have a say when the federal government tries to commandeer their resources to enforce a harsh federal agenda. Second, I will clarify how this new legislation builds on the Rikers bill in important—and at this point critical—ways. Recognizing that enacting these bills is an important step, I will conclude by urging the Council to embrace the larger effort to protect New York communities and turn swiftly to next steps so that New York City can be a national leader in thoughtful, community-minded engagement in immigration reform and the creation of a humane immigration policy.

First, I want to simply highlight what many of you already know: the first Rikers bill, which the Council passed about a year ago, had important impacts in New York and across the nation. At that time, cities and states were just figuring out how to express their opposition to the federal government's dragnet enforcement policies. New York City was one of the first to step into the debate and articulate a policy that made clear that it was not going to allow the Department of Corrections ("DOC) to simply bow to the federal governments' requests when it was contrary to New York City's interest. Following that statement, New York State and other states made clear that they too did not want to be dragged into the business of immigration enforcement.

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However, just as localities enacted laws to blunt the worst impacts of one ICE enforcement program, another enforcement program, Secure Communities, reared its ugly head. The cruel irony of this name has not been lost on us. This new federal program, linked not only the DOC, but also the New York City Police Department ("NYPD"), to federal immigration initiatives by tapping into local law enforcement at the earliest stages of the process; this not only hampers the criminal justice process, but also pushes people quickly into the federal immigration system without the necessary checks or opportunities to challenge their detention and deportation. This is devastating to the people unjustly detained and deported and to their families and the community that depend on them. Recognizing this, Governor Cuomo, as well as the governors of Illinois and Massachusetts, attempted to opt out of this error-riddled program that was portrayed, at least at first, as voluntary. Not to be dissuaded, the federal government switched course and essentially foisted the program upon us by making it automatic upon fingerprint checks. But, by passing the pending legislation, New York City will make clear that we will not have this forced upon us.

This brings me to my second point: cities and states are again facing the federal government's attempt to use localities' resources to jeopardize the safety of their residents and tear apart their communities. For this reason, the pending legislation is critical to ensure that the protection offered by the first Rikers bill remains available to people regardless of whether they are in DOC or NYPD custody. Just as we did not want the DOC to use City funds and facilities to hold people for ICE without having any say in whether holding that person is at all beneficial to the City, neither do we want the NYPD to divert its resources and attention in order to hold people in precincts all over the City so that ICE can speedily deport them.

At present, the NYPD (unlike the DOC) does not engage in any balancing of local interests to determine when it is and when it is not in New York City's interest to hold an individual on an ICE detainer. This means that anyone who is arrested and fingerprinted by police, even if they are neither charged nor prosecuted and even if found innocent, can be detained and deported. As the Council knows, it is all too common, especially in domestic violence situations, for the victim who called the police to be arrested along with their abuser. In those situations, the police often arrest everyone involved and sort it out later, which may resolve the matter from a criminal justice perspective. However, if any of the parties arrested are drawn into the immigration system, dropping unwarranted criminal charges does nothing to prevent them from being deported; that bell cannot be unrung. Quite logically, this brings enormous risk to any contact with the police and therefore prevents many witnesses and victims from reporting crimes.

For people who are arrested and have alert criminal defense attorneys, they will, in many instances, seek to have bail set at $1, which will allow them to go into DOC custody and eventually be released under the first Rikers law. This results in days needlessly spent in City custody, on the City's dime, solely because of the detainer. Without the pending legislation, the City is again faced with paying hundreds of thousands of dollars to detain people for ICE when those people would otherwise be out on bail or on their own recognizance. Every time ICE drops a detainer, New York City taxpayers pick up the tab. Every time ICE drops a detainer, New York City communities suffer when police resources are diverted. And, every time ICE drops a

detainer, New York City residents suffer when crime witnesses and victims are too fearful of the police to reach out.

The new legislation improves the existing law by bringing within its protection some of the additional categories of people who are not threats to public safety and who the City has no interest in detaining. These people include individuals who have had no convictions within the past ten years, those whose only convictions are status-based offenses, and those who have been charged with most misdemeanor offenses. The new bills recognize the absurdity of the City paying to detain these people solely for ICE when, in the ordinary course, they would never even see the inside of DOC.

But the most important aspect of this legislation, for New York City, is that it represents a step forward in our quest for safe and truly secure communities. As this City knows, our neighbors and the bystanders can and do save lives by reaching out to help, calling for medical and police assistance, and keeping open eyes and ears for trouble. It is simply a matter of common sense that, in a City where approximately 37% of the community is foreign born and mixed-status families are as common as not, linking local police with immigration enforcement will diminish or destroy community's willingness to assist in police work. And, for people who do come into contact with the police, any involvement with immigration authorities can ratchet up the stakes of that interaction so disproportionately that the interaction itself becomes fraught.

Subsequent measures can, as they must, further strengthen the provisions we put in place today. This legislation is a good step forward, but it is simply one step toward disentangling our City from the harms and terror wrought by this roughshod federal enforcement that fuels our broken immigration system. We are eager to work with the Council toward achieving that goal.

Thank you again for hearing us today and for your careful consideration of these serious issues.

Testimony of Cesar Palomeque
Board Member, Make the Road New York
Civil Rights and Immigrant Power Project, Queens
1.25.13

Testimony in Support of Intros 982 and 989

Good morning. My name is Cesar Palomeque and I am an Ecuadorian immigrant and member of the Board of Directors of Make the Road New York. I want to thank you for the opportunity to testify today. I also want to thank Speaker Quinn, Councilmember Melissa Mark-Viverito, and Councilmember Danny Dromm for their leadership on this issue.

I want to share the perspectives I hear from many member of my community about this issue.

Many immigrants fear the authorities. They do not trust the police, and would rather have something bad happen to them than report it to the police. I have heard many stories of deportation, and I personally have fought with the support of Congressman Ackerman and Senator Gillibrand to stop deportations. Having your father or your son or daughter or spouse taken away is a terrible thing, and it happens too often. Every Tuesday night in our office in Queens we hear stories of separation, of deportation. I am doing everything in my power, and Make the Road New York is doing everything in its power to make it stop. Unfortunately, for many undocumented people in Queens and across the city, getting sent to Riker's Island meant being deported.

It didn't matter that Immigration was a separate agency to the city's Department of Corrections. It just meant that one day someone was arrested, and the next they were in Louisiana or Texas fighting against deportation. That's why we started the campaign to get ICE out of Riker's.

We took the first step to changing that in 2011 when we passed the legislation limiting ICE's presence in the Department of Corrections. But it was not the end. Then Secure Communities was activated, and we needed to move to the NYPD, because people could now be turned over to ICE from the precincts and from central booking in addition to Riker's Island.

I support this legislation because it is an important step to keeping families together, to giving immigrants their full civil rights, and to building trust and lowering fear between local authorities and immigrant communities. The ideal situation would be if an immigrant has no reason to fear that immigration will get involved if they interact with the local police, and if this damaging collaboration between ICE and the City was ended. These bills are welcome steps forward and we support them wholeheartedly. We will continue to work to achieve that sort of community. Thank you.

Buenos días. Mi nombre es César Palomeque soy inmigrante Ecuatoriano y miembro de la Junta Directiva de Se Hace Camino New York. Gracias por la oportunidad de testificar el día de hoy. También agradezco a la Portavoz Christine Quinn, la Concejal Melissa Mark-Viverito y el Concejal Danny Dromm, por su liderazgo sobre el asunto.

Quiero compartir la perspectiva que yo escucho de miembros de mi comunidad sobre el tema.

Muchos inmigrantes tienen miedo de interactuar con las autoridades. No confían en la policía, y prefieren que algo malo le pase, que tener que ir a la policía. He escuchado muchas historias de deportación, también yo personalmente he luchado con el apoyo del Congresista Ackerman y la Senadora Gillibrand, para parar deportaciones. Estar en una situación donde llevan a tu padre o tu hijo o tú hija o tu esposo es terrible, y la separación de familias pasa a menudo. Cada martes en el comité de Inmigración en Queens, escuchamos de casos donde las familias están siendo separadas y deportadas. Yo estoy haciendo todo lo posible para que pare las deportaciones, también Se Hace Camino New York está haciendo todo lo posible. Desafortunadamente para muchas personas indocumentadas en Queens y en toda la ciudad cuando les detienen les mandan para Riker's Island, para ser deportados.

No importa si ICE es una agencia totalmente separada del Departamento de Correcciones de la Ciudad. Esta colaboracion significa que si un día alguien fue arrestado en la Ciudad de New York, un dia lo van a llevar a Louisiana o Texas en manos de ICE, apresurando su deportación, sin darle oportunidad de presentarse ante un juez. Por eso empezamos la campaña para sacar la migra de la cárcel.

Tomamos el primer paso para cambiar eso en el 2011 cuando pasamos la legislación limitando la presencia de ICE en el Departamento de Correcciones. Pero no podemos parar allí. Cuando activaron el programa de Comunidades Seguras, supimos que teníamos que movernos, para enfocarnos en los precintos y el NYPD, porque ahora la gente podría ser entregados a ICE desde los precintos o "central booking" en adición a Riker's Island.

Yo apoyo esta legislación porque es un paso importante para mantener familias unidas, para asegurar que los inmigrantes tengan los mismos derechos que todos, y para construir confianza y bajar el miedo entre la comunidad inmigrante y las autoridades. Lo ideal sería si un inmigrante no tuviera ninguna razón para tener miedo de la policía, y si esta colaboración entre ICE y la Ciudad podría terminar. Estas propuestas son pasos muy buenos hacia esta visión, y las apoyamos. Vamos a seguir trabajando para lograr este tipo de comunidad. Gracias...

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January 25th, 2013 – New York City Council – Committee on Immigration Hearing

My name is Nadira Kashem, and I am an active member of DRUM – Desis Rising Up & Moving. I am here to testify about the consequences of the Secure Communities program on my family. My husband Abul Kashem worked at a perfume store in Manhattan, and was falsely arrested by police and taken to jail on counterfeiting charges. When he tried to get bail, they did a check on his immigration status, and turned him over to immigration authorities. For this reason, life has become miserable for my children and me for the past eleven months.

My daughter, Nushin Tarannum, is a sixth grade student. My son, Fatin Ishraq, is 9 years old and in the 4th grade. Both my children were born here, and I am also a citizen. My husband is from Bangladesh. My children do not know anything about life, language, or culture in Bangladesh. The political situation in Bangladesh is dangerous with lots of violence, and my children see this on the news, and wonder what will happen to their father if he is deported.

