Bill de Blasio
Mayor

Office of
Immigrant Affairs
Nisha Agarwal
Commissioner

October 15, 2014

Testimony of Commissioner Nisha Agarwal,

NYC Mayor's Office of Immigrant Affairs

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

concerning Int. 0486-2014 and Int. 0487-2014

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Thank you to Speaker Mark-Viverito, Chair Menchaca, and the members of the Committee on Immigration for the opportunity to testify today. I also want to thank the Council, and the Speaker in particular, for your leadership on this issue.

My name is Nisha Agarwal, and I am the Commissioner of the New York City Mayor's Office of Immigrant Affairs, a Charter-mandated office that recommends policies and programs to improve the lives of immigrant New Yorkers. On behalf of the administration, I am pleased to announce our support for Intro. 486 and Intro. 487.

These two bills will prevent some two to three thousand New Yorkers per year from being held in City custody beyond the time when the criminal justice system says they should be released, solely for the purpose of helping federal immigration officials take custody of them so they can be placed in detention and deportation proceedings. These are individuals— lawful permanent residents and visa holders as well as undocumented immigrants—who pose no significant threat to public safety. To the contrary, the vast majority of these immigrants have family and community ties to this City and call it home. Intros. 486 and 487 will treat these immigrant New Yorkers equally to all others in our criminal justice system who, when they are released by judge or jury, are allowed to return home to their families and jobs. In addition, these bills will contribute to trust between immigrant communities and the police, encouraging victims of crime and witnesses to come forward to work with law enforcement.

New York City was among the earliest voices on the issue of overbroad civil immigration detainer requests, and Mayor de Blasio pledged as public advocate and as a mayoral candidate to end the City's cooperation with these requests except where it was warranted as a public safety matter. With these bills we can not only continue to improve the way we treat our immigrant residents but we can also reaffirm our leadership in the growing movement among cities, counties, and states to take local action to better serve all of our residents in the absence of viable reform at the federal level.

Background

Local law enforcement agencies' involvement in civil immigration enforcement originated with President Reagan's signing of the Narcotics Traffickers Deportation Act, a part of the broader Anti-Drug Abuse Act of 1986.[1] That law authorized federal officials to issue detainers to request that local police and jails hold an immigrant beyond the time when he or she is due to be released. In 2003, the detainer process was codified in immigration enforcement rules. Detainers proliferated as proponents of harsher enforcement measures—including Kansas Secretary of State Kris Kobach, the man behind the now-largely invalidated Arizona immigration law,

[1] Pub. L. 99-570 (1986).

SB1070, and Fremont, Nebraska's ban on apartment rentals to undocumented immigrants—pushed a theory that saw local and state governments as "force multipliers," effectively expanding the capacity of federal immigration authorities far beyond the borders. This model was enthusiastically adopted by the federal government over the last decade, with the extension of the Criminal Alien Program into local jails, including New York City's jails, and the adoption of the 287(g) and Secure Communities programs. These programs rely on local manpower, resources, and information to vastly extend the reach of federal enforcement, primarily through the broad issuance of detainers.

This enforcement model has created a situation in which local police and correctional resources are now used to hold thousands of New Yorkers who pose no safety threat, for longer than is necessary. Through the detainer process, localities including New York City have been helping federal immigration authorities do their job, at considerable cost to New York City families and the public fisc.

Local and national expansion of detainer discretion policies

In response to this trend, in 2011, the City Council adopted one of the first detainer discretion laws in the country, sponsored by then Council Member Mark-Viverito. New York City was a leader in recognizing that civil immigration detainers were merely requests from federal Immigration and Customs Enforcement (ICE), as opposed to mandatory orders.

That 2011 law directed the Department of Correction (DOC) not to hold individuals based on a civil immigration detainer unless the individual had a criminal conviction, still had an open criminal charge or warrant, or had a prior order of removal, among other grounds. The result was that DOC declined to hold individuals subject to detainer requests in 27% of cases.