In order to look after my children, and due to my mental state, I am unable to work. Thus, I am struggling to pay the rent, bills, and other expenses. I have sold all my jewelry, and am taking loans. My daughter was admitted into a special school, but I was unable to send her there. But my son has special needs, and receives an Individual Education Program, and needs additional attention. He wants his father to come home, and cant live without him. My son sees him as a caring father, and I see him as a caring husband. Me and my children need him to come back home, or else our family will be broken apart, and our future will be destroyed. I am asking all of you to help me.

My husband's criminal case was dismissed, but he still remains in immigration detention in Orange County, New York. This critical situation is not only my story, but similarly of thousands of others. People may get arrested for minor things, by mistake, or by being targeted by the police, and then get turned over to immigration. The immigration consequences are devastating, particularly for low-wage workers, such as street vendors, cab drivers, or small shop workers like my husband, who are routinely arrested by the police on false charges which are later dismissed. They can't afford to wait inside jail until the case is resolved. We are doubly targeted, first by the police and then by immigration. Families are being torn apart and this is unjust. This situation makes people afraid to even contact the police, because undocumented people know that their immigration status may come up and get people in trouble. It is very important to change this law, so that policing and immigration are not mixed together.

My question to you is that just because my husband is undocumented, should my family be destroyed? I am appealing for my husband to be returned home. I want this law to be changed, so that no family has to suffer like I am suffering.

Testimony presented by:
Nadira Kashem
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Written Comments of The Bronx Defenders

New York City Council Committee on Immigration
Hearing on:

Int. No. 982, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained*
and
Int. No. 989, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the Department of Correction*

January 25, 2013

My name is Ashley Kaper, and I am an Immigration Attorney at the Bronx Defenders. I submit these comments on behalf of The Bronx Defenders and thank City Council for the opportunity to testify.

The Bronx Defenders is a community-based public defender service that provides holistic criminal defense, family defense, civil legal services, and social services to indigent people charged with crimes in the Bronx. Each year The Bronx Defenders provides free criminal and civil legal defense to 29,000 people accused of crimes in the Bronx, about one-third of whom are not U.S. citizens.

Since Secure Communities' inception in New York City in May 2012, we have witnessed the devastating impact of the expansion of the Department of Correction's collaboration with Immigration and Customs Enforcement (ICE) both in and out of the courtroom. Clients facing minor charges or unlawful arrests have remained in jail for prolonged periods of time solely as a result of immigration detainers. Additionally, many clients who would otherwise fight the criminal charges pending against them accept pleas of guilt rather than spend months in jail

awaiting trial. The result is the prolonged detention and removal of valuable members of our community, many of whom were brought into custody for minor offenses. When a New Yorker is detained and deported, of course, they are not the only ones impacted: their family members, co-workers, friends, and the entire community left behind is also impacted.

We are excited to be here today to testify in support of Intro Number 989 and 982. As we applauded the Committee back in October of 2011 for drafting and subsequently passing Local Law 2011/062, we commend City Counsel for recognizing the continued impact of Secure Communities and working to expand protections for residents of New York City. This new bill will further protect non-citizens who are arrested by permitting release for individuals with certain pending charges and release for people with minor prior criminal contact.

Sherry is one individual who will benefit from the proposed bill. Born in Jamaica, Sherry entered the U.S. in 2007 on a visa. During a verbal dispute with the father of her 4-month-old daughter, the neighbors called the police. In responding to the scene, the police arrested both Sherry and her boyfriend. Sherry had no prior criminal contact. She was working full-time at a small grocer and still breast-feeding her daughter. When she was brought before a criminal court at arraignments an immigration detainer was lodged, revoking the criminal judge's authority to release her. Sherry sat in jail for months with the charges pending, separated from her daughter despite the fact that her boyfriend had no intention of pressing charges against her. While the existing law allowed Sherry to ultimately be released once the pending charges were dismissed, this new bill would have prevented months of unnecessary detention and traumatic separation from her child.

David is another client who will benefit from this new bill. Originally from Honduras, David migrated to the United States in the late 1990s and has lived in the Bronx since. In 1999

he was arrested and charged with New York Penal Law 265.01, criminal possession of a weapon, a misdemeanor, for carrying a box cutter he often used while on the job as a superintendent of a residential building. Fearful of being held in jail and encountering problems with immigration, David pled guilty to a misdemeanor at arraignments. In 2012 David was one of five men arrested for a fight that took place in the lobby of his building. David was adamant he was innocent but the arraignment judge nevertheless set bail and an immigration detainer dropped. Five days later, when David appeared again in court, the prosecution acknowledged that his arrest was a mistake and the charges were dismissed. Unfortunately, because of his prior misdemeanor conviction, the detainer was honored and David was transferred to immigration custody and subsequently deported. Under the proposed bill, David would have been released and able to return to his job and family within a matter of days.

While the steps City Council is taking today are noteworthy, the overarching power of Secure Communities remains and we call on the City to continue to expand protections for non-citizen residents. Here in the Bronx, we see the use of over-policing through the unlawful and discriminatory stop-and-frisk practice by the NYPD. This policy of the NYPD has resulted in countless illegal arrests with no probable cause, motivated by racial bias and misguided policing practices. There are three pending lawsuits against the City to stop this practice. While earlier this month Federal District Court Judge Shira A. Scheindlin issued a Preliminary Injunction ordering the NYPD to stop illegally arresting people for trespass outside of Clean Halls buildings in the Bronx, it has been common practice for years and continues today. Those arrests have led to innumerable misdemeanor convictions for minor offenses such as trespass or possession of marijuana in plain sight. In fact, when non-citizens have sought advice on the immigration consequences of taking plea offers to trespass offenses, immigration attorneys throughout the

City have advised that a trespass misdemeanor is an 'immigration safe' plea. Consequently, many Bronx residents who are non-citizens have pled guilty to trespass offenses within the past ten years. In addition, misdemeanor convictions for marijuana possession also render noncitizens ineligible for release, despite the fact that the Council recognized the problem of misdemeanor marijuana arrests as a result of racial bias in policing with the 2012 resolution calling for the decriminalization of possession of small amounts of marijuana in public. Without broader legislation all of these individuals remain ineligible for release under the proposed bill. We therefore ask that moving forward, City Counsel consider removing the ten year time bar for one prior misdemeanor.

In addition, many clients who immigrate to the United States have contact with immigration at the border that results in outstanding orders of removal. Outstanding deportation orders render all noncitizens ineligible for release under the current law and the proposed expansions, regardless of their criminal records or the outcome of the pending charges. Many of these orders of removal date back decades and were issued without judicial review or due process. In addition, non-citizens with outstanding orders of deportation often entered the country as children and the decision as to whether or not to report to immigration court was made by their guardians. Others may not even be aware that there is an outstanding order of deportation, in cases where notice was sent to outdated addresses, and the individuals have subsequently lived in the United States for years and developed families here. Despite their lack of culpability they remain unprotected from deportation by this law. We therefore ask that City Counsel expand protections to people will prior orders of removal, specifically in absentia orders, expedited removal orders, and removal orders issued against juveniles.

The Bronx Defenders therefore commends the City Council on today's hearing and the proposed legislation. There are hundreds of families in the Bronx who will be helped by the legislation and we look forward to continuing to cooperate with City Council on progressive criminal justice and immigration policy that will benefit immigrant families and all New Yorkers.

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Written Submission By Brooklyn Defender Services—

Testimony of Lisa Schreibersdorf, Executive Director

New York City Council Committee on Immigration Hearing:

Int. No. 982, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained* and **Int. No. 989,** *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the Department of Correction*

January 25, 2013

Good morning. My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services ("BDS"). BDS is a public defender office that protects the legal rights of poor Brooklyn residents who are charged with crimes and cannot afford to pay for an attorney. We defend 38,000 people every year—almost half of all indigent defendants in Brooklyn—from their initial appearance before the judge at criminal court arraignment and through final disposition of their case. With New York the immigrant city that it is, we estimate up to 20% of our clients are not U.S. citizens; they are lawful permanent residents, other noncitizens with lawful immigration status, and still others who may now be undocumented but have a current or foreseeable path to obtaining that lawful status one day.

While most of our attorneys are criminal defense lawyers, BDS has a specialized Immigration Unit that advises our defenders and our noncitizen clients on the immigration consequences of their criminal case. Where an immigration detainer has been dropped against our clients, our immigration attorneys also advocate with ICE for the lifting of those detainers whenever possible. When our capacity allows, our immigration attorneys also represent our clients in Immigration Court against deportation, including those clients who have been transferred from DOC or NYPD custody to immigration jails as a consequence of an immigration detainer.

Thank you for this opportunity to provide testimony in support of the proposed local laws today. Through our day-to-day work, BDS has had numerous and up-close experiences with U.S. Immigration and Customs Enforcement's use of civil detainers, including SComm detainers lodged at criminal arraignments and detainers issued at Rikers Island, against our clients. We have seen the devastating impact these detainers, and the transfer of our clients from Rikers to immigration custody thereunder, have wrought on our immigrant communities. These detainers also wreak havoc on the natural course of our criminal justice system, in which judges, prosecutors and defense attorneys alike are often stymied, and delayed, in their pursuit of a resolution best suited for all parties. We therefore support the proposed laws as a significant step in the right direction for our City to protect many vulnerable New Yorkers and their families, allow our criminal justice system to function better, and save valuable City resources to boot.

How the proposed local laws will keep families together while also allowing immediate resolution of low-level criminal cases at arraignments

About 60% of our 38,000 cases each year are resolved at arraignments, the great majority of times with a resolution of the case in a low-level violation such as disorderly conduct, or in the adjournment of the case in contemplation of dismissal (ACD). These statistics reflect the sober reality of how many criminal cases involve only misdemeanor or lesser charges, and often include even the most minor offenses such as riding a bicycle on the sidewalk, or taking up two seats in the subway. Where noncitizen clients comes through arraignments with an SComm detainer, however, our ability to resolve their cases then and there with that disorderly conduct or ACD flies out the window, since we must protect them against their disappearing into the immigration vortex immediately thereafter. Instead, we have been forced to ask the criminal judge for an adjournment and to set a one dollar bail on these clients, so that they are placed in DOC custody while we determine what if any advice and assistance we may provide to them to defend against their deportation. Of course, this course of action comes at significant cost to the City—already overcrowded court dockets remain unnecessarily more crowded; courts, prosecutors, and defenders must spend more time and resources, and DOC must house these clients who would otherwise have never been placed under their custody.

The proposed laws would protect many New Yorkers against, and save the City from the expense of, this conundrum. Should all parties to the criminal action agree that the right result in the criminal case is for its disposal at arraignment with a violation or an ACD, for example, our immigrant client would be able to put this criminal case behind her, return to her family, and remain safely within the fabric of her community. Children would not lose their parent and, often, breadwinner. And New York would keep families united and on more stable footing.

How the proposed local laws will keep clients at liberty during the pendency of their criminal case, a result critical to their right for a fair resolution.

In those cases that would not be resolved at arraignments, the proposed laws would allow a significant number of New York immigrants to request release on their own recognizance, or post any criminal bail set in their case, to remain at liberty during the pendency of the case despite the existence of an immigration detainer. I cannot over-emphasize the significant protection that this affords. As I have testified in previous appearances before you, immigration detainers cause our clients to spend much longer time periods in pre-trial detention than their non-immigrant counterparts and often end up with worse outcomes in their criminal cases. The pressure of incarceration is often too great for clients to bear, and so they take plea offers that they would not have taken were they out at liberty, even, in many cases, where their defenses against the criminal charges are strong.

The proposed laws would provide many immigrant New Yorkers the same fighting chance that we now give to our citizen New Yorkers to remain free from the duress of pretrial detention. Without the direct and devastating impact that such pre-trial detention causes—to them and to their households—these immigrant New Yorkers will more likely be able to resolve their criminal cases in a manner that results in a fairer disposition. That fairer disposition, in turn, will likely be a better result for their chance to remain in the country and, if they are undocumented, for their ability to obtain lawful immigration status one day.

Two recommendations.

For the reasons I have given, BDS is in full support of the proposed laws, and applauds the leadership that this City Council has taken to make these laws a possibility. We believe, however, that this City Council can do even more to protect New Yorkers against the full force of the troubling federal immigration enforcement regime we have today.

First, although the proposed laws would protect some immigrant New Yorkers with any past misdemeanor conviction that is at least ten years old (with a couple of exceptions), we believe that such a ten-year requirement for protection is simply too long. We would hope that this City Council recognizes that individuals—particularly young people, or those with minor mistakes such as shoplifting, or those who, because undocumented and without work authorization sell goods on the street without a license—end up with a misdemeanor conviction in the recent past that, surely, should not dictate deportation and permanent separation from family. We therefore recommend that this ten-year period be shortened. Alternatively, we recommend that that individuals with certain misdemeanors within ten years, particularly those associated with the mere fact of undocumented status, such as unlicensed vending or possession of a false driver's license, be protected.

Second, immigration detainers prevent many of our clients from participating in the many alternative to incarceration programs available in Brooklyn. These programs include mental health court and drug treatment programs, among others. They are meant to be available to eligible clients, citizen and non-citizen alike. A client with an ICE hold however, cannot participate in these programs. We have had many instances where all the available stakeholders, including the judge, the prosecutor, and the mental and behavioral health professionals who serve the court, have all strongly agreed that it would be in the best interest of justice to let the client participate in the program. Because of the ICE hold, however, the client was not able to participate. We therefore recommend that this City Council consider protecting individuals whom the court and/or the prosecutor agree should be diverted to these programs, despite their having been charged with crimes that would otherwise bar them from the protection of the laws proposed today.

Real World Examples of How the Proposed Laws Will Protect New Yorkers.

I thank you again for your leadership on this issue, and the time you have given me today. I include below, for your better understanding, three of our many real-world examples of the negative impact that detainers have on our clients and on the criminal justice system. These examples also highlight how the legislation, if enacted, would protect similarly situated clients.

1) Battered Spouse/Mother of U.S. Citizen Child. Tasha was arrested and charged with misdemeanor menacing after a disagreement with her roommate (a woman Tasha allowed to stay in her home because she had no place to go). Although Tasha had no criminal record, an SComm detainer had been issued against her. Tasha has been a New Yorker for more than 13 years and since she was in her early teens. At the time of arrest she was in removal proceedings and seeking relief under the Violence Against Woman Act as a battered spouse. Her criminal case was eventually resolved in a non-criminal disposition and she was ultimately released from jail under the DOC law that this City Council passed last year. In the meantime, however, Tasha was forced to wait in DOC custody, separated from her infant daughter whom she had to place under a remote cousin's care. The proposed legislation would protect people like Tasha from the devastation to family—particularly minor children—wrought by such unnecessary incarceration under an immigration detainer.

2) Father of Newborn; Driving without a valid license plate or license. Collin is a Jamaican New Yorker who had come to the United States years ago on an H2B visa. He is married to a U.S. Citizen who has filed an I-130 relative petition for him. He and his wife also have a prematurely born infant who was only four months old at the time of Collin's arrest. Collin was arrested and charged with misdemeanor and lesser offenses related to driving without a valid license plate or license. Although he had no prior interaction with ICE and no criminal record, an SComm detainer had been issued against him. We set $1 bail to prevent Collin's transfer to immigration jail. Although he was ultimately released from DOC after resolving his case with a disorderly conduct violation, he was forced to spend more than two weeks at Riker's Island, separated from his family and unable to work, until that resolution. His wife struggled under the considerable strain of assuming all of the baby-care, all the while working and without the benefit of Collin's financial support.

3) Taking Up Two Subway Seats. Pedro is an undocumented Mexican client who has been a New Yorker for more than five years. He was arrested in our case and charged with a railroad violation for having his feet up on a subway seat and taking up more than one seat. Although he had no prior criminal record, an SComm detainer had been lodged against him. Without that detainer, Pedro would have been able to resolve the criminal case at arraignments, with no more than a conviction for a low-level violation or even an adjournment in contemplation of dismissal (which is not a conviction at all). Instead, because of the detainer we were forced to request that the judge set $1 bail against Pedro, so that he would not be disappeared into immigration custody. Pedro's case was eventually dismissed and he was released pursuant to the DOC law. To obtain that result, however, Pedro had to spend days in jail at Riker's Island, losing his liberty and his ability to go to work. The legislation now proposed would allow people like Pedro to resolve their low-level cases at arraignment without the threat of immigration detention and deportation. It would also protect people like Pedro against having to spend days—or even months—in jail while their criminal case is pending.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2012-2013

January 25, 2013

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New York City Council
Committee on Immigration

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, on the proposed Int. No. 989 and 982.

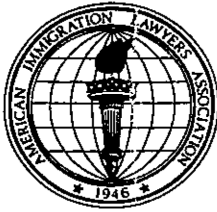
As experts in immigration law, AILA lawyers are uniquely positioned to comment on the potential impact of the proposed amendments. AILA and our members have long denounced overreaching immigration enforcement programs such as Secure Communities and the Criminal Alien Program, which continue to terrorize neighborhoods, tear apart families, and destroy civil liberties. We therefore commend the New York City Council's efforts to limit the reach and impact of these programs on our fellow New Yorkers. At the same time, we would like to suggest a few ways that the City Council can have an even deeper and more meaningful impact.

Since these changes were initially drafted, Immigration and Customs Enforcement has released a new Guidance on the Use of Detainers (See Morton, John Memorandum: "Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems" December 21, 2012). The new guidance by ICE purports to achieve many of the same goals as the amendments currently contemplate, and extend great protection in one significant area: under the new guidance, ICE claims that it will not enforce detainers against persons with less than three misdemeanor convictions, unless the conviction(s) is for certain specific crimes which create a significant risk to public safety.

At a minimum, we urge the City Council to consider expanding the categories of persons to be protected under the proposed amendments to mirror the categories detailed by ICE in its new guidance. We do so for two reasons.

First, AILA has noted in the past that despite written guidance from ICE leadership, policy memoranda have been unevenly adhered to in practice in the field. For example the Prosecutorial Discretion memorandum of 2011, which was meant to reduce immigration court backlogs and target enforcement efforts to focus on priorities for deportation, led to only 1.7% of immigration cases in New York being closed. Having ICE's own guidance codified into New York City law would ensure that the intended protections would truly be available to non-citizen New Yorkers.

Second, given the dramatic consequences of detention by ICE, it is urgent that the City does its utmost to protect our families and our



communities from the emotional and financial devastation caused by incarceration (and ultimately deportation). Once detained by ICE, an individual can face lengthy imprisonment while their cases go through the immigration court process. Often times, ICE refuses to set a bond, even if the individual is eligible, or the bond amount is prohibitively high. A report released last year by Families for Freedom, the Immigrant Defense Project, and the New York University School of Law showed that four out of five New Yorkers detained by ICE are never given a bond setting, that of those given bond, only 45% are able to pay it, and that 75% of all bonds are $5,000 or more. For a family that has most likely lost a key source of financial support, and who is now facing high legal fees to defend themselves in immigration court, $5,000 can be unreachable.

Moreover, our members report time and again with examples of how ICE fails to honor their own guidelines. Rather, ICE too frequently attributes the label of "criminal alien" to any individual with a criminal conviction, regardless of the severity of the crime, or the circumstances surrounding it. ICE will then use the fact that such individual has a criminal conviction to justify prolonged detentions and deny requests for discretionary relief. This is both misleading and dangerous.

In addition to our concerns regarding the treatment of individuals with minor criminal convictions, we believe that it is crucial that New York City take a stand to restore public faith in the police force. Programs like Secure Communities have eroded trust in the police, because a local precinct is now viewed as an extension of federal immigration law enforcement. When a crime is committed, immigrants are less likely to trust the police to report the crime, or to cooperate in ongoing investigations. This makes our City as a whole less safe. Ensuring that immigrants who are arrested for minor offenses are not funneled into the detention and deportation system is a necessary first step in restoring trust between immigrants and law enforcement. While we would like to see a broad expansion of the categories of immigrants against whom detainers will not be enforced, we specifically ask that the City Council consider removing persons with outstanding warrants for removal or previous orders of removal from the exceptions listed in Paragraph two Subparagraph (ii). Immigration laws are complex, and it is unrealistic and unreasonable to ask a New York City police officer, who is already tasked with enforcing the City and State's myriad laws, to be sufficiently knowledgeable in this area to accurately determine the immigration status of a person, and when it is proper to refer them to ICE. Such determinations should be left to federal immigration enforcement officers who have been trained specifically in immigration law, and are better positioned to make such critical and complex determinations.

Every time ICE enforces – and New York City honors – a detainer, an individual is thrown into an overzealous immigration enforcement system that detains and deports more immigrants than ever before. Across the country, including here in New York City, families are separated, communities are devastated and countless individuals suffer immense hardship on a daily

AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2012-2013

basis as a result of ICE's heavy-handed policies and practices. Detainers play a key role in this process, which is why we urge the City Council to do all it can to meaningfully impact the detainer process, and protect New Yorkers and their families, by ensuring that immigrants who are not a threat to our communities do not automatically fall into the immigration enforcement system following an arrest. After all, the best way to ensure that families remain together, that children can be raised by their parents and that New York can benefit from the vast contributions of immigrant New Yorkers is to limit the number of immigrants who get swept up in the immigration enforcement system in the first place. Changing New York City's detainer policies is one important way to do this.