In 2013, Speaker Mark-Viverito again sponsored legislation on this topic in response to the activation of the controversial federal Secure Communities program in New York State. The 2013 bills further limited the circumstances in which DOC was authorized to extend its detention of individuals due to be released. These bills restricted the range of criminal histories that would justify extended holds, and applied the same standards to the Police Department. The result of these changes was that DOC declined to hold individuals subject to detainer requests in 36% of cases, and NYPD declined to hold individuals in about 48% of cases.

Since New York City first took action on this issue, there has been a growing recognition about the destructive impact of federal immigration detainer requests on local communities. Judges across the country have decided that civil immigrant detainers are non-mandatory requests to local law enforcement agencies, and ICE now concedes that point. Other cities, counties, and states have followed New York City's lead. Now, more than 200 jurisdictions across the U.S.

limit their cooperation with detainer requests, including the states of Connecticut, Cailfornia, and Rhode Island; cities such as Philadelphia, Chicago, and Washington, DC; and counties and sheriffs' departments all across the country.

Benefits of Intros. 486 and 487

These bills advance several important interests of the City. The first is family unity. The proposed legislation will help bring stability to our communities by keeping families together. Federal data analyzed by the Applied Research Center shows that about 22% of the immigrants detained in New York City are parents of U.S. citizen children, without accounting for the number of parents of non-citizen children, both documented and undocumented.[2] Reducing the disruption of families caused by the federal immigration enforcement system will not only protect children, but will also protect the City's finances and services by preventing the family members of deportees from being deprived of their parents' and spouses' support and income.

Second, these bills advance important City interests in community trust and public safety. Drawing a clear line between local law enforcement and federal civil immigration enforcement will foster trust between the City's immigrant community and local law enforcement agencies. This line-drawing will support community policing practices and promote public safety by eliminating fear for immigrant victims of crime and witnesses to come forward and work with law enforcement. Law enforcement leaders throughout the country have spoken out publicly about how blurring the lines between local policing and immigration enforcement makes the job of local law enforcement more difficult and detracts from public safety. Studies have shown that 70% of undocumented Latino victims of crimes are less likely to contact police if they believe the police are involved in civil immigration enforcement efforts.[3] These bills will ensure that the City only honors detainers for individuals whom we deem to be significant public safety threats as a result of a recent felony history of violence, terrorism, very serious drug and firearms crimes, vehicle-related crimes involving personal injury, exploitation of vulnerable populations like children, or because they are a match on the Terrorist Screening Database. These bills will protect New York City's immigrants and ensure that genuinely dangerous individuals cannot threaten our public safety.

These bills will direct the City's law enforcement agencies to expend their time and resources on protecting public safety, rather than doing federal immigration officials' jobs for them.

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[2] APPLIED RESEARCH CENTER, SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 11 (2011), *available at* https://www.raceforward.org/research/reports/shattered-families.

[3] NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 5 (2013), *available at* http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

The legislation will also encourage the full participation of immigrants in the civic and economic life of the City by cementing protections for New Yorkers regardless of their immigration status. These bills are consistent with the City's other efforts to integrate and protect its immigrant population, such as the New York Immigrant Family Unity Project, the recent response to the influx of unaccompanied child migrants, and the Municipal ID card initiative.

Conclusion

Thank you very much for the opportunity to testify on these two bills. We look forward to working with the City Council to finalize this legislation and place New York City, once again, at the forefront of pro-immigrant policy in the country.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Testimony of Maya Wiley
Counsel to the Mayor
before the Immigration Committee
Intro. 486 & Intro. 487
Tuesday, October 15, 2014

Good morning, Speaker Mark-Viverito, Chairperson Menchaca and members of the Immigration Committee. It is my great privilege to appear before you today. Thank you for your leadership on immigration issues and many other matters of importance to New Yorkers.