Of course the City Council cannot change the federal immigration laws. It can, however, take a leading role in opposing bad policy so that ultimately the laws will be changed. By refusing to support policies that break up families and deny people the opportunity to contribute to our city, state and country, you can ensure that New York City remains a welcoming place for immigrants and that all New Yorkers are treated with the respect, dignity and equality they deserve.

Sincerely,

Elizabeth M. Barna

Elizabeth Barna
Chapter Chair

C Mackler

Camille Mackler
Co-Chair, Advocacy/Media Committee
Member, Pro Bono & Local Government Liaison Committees

Michael Mandel

Michael Mandel
Member, Advocacy/Media, Pro Bono & Local Government Liaison Committees

New York City Council Committee on Immigration
January 25, 2013 Hearing
Int. No. 982 & Int. No. 989

Anti-Violence Advocates Against Deportation
antiviolencenyc@gmail.com

My name is Shelby Chestnut, and I am a Senior Organizer at the New York City Anti-Violence Project. I am reading the statement on behalf of the Anti-Violence Advocates Coalition Against Deportation.

We work with survivors of family and intimate partner violence, human trafficking, sexual assault, and homophobic and transphobic violence throughout New York City. Our communities have frequent interaction with police, and we came together to bring an end to the dangerous collaboration between ICE and the NYPD that is undermining decades of advocacy to protect our rights.

Although we represent particular constituencies, we fight for the fundamental rights of all.

Our communities are facing massive deportations. We are encouraged that the City Council is taking an important step to protect some from being turned over to ICE, but the City must expand the bill as too many people are still at risk.

ICE/police collaboration exacts too high a cost.

One cost is public safety. Survivors of violence face the increasingly difficult choice about involving police in abusive situations since it may result in deportation. The loss of community trust have been raised by many, including Commissioner Kelly and Sheriff Baca of LA County, once a key supporter of S-Comm who recently announced he would not comply fully with ICE detainer requests.

Another cost is our ability to protect communities from harmful interactions with police. LGBTQ people who are repeatedly targeted for arrest based on sexual orientation and/or gender identity profiling. When arrested, LGBTQ non-citizen survivors are often funneled from the criminal legal system into remote immigration detention centers, increasing their fear of reporting violence and making their lack of access to services more severe. In addition deportation may result in their return to a country with homophobic and transphobic policies that further endanger their safety.

Another cost is the extreme consequences of interaction with the criminal justice system that non-citizens face, including separation from their children and deportation. Police officers still commonly mis-arrest both the abusive partner and survivor when addressing a domestic dispute, especially in cases that involve LGBTQ people. Survivors of violence are often arrested and convicted of a multitude of crimes, including assault and criminal contempt, because abusers and traffickers commonly

manipulate the legal system as a form of control and punishment. Others have convictions related to trauma and economic instability—common offenses include drug possession and petty larceny. Once turned over to ICE detention—which often means being transferred far from legal and personal support—people face an incredibly difficult time fighting a pending criminal charge, reuniting with children, or fighting their deportation. It becomes even more difficult to screen people for abuse or trafficking. Even though immigration remedies, such as U or T visas, may be available, many are unable to access them.

This story is an example of a common situation. Carmela married a man who promised to provide for her if she came to the U.S. Her husband then forced her into prostitution and to purchase drugs for him. Carmela was convicted of prostitution, trespass, and drug possession. After she escaped, Carmela sought counseling and eventually connected with service providers and received T status for survivors of human trafficking. Carmela was the first person to vacate all of her convictions under New York's "Vacating Convictions Law," for trafficking survivors. If S-Comm had been in effect when Carmela was arrested, she most likely would have been immediately placed in deportation proceedings and would not have been granted the T status that stopped her deportation. Even if she was eligible for diversion programs or supportive services, the judge may have prevented her from participating if she had an ICE hold request.

Having a prior misdemeanor or a pending charge should not mean a life sentence of exile. We cannot allow ICE's dragnet for so-called "fugitives" and "criminals" to destroy our City. The merger of the criminal legal system with an unjust deportation system undermines basic civil and constitutional rights for lawful permanent residents and the undocumented alike, and makes us all less safe.

We look forward to working together until ICE is completely out of New York – which is the only way that we believe we will have real community safety.

Sanctuary for Families

January 25, 2013
Testimony by Sanctuary for Families
Hearing Regarding Int. 0982-2012 and Int. 0989-2012
New York City Council
Committee on Immigration

My name is Melissa Brennan and I am a senior staff attorney with the immigration project at Sanctuary for Families. We are honored to have the opportunity to present at this hearing before the Committee on Immigration. Thank you to members of the Committee for focusing on this issue of great importance.

Sanctuary for Families is the largest nonprofit in New York State dedicated exclusively to serving victims of domestic violence and sex trafficking and their children, through shelter, legal and social services. In the last year alone, we served 8,000 clients directly and reached approximately 30,000 individuals through outreach, training and public events. Approximately 70% of our clients are foreign-born, hailing from 109 different countries. We have staff fluent in 30 languages and offer a variety of distinct programs. Sanctuary for Families' immigration project's staff of 17 full-time employees provides a wide range of legal services to immigrant victims of gender-based violence and sex trafficking -- from the filing of various types of affirmative immigration applications to the representation of victims and their children in removal proceedings in Immigration Court. We have staff on the ground serving immigrant victims citywide, with offices in Manhattan, Brooklyn, the Bronx and Queens. In the last year, we provided immigration representation to more than 1600 immigrant New Yorkers.

As advocates for immigrant victims of domestic violence and sex trafficking, Sanctuary for Families applauds this initiative of the City Council under the leadership of Speaker Christine Quinn in seeking to limit the harmful impact of Secure Communities. At Sanctuary for Families, we are deeply aware of just how often victims of domestic violence and sex trafficking end up in the criminal justice system as defendants. Our clients, many of whom are cooperating with law

enforcement as victim witnesses, are often arrested and sometimes convicted as a direct result of the actions of the batterers and traffickers who abuse and exploit them. Frequently, our immigrant clients are arrested as the result of baseless allegations made by their abusers intent on maintaining power and control over their victims. Often abusers bring false charges against their victims to retaliate against them for leaving them or for seeking the protection of the justice system and cooperating with law enforcement. We have seen many cases in which abusers obtained ex parte orders of protection against our clients in family court and then falsely alleged that those orders have been violated, causing the arrest and prosecution of the victims, rather than the perpetrators of violence. Our clients' vulnerability to arrest and conviction places them at great risk of detention and deportation by the implementation of Secure Communities. It also places the children of our clients at considerable risk of temporary or even permanent separation from their primary caretaker parents.

The legislation being discussed today (Int. 0982-2012 and Int. 0989-2012) is a commendable step towards preventing vulnerable immigrant victims from being swept into an immigration enforcement net and away from their families and children. Notably, this legislation protects immigrants who have criminal convictions only related to prostitution. This is a critical protection for sex trafficking victims, who frequently have a history of prostitution convictions. This new legislation may help to prevent trafficking victims from being whisked away from New York City where Criminal Courts routinely provide victims with access to social services. We also acknowledge the efforts being made through the proposed legislation to allow prosecutors a window of opportunity to potentially identify victims of domestic violence who have been wrongfully arrested based on retaliatory allegations before New York's police or Department of Corrections complies with a hold request.

We applaud the leadership of Speaker Quinn and the Council in acting to mitigate some of the harmful consequences of Secure Communities for immigrant victims of gender-based violence and sex trafficking. Sanctuary for Families will continue to work with the City Council and Speaker Quinn to ensure that immigration enforcement and criminal justice systems protect, but do not penalize victims of sex trafficking and domestic violence. It is vital that these vulnerable immigrants have access to all the protections and pathways to citizenship available under our criminal and immigration laws. We look forward to continuing to work with you to strengthen critical protections for immigrant victims. Thank you for this opportunity to speak to you today.

IMMIGRANT
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New York City Council-Immigration Committee
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Re: Hearings on Int. No. 982 and Int. No. 989

Dear Members of the Immigration Committee:

My name is Alisa Wellek and I'm the Deputy Director of the Immigrant Defense Project, where we promote fundamental fairness for immigrants accused or convicted of crimes. IDP seeks to minimize the harsh and disproportionate immigration consequences of contact with the criminal justice system by 1) working to transform unjust deportation laws and policies and 2) educating and advising immigrants, their criminal defenders, and other advocates.

Let me start by thanking Speaker Quinn, Council Members Melissa Mark-Viverto, Daniel Drumm, and others for your work to limit some of the damage that ICE policies inflict on New York and the city's large immigrant community. From the thousands of hotline calls from immigrants, their loved ones, and advocates that IDP responds to every year to our partnership with community based organizations and our work with defenders across the country, we have born witness to the cruel realities of the U.S. immigration system. Many of the council members here are aware of some of its inner workings and you will hear testimony from the lived experiences of people who have suffered through its devastation. My goal in speaking with you today is to help clarify some of the broader context in which cities like New York are taking a stand to protect their residents and encourage you to continue to expand protections for more immigrant New Yorkers.

The rapid expansion of both what we now call "mass incarceration" and "mass deportation" is no coincidence. The last few decades have seen our jail and prison population quadruple – from 500,000 in 1982 to 2.3 million in 2008, much of it due to the War on Drugs. The drug war has been waged almost exclusively in poor communities of color, even though studies have consistently shown that illegal drug use and sale is no higher in these communities. In our local context, we see these issues coupled with NYPD practices like stop-and-frisk and increased focus on so-called "quality of life" crimes bring more and more people of color, including immigrants, into contact with the criminal justice system. The recent attempts to challenge the high rates of trespass and possession of marijuana in public view are some examples.

At the same time, there have been devastating changes to our federal immigration laws and how they have been enforced over the last two decades. More than 3 million immigrants have been deported since 2001. To give you a sense of historical perspective, the U.S. has deported more people from 2001-2010 than in the past 108 years combined. The success of this mass deportation regime is based on the draconian laws that make deportation a mandatory sentence for a wide range of criminal offenses, and the federal government's entanglement of mass

deportation programs like the Criminal Alien Program and Secure Communities with our local law enforcement and jails, costing the City both resources and the community trust necessary to ensure public safety.

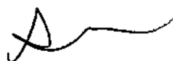
Once identified by federal immigration authorities, immigrants – both documented and undocumented - are funneled directly into a deportation system lacking in many even basic due process protections. We speak with immigrants every day who are trying to make heads or tails of this brutal system, without a lawyer, sometimes without a right to even see a judge, often while locked up for years with no chance of obtaining bond in an immigration jail thousands of miles from their home and loved ones in New York.

These stories are now backed up by hard data that IDP, along with Families for Freedom and the NYU Immigrant Rights Clinic, received as part of a Freedom of Information Act ("FOIA") lawsuit we settled against ICE in May of 2011. We now know many more details about what happened to New Yorkers apprehended by ICE from 2005-2010. I've included our report on the data with my testimony. I'll highlight just a couple of the key findings here. During this time period:

- ICE apprehended **over 34,000 New Yorkers and deported 91% of them.**
- Despite having the **discretion to set bond in over 90% of cases**, bond was only set for **1 out of 5 New Yorkers** in immigration detention. New Yorkers in New York City Criminal Courts **are 75 times more likely** to be released on their own recognizance than New Yorkers in ICE detention.
- ICE transferred more than half of all those apprehended to detention facilities in far-away jails in Texas and Louisiana, making it much harder to access lawyers. 79% of detainees transferred out of the New York region went unrepresented, resulting in an only 3% chance of winning their cases. These numbers are radically different when someone is not detained and has a lawyer.

The implementation of Secure Communities in New York is tearing apart more families and forcing more immigrants into this unjust system. Every time cities and states like New York push back on these policies, ICE returns with new rhetoric and priorities. We know from past experience that ICE's actions rarely match its public statements. Instead, the agency has created a de-facto quota of deporting 400,000 people a year based not on any Congressional dictate, but on bureaucratic fears that some of its massive budget will be reduced if it is not all spent. These bills are another important step towards rolling back the terrible outcomes when local law enforcement is entangled with civil immigration.

For every story you hear today of someone who will be helped by this legislation, however, there are many other New Yorkers, especially those with a prior misdemeanor conviction, who won't be afforded a second chance. They will be funneled into the terrible system I just described, leaving behind shattered families and devastated communities. Thank you again for your important work on these issues. We hope that you will consider taking additional steps to protect more immigrant New Yorkers as well.



Alisa Wellek

TESTIMONY OF REBECCA ENGEL

ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION

Before

THE NEW YORK CITY COUNCIL IMMIGRATION COMMITTEE

In Support of

INTRO NOS. 982 and 989

January 25, 2013

I. Introduction

The New York Civil Liberties Union ("NYCLU") presents the following testimony in support of Intro Nos. 982 and 989, legislation that would limit the role that both the Department of Correction (DOC) and the New York City Police Department (NYPD) play in facilitating the detention and deportation of immigrants living in New York City. Since 1951, the NYCLU has been defending the rights and freedoms of all New Yorkers. We present our testimony today as part of our continuing advocacy to protect the rights of immigrant New Yorkers.

Elected officials and members of the public often describe New York City as a "sanctuary city" for its hundreds of thousands of undocumented residents.[1] The city has a long history of embracing its immigrant communities and their contributions to its diversity, culture, and economic strength. In September 2003, Mayor Bloomberg strengthened that bond when he signed Executive Order No. 41, which has commonly been described as establishing a "don't

[1] *See e.g.,* Ron Claiborne and Jake Tapper, "Romney: Giuliani's NYC: 'Sanctuary' for Illegal Immigrants," ABC News, August 7, 2007, *available at* http://abcnews.go.com/Politics/story?id=3459498&page=1; Afton Branche, "Scaremongers and the Sanctuary City," The Huffington Post, August 2, 2010, *available at* http://www.huffingtonpost.com/afton-branche/scaremongers-and-the-sanc_b_667134.html.

ask, don't tell" mandate on city employees who come in contact with undocumented New Yorkers.

However, as the NYCLU and other organizations noted at the time of the issuance of Executive Order 41, the order fell short in one important respect: Executive Order 41 carves out exceptions for collaboration between law enforcement officers and federal immigration authorities. Under EO 41, law enforcement officers may inquire about a person's immigration status when investigating illegal activity other than mere status as an undocumented immigrant, and cooperate with federal immigration authorities in investigating and apprehending immigrants suspected of criminal activity. The latter authorization applies to NYPD and DOC officials as well. Therefore, while New York City does maintain a wall of confidentiality between non-law enforcement agencies and federal immigration authorities, in the context of the criminal justice system, such a wall has been crumbling for many years.

The NYCLU believes that immigration enforcement is a job for federal immigration authorities and not for our local law enforcement, whose job is to protect all of our residents, regardless of immigration status. Therefore, the NYCLU respectfully submits the following testimony in support of Intro Nos. 982 and 989, bills that will limit the number of "detainer requests" from ICE that New York City chooses to spend its time, money, and resources on. While these bills do not put an end to the entanglement that continues between local law enforcement and civil immigration enforcement in New York City, they are a definitive step in the right direction. Intro Nos. 982 and 989 will make New York City part of an emerging national trend, under which counties and cities nationwide are choosing to preserve their own needed financial resources, and focusing on their own priorities over ICE priorities, in choosing who to detain.

II. The Problems with Immigration Detainers

Beginning with former President George W. Bush and continuing aggressively under the administration of President Barack Obama, in recent years, the federal government has aggressively implemented a series of immigration enforcement programs that partner-up with local law enforcement agencies to enforce federal immigration laws. These enforcement programs represent an unprecedented shift in responsibilities for immigration enforcement from the federal level to local authorities. Immigration and Customs Enforcement (ICE) currently administers an entire suite of enforcement programs under the umbrella of ICE ACCESS (Agreements in Cooperation in Communities to Enhance Safety and Security), which includes 14 different enforcement programs.[2] Some, such as the "287(g) program," directly deputize local law enforcement agents to act as immigration enforcement officers, with powers to arrest individuals for immigration law violations.

In New York City, immigrant communities are confronted with the presence of ICE in their local law enforcement in the form of "detainers" (also known as an "ICE holds" or "immigration holds")— requests from ICE that a local law enforcement agency continue to detain an individual on its behalf. When ICE files a valid immigration detainer request against a prisoner, the local law enforcement agency may continue to hold that individual for up to 48 hours, excluding weekends and federal holidays, after the person is otherwise entitled to be released. If ICE has not assumed custody of that person upon the expiration of the 48-hour time period, he or she must be immediately released from custody, unless the facility has other

[2] *See* Immigration and Customs Enforcement, "ICE ACCESS," *available at* http://www.ice.gov/access/ (last accessed Jan. 24, 2013).

reasons to continue to hold him or her. A detainer request is not an arrest warrant and it does not purport to authorize the arrest of any individual. Nor does it need to be based on a determination that the person has violated any federal immigration laws. Instead, ICE may issue a detainer request simply because it wants to investigate a person's immigration status, and needs extra time to decide whether or not to assume custody of that person and to begin administrative proceedings in immigration court.

The NYCLU has had serious concerns about the constitutionality of detainers ever since the beginning of their use in New York State. Under the New York Criminal Procedure Law, "a police officer, after performing without unnecessary delay the required preliminary police duties, must without unnecessary delay bring a person arrested without a warrant to a local criminal court for arraignment." N.Y. CPL §140.20. After arraignment, especially for many low-level crimes, many individuals are released on bail or on their own recognizance. In 1991, the Court of Appeals for the State of New York ruled that there is "no reason why the prearraignment process cannot be completed within 24 hours," and that " a delay of arraignment of more than 24 hours is presumptively unnecessary and, unless explained, constitutes a violation of CPL 140.20." *People ex rel. Maxian v Brown*, 77 N.Y.2d 422, 427 (N.Y. 1991) (internal citations omitted). Given this specific New York legal standard, imprisonment of a person for any additional amount of time, even if only for 48 hours, raises fundamental concerns. The detainers themselves, which may be issued simply because DHS has "determined that there is reason to believe that the individual is an alien subject to removal from the United States,"[3] fall far short of alleging, much less demonstrating, probable cause, and are issued without any authorization by a neutral judicial oversight. To deprive a person of liberty solely because the government seeks to

[3] Immigration Detainer – Notice of Action Form I-247 (Rev. 12-12) (as issued by U.S. Department of Homeland Security).

investigate that person's immigration status, without requiring any concrete showing of probable cause, offends both the Constitution and fundamental principles of justice.

The lack of a probable cause standard also often leads to one of the most serious problems with detainer requests: they are frequently lodged by ICE with only the barest of information,[4] which sometimes results in the mistaken detention of individuals who have not violated any immigration laws at all—including naturalized citizens and visa holders. Detainer requests have even mistakenly been lodged against citizens born in the United States who are not deportable under any circumstances.[5] There are serious liability concerns for local law enforcement agencies who decide to continue the detention of an individual—for any length of time—based solely on detainer requests.

In addition to the risk of civil liability, detainer requests also raise the overall operating costs for New York City jails. The federal government has made it clear that it bears "no fiscal obligation" to pay for the costs of holding most individuals under detainers.[6] This is true even though the requests often have the effect of prolonging the time that those individuals spend in the custody of local law enforcement agencies. Detainer requests increase incarceration times

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[4] *See* Jacqueline Stevens, *Thin ICE*, The Nation (June 5, 2008), *available at* http://www.lawso.ucsb.edu /faculty/jstevens/113/ICENationArticleStevens.

[5] *See e.g.*, "Lucy Steigerwald, "Mentally Ill American Citizen Deported to Mexico In 2008 Gets $175K for His Troubles," REASON, Oct. 5, 2012, *available at* http://reason.com/blog/2012/10/05/mentally-ill-american-citizen-deported-t; Editorial, "Immigration: Another U.S. Citizen Deported," L.A. TIMES, Jan 5., 2012, *available at* http://opinion.latimes.com/opinionla/2012/01/immigration-us-citizen-deported.html; Ted Robbins, "In The Rush To Deport, Expelling U.S. Citizens," NPR, Oct. 24, 2011, *available at* http://www.npr.org/2011/10/24/141500145/in-the-rush-to-deport-expelling-u-s-citizens; Paul McEnroe, "U.S. Citizenship No Defense Against Deportation Threat," MINNEAPOLIS STAR TRIBUNE, Nov. 27, 2011, *available at* http://www.startribune.com/local/north/134541773. html?refer=y; Lisa DiVirgillo, "Report: Hundreds of U.S. Citizens Wrongfully Deported Every Year," SYRACUSE POST-STANDARD, Jul. 26, 2010, *available at* http://www.syracuse.com/news/index.ssf/2010/07/report_hundreds _of_us_ citizens.html.