As Counsel to Mayor Bill de Blasio, I am responsible for both supporting the Mayor's policy initiatives and ensuring compliance with City, State and federal law. The policy decisions around Immigration & Customs Enforcement ("ICE") detainers implicate all aspects of my job. It has been my great privilege to work on the important and complex question of when to honor ICE detainers with my colleagues, Commissioner Agarwal, Corporation Counsel Zachary Carter and leaders from the Mayor's Office on Criminal Justice, the New York Police Department, Department of Corrections and the Inter-Governmental Affairs Unit. I am pleased to join you this morning to testify in support of Intros 486 and 487, which would reform the City's responses to ICE immigration detainer requests.

The Mayor's platform specifies that detainers should not be honored except where issued against individuals who have previously been convicted of serious or violent felonies. The Mayor adopted this position to account for a range of interests, and the administration remains committed to striking the appropriate balance between them. You have heard Commissioner Agarwal testify about this administration's commitment to ensuring that New York remains a global city and one that continues to welcome immigrants. In addition to these commitments, the question of how the Department of Correction ("DOC") and New York Police Department ("NYPD") should respond to federal detainer requests designed to aid in the enforcement civil immigration law implicates a range of additional public interests. These include providing a fair and appropriate process and guaranteeing public safety. My testimony will focus on these issues.

All New York City residents—whether U.S. born citizens or undocumented immigrants--should be treated fairly and appropriately. Even the best-intentioned public servants can make clerical errors. Recall the case of Mark Lyttle, a US citizen, with diabetes and some

cognitive impairment. He could read but was barely able to write. As the New Yorker has reported, after serving a sentence for misdemeanor assault, he was flown, shackled and handcuffed, to Hidalgo, Texas. There, he was taken to the international border and ordered to walk across a bridge into Reynosa, Mexico, with only the prison jumpsuit on his back, three dollars in his pocket and a deportation order for Jose Thomas. That mistake didn't happen in New York City. Nor should we let it.

As you know, if ICE would like, for the purposes of arrest and removal, to assume custody of an individual, it may issue an immigration detainer asking the local law enforcement agency to continue to hold that individual for up to 48 hours, whether or not the person was ever convicted of a crime. ICE transmits a DHS Form I-247, checking a box or boxes indicating why it requests the individual be detained. Generally, the Department of Correction or NYPD receives no further documentation to support the claims on the form.

By requiring that a judicial warrant accompany the Form I-247, the bills ensure that probable cause concerns are addressed. In addition, a detainer may not be honored unless the individual has been convicted of a serious or violent felony offense. Consistent with the Mayor's platform, these offenses are limited to those involving violence or force, terrorism, firearms, high-level drug crimes or the endangerment or abuse of children or other vulnerable individuals. Alternatively, a detainer supported by probable cause may be honored where the individual in question is a match in a terrorist-screening database. In short, these bills would support a fair process and ensure that detainers are honored where there is evidence of a meaningful risk to public safety.

The bills include other elements designed to focus resources on those cases in which the public safety threat is most pronounced. With the exception of individuals who are matches in a terrorist database, the City would only honor requests for those with criminal convictions—not mere charges. In addition, the conviction in question must have been within the previous five years—with tolling for periods of incarceration. This would ensure that individuals with prior convictions, who have not re-offended in at least five years, would not be punished again.

The Council bills are not only consistent with the Mayor's commitment to honoring detainers only where serious public safety threats are implicated, they are also aligned with developments in other states and major cities. As Commissioner Agarwal has noted, hundreds of jurisdictions across the country have instituted policies limiting the degree to which ICE detainers will be honored with some, like the state of California and King County, Washington, for example, only honoring detainers in connection with certain types of offenses. These policy shifts reflect a growing consensus that local law enforcement and federal immigration enforcement should generally remain distinct.