[6] *See* 8 C.F.R. § 287.7(e).The one exception to this lack of funding is the State Criminal Alien Assistance Program (SCAAP), which provides payments to states and localities that incur correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for at least four consecutive days. *See* Office of Justice Programs, Bureau of Justice Assistance, BJA Programs, *available at* http://www.ojp.usdoj.gov/BJA/grant/ scaap.html (last accessed April 7, 2011).

for prisoners directly, during the 48-hour period after they would otherwise be entitled to release, but also indirectly during the pre-trial and sentence phases of detention, by making judges reluctant to set bail for them and making them ineligible for rehabilitation programs that would shorten or avoid the need for their detention at the county's expense.[7] The increased burdens that result for those local law enforcement agencies that honor detainer requests include not just allocating more bed space, but also providing for additional incidental costs for these prisoners, such as medical care. Therefore, since the beginning of ICE's use of detainer requests, the NYCLU has been advising local law enforcement agencies that those who elect to honor detainer requests should be aware that doing so will raise their costs and potential liabilities, neither of which the federal government will reimburse.

III. The Problem With Secure Communities

In late 2007, ICE hugely expanded its use of detainer requests by launching the "Secure Communities" (S-Comm) program, in which it identifies immigrants eligible for deportation by running the fingerprints of every arrestee in a locality through the Department of Homeland Security's (DHS) biometric immigration database. Under S-Comm, upon arrest for an offense that requires fingerprinting, an arrestee's fingerprints are taken by the local law enforcement agency and forwarded to that state's criminal information bureau. The state agency then forwards the fingerprint data to the FBI Criminal Justice Information Services (CJIS) for routine screening for

[7] *See e.g.*, AARTI SHAHANI, JUSTICE STRATEGIES, NEW YORK CITY ENFORCEMENT OF IMMIGRATION DETAINERS: PRELIMINARY FINDINGS 4 (2010) ("Noncitizens with an ICE detainer are effectively barred from pre-trail release on bail, no matter the offense level."); THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, IMMIGRATION DETAINERS NEED NOT BAR ACCESS TO JAIL DIVERSION PROGRAMS 3 (2009) ("While immigration detainers are not the equivalent of a final removal order and not all individuals with detainers will necessarily be removed . . . many in the criminal justice system will assume a detainer cannot be lifted and therefore disqualifies an immigrant from participating in a jail diversion program, no matter how much he or she would benefit or how much the savings would be to city and state resources.").

other outstanding warrants and previous convictions. Next, the FBI shares that fingerprint data with ICE who then runs the fingerprint data against its biometric database called US-VISIT IDENT.[8] If a "match" is found, ICE sends an "Immigration Alien Query" ("IAQ") to its Law Enforcement Support Center ("LESC") where a determination will be made on whether or not an immigration detainer will be issued upon the person identified as a "match." If the decision is made to issue an immigration detainer, the LESC will issue an "Immigrant Alien Response" ("IAR") to the ICE Field Office nearest to the local facility where the arrestee is being held. The local ICE Field Office then issues the immigration detainer to the local law enforcement agency, requesting that it transfer custody of the individual to ICE once it relinquishes custody.[9]

As jails throughout New York State began to implement this system in 2011, sheriffs, faith communities, labor unions, legal advocates, and politicians began to express concern about both S-Comm's constitutionality and its wisdom.[10] Among other concerns, these groups began to express concern that (1) deporting individuals regardless of whether or not they have been convicted of the crime that led to their initial arrest would violate basic principles of American justice; (2) that S-Comm would facilitate racial profiling and unconstitutional arrests, by potentially incentivizing law enforcement agents to make arrests based on the race or ethnicity of suspected undocumented immigrants; (3) that tearing down the wall between the local law enforcement and federal immigration enforcement would make our communities less safe, by

[8] The US-VISIT IDENT database includes photos, the two index finger fingerprints and any available criminal history of individuals previously apprehended by border and immigration agents, and all persons entering the U.S. from countries where a visa is required to enter the U.S.

[9] Local law enforcement agencies relinquish custody for a number of reasons: the arrestee may be released on their own recognizance, the arrestee has posted bail, the charges against the arrestee have been dropped, or there has been an adjudication of guilt or innocence.

[10] *See e.g.*, Editorial, "Resistance Grows," N.Y. TIMES, Jun. 7, 2011, *available at* http://www.nytimes.com/2011/06/08/opinion/08wed1.html ("Resistance has mostly been heard at the ground level, from immigrants and advocates who say families are being split apart, workers frightened and exploited, the American dream dishonored. So it's good to hear powerful Democrats — Mr. Obama's friends and allies from large states — telling him that with Secure Communities he has gone way overboard.")

making immigrant communities fearful that any kind of interaction with the police would put themselves, their family members, or friends at risk for detention and deportation.

In New York City, the concern that S-Comm would make our communities less safe was of particular vigor, since hundreds of thousands of undocumented immigrants live here. Indeed, immigrants have flocked to New York City for centuries because of the city's unique cultural and economic opportunities. Mayor Bloomberg has recognized the importance of immigrants to the city's culture and economy: "No city on earth has been more rewarded by immigrant labor, more renewed by immigrant ideas, more revitalized by immigrant culture." [11] Mayor Bloomberg's sentiments are shared by millions of New Yorkers who understand that immigrants fuel our economy and contribute to the rich diversity of this city – New York's immigrant communities are vitally important for the quality of life of all New Yorkers.

Yet, with the use of S-Comm and detainers, activists were and continue to be concerned that when local law enforcement agencies like the NYPD and the DOC open up their doors to federal immigration enforcement agents, immigrant communities will avoid contact with local law enforcement for fear of being exposed to immigration authorities. For example, with the entanglement between federal immigration authorities and the NYPD, immigrant residents might refrain from reporting to the police when they have been a victim of a crime, or that they have witnessed a crime. As Police Commissioner Ray Kelly himself has noted, "We want people to feel free to contact the police, to walk into police stations; communicate with the police. To the extent that that act [Secure Communities] may have some effect on that, that's problematic."[12]

[11] Editorial, "Immigration's New Year," N.Y. TIMES, Jan. 5, 2010, *available at* http://www.nytimes.com/2010/01/06/opinion/06wed1.html.

[12] Adam Lisberg, "Crackdown on Illegal Immigrants Worries NYPD Commissioner Kelly," N.Y. DAILY NEWS, Dec. 21, 2010, *available at* http://www.nydailynews.com/new-york/crackdown-illegal-immigrants-worries-nypd-commissioner-kelly-article-1.473603#ixzz2IY33eFmL.

When community members don't trust law enforcement enough to alert them of crime occurring in their community, then law enforcement officers are not able to adequately police their communities and maintain safety.

As a result of New York City's, and other towns and cities' concerns, in June 2011, Governor Cuomo suspended New York's participation in the S-Comm program. However, in May of 2012, DHS chose to ignore New York's position and implemented the program in our state regardless. As a result of this now-imposed stance, New York State has since deported 1,717 individuals identified and detained through S-Comm, with 284 of those deportations taking place in New York City in the last seven months alone.[13]

III. Cities and Counties Around the Country Are Now Limiting the Power of Detainers and S-Comm

Not only has S-Comm greatly increased the number of individuals being deported by ICE nationwide, its implementation has even run against its stated goal, of deporting the "most dangerous criminal aliens."[14] Last year, of the 83,815 individuals detained and deported after identification through S-Comm nationwide, more than 21 percent of them were classified by ICE as "non-criminals," meaning they had no criminal conviction on record. More than 70 percent of those deported were either non-criminals or were merely charged with lower level offenses. In fact, only 30 percent of the people deported last year had been charged with or convicted of what ICE classified as a "Level 1" offense, encompassing more serious felony offenses.[15] In New York City, the statistics are even starker: since S-Comm was implemented last year, 48 percent

[13] U.S. Immigration and Customs Enforcement, SECURE COMMUNITIES: MONTHLY STATISTICS THROUGH OCTOBER 31, 2012, at 6 & 37, *available at* http://www.google.com/search?q=Secure+Communities%3A+Monthly+Statistics+Through +October+ 31%2C+2012%2C&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a.

[14] U.S. Immigration and Customs Enforcement, SECURE COMMUNITIES: A MODERNIZED APPROACH TO IDENTIFYING AND REMOVING CRIMINAL ALIENS, at 1, *available at* www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf.

[15] SECURE COMMUNITIES: MONTHLY STATISTICS, *supra* note 13, at 2.

of those deported after being detained by S-Comm have been non-criminals, while an overwhelming 85 percent have been non-criminals or convicted only of misdemeanors or violations. [16]

As a result of these numbers, and because of continuing concerns about racial profiling, cost, and community safety, cities and counties all over the country are now choosing to lessen the brunt of S-Comm on a more local level—by simply limiting the number of detainer requests that they choose to respond to. For example, in Cook County, Illinois, due to an ordinance passed by the county Board of Commissioners, no detainers are being honored unless there is a written agreement with the federal government to reimburse costs.[17] In Santa Clara County, California, no ICE detainers will be honored unless there is both reimbursement and the person has been convicted of a "serious or violent" felony offense as defined in the California Penal Code. [18] In Chicago, the City Council passed an ordinance several months ago, under which agents shall not detain anyone based on an ICE detainer unless the person has an outstanding criminal warrant, is facing a felony charge, has a felony conviction, or is a gang member. In Washington, D.C., detainers will be honored only for 24 hours, and only if the person is 18 years or older and has been convicted of a "dangerous" crime as defined in the D.C. Code.[19]

Meanwhile, the Massachusetts Legislature is currently considering a law, the Massachusetts Trust Act, that would establish that Massachusetts law enforcement agencies may

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[16] *Id.* at 37.

[17] Cook County, Illinois, Chapter 46 Law Enforcement, Section 46-37 of Cook County Code (Sept. 7, 2011).

[18] Santa Clara County, California, Board of Supervisors' Policy Manual, Section 3.54, Civil Immigration Detainer Requests (Oct. 11, 2011).

[19] Chicago, Illinois, Municipal Code of Chicago, Chapter 2-173, Welcoming City Ordinance (Sept. 12, 2012); Washington, D.C., D.C. Official Code § 24-211.01 *et seq.*, "Immigration Detainer Compliance Amendment Act of 2011" (Jun. 15, 2012).

hold someone on the basis of an immigration detainer only if the detainer is accompanied by a prior order of removal or Notice to Appear, if the individual has been confined to a state prison for at least five years for a conviction of a violent crime, and the federal government has agreed to reimburse all expenses associated with the continued detention of that individual.[20] And last month, the California Department of Justice and the Office of the Attorney General issued an information bulletin clarifying the role of local law enforcement agencies in California with detainer requests, writing that "in a time of shrinking financial resources, a growing range of critical public safety priorities, limited space for housing prisoners, and layoffs of police officers and sheriffs' deputies, it is appropriate that California law enforcement agencies that receive immigration detainer requests consider them carefully and determine what course of action best protects public safety in light of the facts of each case."[21]

Indeed, the resistance against S-Comm and detainers has become strong enough that just last month, even ICE issued a memorandum stating that the agency would issue a detainer on an individual only if he or she had a prior felony conviction, had been charged with a felony offense, had three or more prior misdemeanor convictions, is a "significant risk to national security, border security, or public safety" or because of several other exceptions.[22]

IV. Intro Nos. 982 and 989

As legislation that would likewise limit the number of detainers from ICE that NYPD and the DOC would honor, Intro. Nos. 982 and 989 are part of this trend that is taking place across

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[20] National Immigration Project, MASSACHUSETTS TRUST ACT SUMMARY: CONTENTS OF THE BILL (2013).

[21] Kamala D. Harris, Attorney General, INFORMATION BULLETIN: RESPONSIBILITIES OF LOCAL LAW ENFORCEMENT AGENCIES UNDER SECURE COMMUNITIES, Dec. 4, 2012 at 2-3.

[22] John Morton, Director of U.S. Immigration and Customs Enforcement, MEMORANDUM RE CIVIL IMMIGRATION ENFORCEMENT, Dec. 21, 2012, at 2.

the country, of lessening the impact of S-Comm by allowing cities to decide who they believe it is appropriate to detain. These current bills build off the legislation that City Council passed in 2011, that first limited the type of detainers that the DOC honors. Intro. 656 ordered the DOC not to oblige with detainer requests on arrestees unless he or she had been convicted of any crime, was a defendant in any pending criminal case, had an outstanding criminal warrant, was listed as a gang member or terrorist, or had ever been subject to an immigration warrant or a final order of removal.

The NYCLU now commends the City Council for revisiting this law and making it even stronger. First, Intro Nos. 982 and 989 bring the limited detainer policy to the NYPD in addition to the DOC, a significant addition due to the activation of S-Comm, which has caused many undocumented immigrants to be held for transfer to ICE upon initial arrest by the police. In addition, these two bills greatly expand the type of detainers that the City does not honor, by removing youthful offenders, those who have never been convicted of a felony or whose last misdemeanor conviction was ten or more years ago, and those who are currently charged with only a violation or most misdemeanors, from being subjected to ICE detainer requests. By further limiting the role that non-serious crimes play in the DOC and NYPD's decision to honor a detainer, these bills will protect many more immigrant New Yorkers from being taken into ICE custody when they would otherwise normally be released.

However, in light of ICE's similar changes in its own policy on detainer requests, the NYCLU believes that the City Council should not only pass this legislation, but that it should also monitor and review its implementation carefully and consider making it even stronger. In doing so, the NYCLU urges the City Council look to Cook County, Santa Clara County, Chicago, Washington D.C., and the many other counties and cities around the country who are

now part of this movement along with New York City. As this movement builds, the NYCLU looks forward to continuing this conversation with the City Council about how to best balance immigration requests from our federal government with our identity as a city, one that is so often a leader in paving the way on issues such community safety, racial justice, and due process.

New York City Council

Committee on Immigration

Testimony of inMotion, Inc.

Catherine J. Douglass, Esq., Executive Director

Delivered by Carmen Maria Rey, Senior Immigration Attorney

Regarding

Int. No. 982, *A Local Law To Amend The Administrative Code Of The City Of New York, In Relation To Persons Not To Be Detained*
And
Int. No. 989, *A Local Law To Amend The Administrative Code Of The City Of New York, In Relation To Persons Not To Be Detained By The Department Of Correction*

January 25, 2013

Contacts: Heidi Lee Henderson, Esq., Senior Director, Legal Services, inMotion
Carmen Maria Rey, Esq., Senior Immigration Attorney, inMotion

On behalf of inMotion, thank you for the opportunity to present to the Committee on Intros 982 and 989. InMotion was founded in 1993 to provide free legal services to low-income and working-poor women in New York City in the areas of family, divorce, and immigration law. In calendar year 2012, inMotion served over 2,000 women, many of whom are foreign-born and most of whom are victims of intimate partner violence.

We commend the Speaker and Council Members for introducing legislation to limit the application of the federal Secure Communities Program in New York City, but believe that the legislation must go further to protect vulnerable populations, including many of our clients, from the potentially devastating effects of Secure Communities.

We are particularly concerned about 2 issues: (a) firstly, that honoring detainers for pending misdemeanor assault and misdemeanor contempt charges will interfere with the functioning of the civil justice system in New York City, particularly the effective functioning of the Family Courts; and (b) secondly, that honoring detainers for past misdemeanor convictions will unnecessarily entangle our clients in the immigration system.

1. As detailed at length in prior testimony before the City Council, once a federal immigration detainer is honored and a noncitizen turned over to immigration authorities, the noncitizen is transferred out of New York City-often clear across the United States-and housed in a detention facility, for months if not years, pending the outcome of her immigration case. Despite recent attempts to facilitate tracking of detainees by family members and legal counsel, it is still quite complicated to locate, much less communicate with, a detainee, and it is notoriously difficult to convince immigration authorities to produce the detainee for civil proceedings, even via teleconferencing technology. This negatively impacts the ability of attorneys to represent a detainee's interests in New York City's Family Courts, and often makes it nearly impossible for a detainee to effectively argue for the maintenance of parental rights over her children.

As abusers become ever more adept at using the justice system as an instrument against their victims, Secure Communities has served to create additional tools for an abuser to exercise power and control by effectuating an abuser's most common threat against an immigrant victim: to have the victim deported and to gain custody of her children. Under Secure Communities, all the abuser must do is to file a false police report accusing the victim of domestic violence. The victim will then be arrested, and the abuser can go unopposed to the Family Court to obtain a temporary order of custody for their children. Proceedings on the custody case will continue no matter the outcome of the criminal case against the victim, and even after the victim has been turned over to immigration authorities. Once a victim is turned over to immigration authorities, she will be unable to exercise any right to visit with her children or effectively communicate with appointed Family Court counsel. In effect, having the victim thrown into immigration custody on a false charge greatly increases an abuser's chances of obtaining custody of their children.

This sequence of events has indeed happened to an inMotion client. Yasmin was 25 years old when her United States citizen husband brought her as his fiancée to the United States

from the Dominican Republic. The couple married and had two children together. Yasmin's husband refused to let her work or attend school; for long periods of time, he even refused to allow her to leave their home unaccompanied. He also never filed petitions to allow her to obtain lawful immigration status, leaving Yasmin undocumented. Over the years, Yasmin began demanding to be allowed to socialize and learn English. Her husband forbade her to do so. When Yasmin threatened to leave him and return to her home country, her husband would threaten that he would never let her take their United States citizen children with her.

Eventually Yasmin garnered the courage to leave her husband, who beat her when he became aware of her plans, then filed a false police report against Yasmin alleging that she had assaulted and attempted to strangle him. The police arrested Yasmin based on her husband's false report. While she was being held for arraignment, Yasmin's husband went to Family Court and filed for custody of the children and for an order of protection against his wife. As Yasmin was in police custody, her husband was issued temporary custody of their children.

Once arraigned, Yasmin was issued a detainer and was transferred into immigration detention and sent to a detention facility in New Jersey, where she could only communicate with her Family Court attorney by U.S. mail because she had no money to put into her commissary account to pay for phone calls.

Yasmin was lucky to learn from other detainees that, as a victim of domestic violence, she was eligible to obtain immigration status, and she was therefore released from detention after just three months. During those three months, she was not able to be in contact with her children, which had a direct adverse impact on the custody proceeding. As a result of her detention, Yasmin's husband was able to unfairly stack the odds against her, and Yasmin continues to fight an uphill battle in the Family Court to maintain her parental rights to her children.

Yasmin is an example of an immigrant whose detainer request would continue to be honored under the current legislation. In light of how honoring detainers for pending misdemeanor assault and contempt offenses will empower abusers and cause victims to lose access to effective representation in the Family Court, **we encourage the Council to amend the pending legislation to prevent City authorities from honoring detainers issued against individuals with pending charges for misdemeanor assault and misdemeanor contempt.**

2. Additionally, we believe that honoring detainers for past misdemeanor convictions will unnecessarily entangle our clients in the immigration system and we ask that the Council reconsider the inclusion of prior misdemeanors or at minimum broaden the list of prior convictions that do not trigger the honoring of a detainer request to include those misdemeanor convictions most common in our client base.

City Council has previously recognized that immigration detainers have caused great harm to noncitizen residents of New York City. Intros 982 and 989 instruct the New York

City Police Department and Department of Correction to not honor detainer requests for New York City residents with prior misdemeanor convictions when those convictions are over 10 years old. The legislation should be expanded to further limit what types of prior misdemeanor convictions would result in the honoring of a detainer request by New York City.

Our immigrant clients have often suffered years of severe physical and emotional abuse; they have been trafficked, tortured, raped and beaten. A significant percentage of our clients also have prior recent misdemeanor convictions. They have pled guilty to trespass, aggravated harassment, theft, and drug related offenses. Often, the very behavior that leads to these convictions is directly tied to their emotional, physical and sexual abuse. These convictions will be forgiven by federal immigration authorities, who recognize that our clients' past victimization may well be a reason to grant them immigration status. Yet, in honoring detainers for past misdemeanor convictions, with only extremely limited exceptions, New York City risks placing this vulnerable population in detention facilities where they will be far from any family support and access to legal counsel. This long-term detention further traumatizes them, and makes it substantially more difficult for them to obtain the right to remain in the United States.

Blanca was fifteen years old and a victim of rape when she fled Honduras for the United States. Once here, she worked odd jobs to make ends meet and send money home to the child she had bore as a result of her rape. As a young woman living in the United States without family support, she fell prey to traffickers and was sold for sex. Eventually, as a direct result of her daily trauma, Blanca herself became addicted to heroin. She was arrested and convicted of drug-related misdemeanors on three separate occasions, but has been clean during the last four years. She also has another child, born here in the United States. Under the proposed legislation, if Blanca were to be arrested and charged with a misdemeanor offense, even simple trespass, New York City would honor a detainer request against her because of her prior convictions. In doing so, we would separate her from her citizen child and the many services available to her here in New York to help her cope with her victimization. Blanca is lucky; she will soon be granted immigration status as a result of her helping New York City prosecute and incarcerate one of the men who sold her for sex. But what of our other clients?

Because convictions for misdemeanor trespass, aggravated harassment, theft, and drug-related offenses are common for victims of domestic violence and trafficking, **we ask that the Council expand the list of prior convictions that do not trigger the honoring of a detainer request to include misdemeanor trespass, aggravated harassment, theft and drug-related offenses.**

We applaud the Speaker and Council Members for introducing legislation to limit the application of the federal Secure Communities Program in New York City, but, for the foregoing reasons, we respectfully encourage the Council to amend the current legislation to further limit the circumstances under which the New York City Police Department and Department of Correction will honor detainer requests.