The Administration does, however, have some suggestions to improve the bills before us today. We believe that successful implementation of this policy will require a greater degree of flexibility in the interest of public safety. We are concerned that the legislation lacks some delegated authority to identify additional offenses that would be appropriate to add, consistent with the principles of these bills. The bills do provide that the Department of Correction, in coordination with the Police Department, may add *new* crimes codified by the legislature, *after* the enactment of the legislation through a rulemaking process. While we

trust that the Council has been thoughtful and deliberate in determining which offenses should be included, we anticipate that changing conditions or experiences may suggest existing crimes be considered sufficiently violent or serious that are not currently included in covered offenses. The City's ability to ensure the appropriate balance between public safety and the other important interests relevant to this policy should not be limited to consideration of the limited universe of new offenses created by state lawmakers each year.

Consistent with this point, we note that there are a number of felony offenses that are not included in the bills before us today. These include tampering with a witness in the first[1] and second degrees[2]— B and D felonies respectively that involve the infliction of physical injury on individuals who intend to testify or who have testified in criminal proceedings. They also include the offenses of sex trafficking[3] and labor trafficking,[4] which combine elements of violence and other forms of exploitation of vulnerable populations. We believe that the Mayor must have the prerogative to add these and other offenses consistent with the principles embodied in this legislation.

We also believe that we should add federal magistrate judges—not just Article III judges—to the list of those who may issue warrants. Federal magistrate judges regularly issue arrest warrants in the federal court system, and we believe the bill should reflect that reality. We also believe that the bills would be strengthened by the addition of a provision delegating to the Mayor the authority to add other judges who may, in the future, be legally empowered to issue judicial warrants as to removability.

In sum, we support the Council's bills and thank the Council for its hard and thoughtful work to reconcile the important objectives of inclusivity and public safety. We look forward to working with the Council to ensure that the City's detainer policy reflects our most closely held principles and affirms the value of each and every New Yorker.

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[1] *See* PL 215.13
[2] *See* PL 215.12
[3] *See* PL 230.34
[4] *See* PL 135.35

New York City Council Committee on Immigration
October 15, 2014 Hearing
Anti-Violence Advocates Against Deportation Testimony in support of
Int. 0487-2014

Anti-Violence Advocates Against Deportation
antiviolencenyc@gmail.com

My name is Juana Peralta from the Sylvia Rivera Law Project. I am reading the statement of the Anti-Violence Advocates Coalition Against Deportation which is based on our letter attached, signed by 14 organizations.

We are advocates for survivors of domestic/intimate partner violence, family violence, human trafficking, sexual assault, other forms of gender-based, homophobic and transphobic violence, and discrimination against individuals living with HIV. In 2011, when we learned of the potential activation of ICE's Secure Communities program, we came together to call for an end to New York's collaboration with ICE.

We appreciate your leadership on protecting immigrants' rights in New York. The new detainer bill is a big step forward towards protecting all immigrants from the damaging effects of ICE's deportation machine. Any cooperation between ICE and local law enforcement not only makes our work more challenging but actually further victimizes and endangers a survivor on the road to safety.

By refusing to honor detainers, the City has taken a stand against the government's devastating justification for mass deportation—that targeting immigrants with convictions and enlisting the police in this process promotes public safety. Through our work, we know that survivors are often the very people the government seeks to deport because they too have criminal histories. Our clients have a range of criminal convictions including felony assault, criminal contempt and serious drug-related convictions, to name a few. Batterers often threaten immigrant survivors with arrest and deportation and are adept at using the criminal legal system as a tool to reinforce their power and control. These convictions do not always appear to be related to the dynamics of abuse. Once enmeshed in the deportation process, survivors are often unable to access social service support and find the road to obtaining immigration relief such as U or T nonimmigrant status even more difficult.

The merger of policing practices with a rigid and extremely harsh immigration system has undermined our work on both policing and immigration, and our efforts to protect our communities. It has perpetuated rather than promoted violence. For example:

- Sexual assault, human trafficking, and family, intimate partner, homophobic and transphobic violence are already underreported crimes. Survivors are acutely aware of the risk of deportation when calling police, and ICE/police collaboration pushes survivors deeper into the shadows.

- In New York, as in many other states, victims of intimate partner violence can risk arrest when they call the police either because they have had to defend themselves from abuse, or because an inability to speak English results in an arrest. We routinely hear reports of survivors who are not provided with interpretation when making the difficult and often dangerous decision to contact law enforcement, and then are improperly arrested for being unable to report their victimization and end up with ICE hold requests shortly after arrest. Put simply, ICE/police collaboration adds teeth to a batterer's threat of getting them deported and taking their children away and places survivors at increased risk of deportation.

- The severity of intimate partner violence in LGBTQH communities has increased while there has been a marked decrease in the willingness of LGBTQH survivors to reach out to local law enforcement for assistance. LGBTQH individuals still face enormous obstacles in obtaining competent assistance from local law enforcement and in seeking orders of protection now available to them through the 2008 New York Access to Family Court Bill. LGBTQH immigrants are at increased risk for negative encounters with local law enforcement in our state and elsewhere because of police profiling, selective enforcement, and discrimination.

- A trafficking survivor is more often than not arrested while a trafficker remains at large, signaling the shortcomings of local law enforcement in meaningfully identifying and protecting them. These arrests often trigger the mandatory detention of the trafficking survivor who, like other victims of violence, faces an uphill battle in securing adequate legal representation and navigating a deportation system that offers few options and is fraught with due process violations. In our experience, S-Comm and ICE presence in the jails actually thwarts the extensive statutory framework we have developed in New York to protect trafficking survivors.

Even if the criminal charges against survivors are eventually dismissed, we have seen firsthand how ICE's ability to identify immigrants through the booking process (S-Comm) has increased the likelihood that they will face deportation, detention, and indefinite separation from their children, families, and communities. For this reason, it is essential that we continue to fight to end ICE's info-sharing programs, even where felonies are concerned. Attached please find stories of survivors who have been adversely impacted because of S-Comm and ICE at Riker's.

Again, we applaud the City for taking significant measures to minimize ICE's presence in our criminal legal system—we are relieved to be able to advise our clients and community members that in the vast majority of cases, they no longer face the risk of the City transferring them to ICE detention. By refusing to honor detainers and eliminating ICE's presence at Rikers, New York has taken a strong stand to weaken ICE's grip on our City. We thank you and your colleagues for your serious attention to our communities' concerns and your commitment to meaningfully expanding the rights of New Yorkers.

October 7, 2014

Speaker Melissa Mark-Viverito
250 Broadway Suite 1856
New York, NY 10007

Dear Speaker Mark-Viverito:

As advocates for survivors of domestic/intimate partner violence, family violence, human trafficking, sexual assault, other forms of gender-based, homophobic and transphobic violence, and discrimination against individuals living with HIV, we are acutely aware of the devastating impact that the City's collaboration with Immigration and Customs Enforcement (ICE) has had on the immigrant survivors we serve. In 2011, when we learned of the potential activation of ICE's Secure Communities program—where arrestees' information is shared by police with immigration when fingerprinted—we came together to call for an end to New York City's collaboration with ICE. Any cooperation between ICE and local law enforcement not only makes our work more challenging but actually further victimizes and endangers a survivor on the road to safety. We are encouraged by your proposed legislation and appreciate your leadership on protecting immigrants' rights in New York. The new detainer bill is a big step forward towards protecting all immigrants from the damaging effects of ICE's deportation machine.

By refusing to honor detainers, the City has taken a stand against the government's devastating justification for mass deportation—that targeting immigrants with convictions and enlisting the police in this process promotes public safety. This idea and practice is not only unfounded, but is extremely harmful for multiple reasons. It undermines the work of the re-entry movement by reinforcing that people do not deserve a second chance and should forever be defined by a conviction. Also, funneling abusers into the deportation system severely undermines survivors' agency in making their own safety determinations and actually further disempowers them from the option of calling the police. Survivors often do not want their batterers deported for a host of reasons, including the loss of financial support, an ongoing desire to maintain the other parent in their children's lives and safety considerations abroad. Through our work, we know that survivors are often the very people the government seeks to deport because they too have criminal histories. Our clients have a range of criminal convictions including felony assault, criminal contempt and serious drug-related convictions, to name a few. Batterers often threaten immigrant survivors with arrest and deportation and are adept at using the criminal legal system as a tool to reinforce their power and control. These convictions do not always appear to be related to the dynamics of abuse. Once enmeshed in the deportation process, survivors are often unable to access social service support and find the road to obtaining immigration relief such as U or T nonimmigrant status even more difficult.