City Council Hearing on
Local Law to Amend the Administrative Code in Relation to Persons Not To Be Detained by the Department of Correction
January 25, 2013

Testimony by Ravi Ragbir
New Sanctuary Coalition of New York City

The New Sanctuary Coalition is a network of Interfaith organizations working with individuals and families who are facing deportation.

We wish to thank Speaker Quinn and the City Council for their leadership and vision in advancing a policy that puts restraints on the implementation of S-Comm in NYC from an inhumane and unjust detention and deportation system and for the opportunity to testify on this legislation.

The US government and its Immigration and Customs Enforcement agency have reported that they have consistently broken deportation records in the last 3 years. In 2011 they reported that they deported 409,000 people, not counting those who were expeditiously removed or who took voluntary departure. These numbers indicate the destructive nature of our present immigration policies. In 2011 over 46,000 parents were deported who admitted to having at least one "US citizen child". We suspect that number is low because how many are afraid that ICE will go into their homes and either take away their children or deport other members of their families?

How many times have you heard testimonies from our members? Remember Luis? He said that he was picked up by NYPD because he "fit" the description of a perpetrator. His witnesses refused to come out and speak up on his behalf because they were afraid that NYPD would deport them. He was vindicated but even so was sent to ICE to face deportation. We speak about a family whose father was taken away while taking the garbage out or the six US citizen children who were traumatized when ICE broke into their home and took their father away. We have photos from the ICE web site showing ICE officers wearing full body armor and assault rifles when they conduct these raids. These husbands and breadwinners of the families were removed and they had to traverse the shelter system because they were homeless. It took one family 5 years to get out and the other family remains in a shelter because the mother is ill and unable to work.

The justification of these policies is that we have to "secure the border" and to protect the country from "threats to society". Let's talk about this. We have agencies that have been designated with responsibility of protecting the country, the FBI, Secret Service, Drug Enforcement Administration, US Marshall Service and the Bureau of Alcohol, Tobacco, Firearms and Explosives. Yet we have spent more money ($18 billion) on immigration enforcement mechanisms than all of the other

named agencies combined ($14.4 billion). But immigration law is a civil offense that involves violations of administrative immigration matters. In fact, the US Supreme Court in its decision in the case of Arizona vs United States said that "as a general rule it is not a crime for a removable alien to remain in the US." The immigration judge presiding over immigration hearings is an administrative officer reporting to the Executive branch of government, the same branch that has the job of deporting immigrants. By linking so-called "threats" to a civil procedure we lose common sense. Does this sound like an immigrant can have a fair trial? Even those people who have been convicted of criminal activity have been found to have paid their debts to society and are released to society by the criminal legal system – when immigration comes in they are subjected to an additional double punishment by tearing them away from their families and communities and deporting them. In most cases they cannot return to the US.

The New Sanctuary Coalition opposes the implementation of SComm and other ICE enforcement programs such as 287g, the Criminal Alien Program, and Operation Streamline, that criminalize immigrants and destroy our communities. When we look at the evidence we see how punitive and destructive these programs are. Certain of our law enforcement agencies love these programs because the burden of proof is a lot lower because the proceedings are civil, not criminal, and immigrant communities are punished.

Here the NYPD says that it will honor all requests by ICE to detain someone who has a criminal history, not considering their family ties, length of time in the US, community ties, or rehabilitation. Why would the community trust the NYPD? Are we safer? Can we as a community work with the NYPD when they are tearing apart our communities and our families? Does this foster racial profiling? Does this create an abusive atmosphere that will further victimize our community, creating violence upon violence? Would even some of our NYPD officers abuse their power?

The New Sanctuary Coalition is happy that the City Council is taking this first step to restrict ICE access to our community and to our local law enforcement agencies. But this is a small step – we need to do more and I hope that the City Council will continue to be ever vigilant and ready to act to protect its constituents.

Overview

Watch Happily Divorced online | Overview

www.ice.gov/about/overview/

TO REPORT CRIMES: EMAIL OR CALL 1-866-DHS-2-ICE

Home | About ICE | Investigations | National Security | Enforcement & Removal | Newsroom | Outreach

- Overview
- Leadership
- Leadership Offices
- Enforcement & Removal Operations
- Homeland Security Investigations
- Management & Administration
- Detention Facilities
- Contact ICE
- Careers

Overview

SHARE

U.S. Immigration and Customs Enforcement is the principal investigative arm of the U.S. Department of Homeland Security (DHS) and the second largest investigative agency in the federal government. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now has more than 20,000 employees in offices in all 50 states and 47 foreign countries.

Print All | Expand All | Hide All

+ Mission

+ Leadership

+ Strategic Plan

Contacting ICE

Report suspicious activity - toll free 1-866-DHS-2-ICE

Media Inquiries
For media inquiries about ICE activities, operations or policies, contact the ICE Office of Public Affairs at
(202) 732-4242

To Mail Secretary
Secretary Janet Napolitano
Department of Homeland Security
Washington, D.C. 20528

To Mail Director
Director John Morton
ICE
Washington, D.C. 20536

Mail/Freight Instructions
Vehicles transporting freight are required to undergo security inspections.
Click for more information.

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: Ravi Ragbir
Address: 239 Thompson St
I represent: New Sanctuary Coalition NYC
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: César Palomeque
Address: 41-19 48 St Sunnyside NY 11104
I represent: Make the Road NY
Address: ______

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 129, 192 Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Rebecca Engel
Address: 187-A 6th Ave, #3 Brooklyn NY 11217
I represent: NYCLU
Address: 125 Broad St., New York NY 10004

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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: 1-25-13

(PLEASE PRINT)

Name: Nicholas Katz
Address: 92-10 Roosevelt Av., Jackson Hts, NY
I represent: Make the Road NY
Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982, 989 Res. No. ______
☒ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Ashley Kaper
Address: ~~86~~ 1096 Dean St, Brooklyn
I represent: The Bronx Defenders
Address: 860 Courtlandt Ave, Bronx, NY 10451

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/989 Res. No. ______
☐ in favor ☒ in opposition

Date: January 25, 2013

(PLEASE PRINT)

Name: Alisha Williams
Address: 147 W. 24th Street, 5th Floor
I represent: Sylvia Rivera Law Project
Address: Same as above

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

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982, 989 Res. No. ______
☑ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Melissa Brennan

Address: ______

I represent: Sanctuary for Families

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: 1/25/13

(PLEASE PRINT)

Name: NADIRA KASHEM (translator: FAHD AHMED)

Address: 42-10 82nd St, Apt 6C, NY 11373

I represent: DRUM - Desis Rising Up & Moving

Address: ______

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/2013

(PLEASE PRINT)

Name: Carmen Maria Rey

Address: ______

I represent: INMOTION

Address: 100 Broadway, 10th Fl. NY NY

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. 982
☑ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Lisa Schreibersdorf

Address: 177 Livingston Street, Brooklyn NY 11201

I represent: Brooklyn Defender Services

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 989 & 982 Res. No: 3
☒ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Heather Yvonne Axford

Address: 99 Wyckoff St Apt 2L Brooklyn NY 11201

I represent: Central American Legal Assistance

Address: 240 Hooper St Brooklyn N.Y 11211

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/989 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/2013

(PLEASE PRINT)

Name: Diane Steinman

Address: 112-01 Queens Blvd Forest Hills

I represent: NYS Interfaith Network for Immigration Reform

Address: same as above

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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: Ward Oliver
Address: Legal Aid Society, 199 Water
I represent: Legal Aid
Address: 199 Water.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 985+982 Res. No. ________
☑ in favor ☐ in opposition

Date: ________

(PLEASE PRINT)

Name: Camille Mackler
Address: 11 Broadway Suite 615, NY, NY 10004
I represent: American Immigration Lawyers Association
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: Lynly S. Egyes
Address: 123 william st, 16 Fl NY, NY
I represent: Sex Workers Project
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. [illegible] Res. No. ______

☐ in favor ☒ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Shelby Chestnut

Address: 240 West 35th Street NY, NY 10001

I represent: New York City Anti-Violence Project

Address: 240 West 35th Street NY, NY 10001

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: Lynn Neagebauer

Address: ______

I represent: SAGE HORIZON

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: Lewis Finkelman

Address: 75-20 Astoria Blvd, East Elmhurst NY

I represent: NYC Department of Correction

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. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: John Feinblatt

Address: NYC CJC

I represent: ______

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: JOSEPH VASATURO

Address: 75-20 ASTORIA BLVD. E.ELMHURST NY

I represent: NYC DEPT OF CORRECTIONS

Address: ______

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982 & 989 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/2013

(PLEASE PRINT)

Name: Alina Das

Address: 245 Sullivan St. 5th Fl NY NY 10012

I represent: New York City Bar Association

Address: 42 West 44th St. NY, NY 10036

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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: Robert Morgenthau

Address: ______

I represent: ______

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: 1-25-13

(PLEASE PRINT)

Name: Rachel Kling

Address: 317 Lenox Avenue, 10th floor, NY, NY 10027

I represent: Neighborhood Defender Service

Address: of Harlem

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/89 Res. No. ______

☐ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: JOHN STAHL

Address: ______

I represent: EMERALD ISLE IMMIGRATION CTR

Address: 59-26 WOODSIDE AVE WOODSIDE NY 11377

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. 982/989 Res. No. ______
☐ in favor ☐ in opposition

Date: 1-25-2013

(PLEASE PRINT)

Name: Sara Valenzuela

Address: ______

I represent: Manhattan Borough President Scott M. Stringer

Address: 1 Centre St, 19th Fl.

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/989 Res. No. ______
☐ in favor ☐ in opposition

Date: 01-25-2013

(PLEASE PRINT)

Name: Brunilda Leon 105-16

Address: 105-16 29 Ave. East Elmhurst Queens

I represent: SEIU (32BJ)

Address: 25 West 18 St.

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/989 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Lindsay Nash

Address: ______

I represent: Immigration Justice Clinic - Cardozo Law School

Address: 55 5th Ave, NY NY 10003

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 982/989 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/2013

(PLEASE PRINT)

Name: Alissa Wellek

Address:

I represent: Immigrant Defense Project

Address: 28 West 39 St #501 10018

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. 982/989 Res. No. ______
☑ in favor ☐ in opposition

Date: 1/25/13

(PLEASE PRINT)

Name: Nisha Agarwal

Address: 802 Kent Ave Bkly 11205

I represent: Center for Popular Democracy

Address: 802 Kent Ave BK 11205

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