The City's new detainer policy will improve our current ability to protect more survivors. The merger of policing practices with a rigid and extremely harsh immigration system has undermined our work on both policing and immigration, and our efforts to protect our communities. It has perpetuated rather than promoted violence in our communities. For example:

- Sexual assault, human trafficking, and family, intimate partner, homophobic and transphobic violence are already underreported crimes. Survivors are acutely aware of the risk of deportation when calling police, and ICE/police collaboration pushes survivors deeper into the shadows.

- In New York, as in many other states, victims of intimate partner violence can risk arrest when they call the police either because they have had to defend themselves from abuse, or because an inability to speak English results in an arrest. We routinely hear reports of survivors who are not provided with interpretation when making the difficult and often dangerous decision to contact law enforcement, and then are improperly arrested for being unable to report their victimization and end up with ICE hold requests shortly after arrest. Put simply, ICE/police collaboration adds teeth to a

batterer's threat of getting them deported and taking their children away and places survivors at increased risk of deportation.[1]

- The severity of intimate partner violence in LGBTQH communities has increased while there has been a marked decrease in the willingness of LGBTQH survivors to reach out to local law enforcement for assistance.[2] LGBTQH individuals still face enormous obstacles in obtaining competent assistance from local law enforcement and in seeking orders of protection now available to them through the 2008 New York Access to Family Court Bill.[3] LGBTQH immigrants are at increased risk for negative encounters with local law enforcement in our state and elsewhere because of police profiling, selective enforcement, and discrimination.

- A trafficking survivor is more often than not arrested while a trafficker remains at large, signaling the shortcomings of local law enforcement in meaningfully identifying and protecting them. These arrests often trigger the mandatory detention of the trafficking survivor who, like other victims of violence, faces an uphill battle in securing adequate legal representation and navigating a deportation system that offers few options and is fraught with due process violations. In our experience, S-Comm and ICE presence in the jails actually thwarts the extensive statutory framework we have developed in New York to protect trafficking survivors.

Even if the criminal charges against survivors are eventually dismissed, we have seen firsthand how ICE's ability to identify immigrants through the booking process (S-Comm) has increased the likelihood that they will face deportation, detention, and indefinite separation from their children, families, and communities. For this reason, it is essential that we continue to fight to end ICE's info-sharing programs, even where felonies are concerned. Attached please find stories of survivors who have been adversely impacted because of S-Comm and ICE at Riker's. They highlight the very reasons that we as anti-violence advocates firmly believe that ICE's presence in our criminal legal system must be stopped in its entirety.

We applaud the City for taking significant measures to minimize ICE's presence in our criminal legal system—we are relieved to be able to advise our clients and community members that in the vast majority of cases, they no longer face the risk of the City transferring them to ICE detention. ICE should not have access to information collected by the City. By refusing to honor detainers and eliminating ICE's presence at Rikers, New York has taken a strong stand to weaken ICE's grip on our City. We thank you and your colleagues for your serious attention to our communities' concerns and your commitment to meaningfully expanding the rights of New Yorkers.

Sincerely,

Arab-American Family Support Center
Garden of Hope
Latino Commission on AIDS
New York Anti-Trafficking Network
STEPS to End Family Violence
Urban Justice Center- Domestic Violence Project
Violence Intervention Project
CONNECT
HerJustice
New York Asian Women's Center
Sakhi for South Asian Women
Sylvia Rivera Law Project
Urban Justice Center, Sex Workers' Project
Voces Latinas

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[1] Applied Research Center, *Shattered Families, The Perilous Intersection of Immigration Enforcement and the Child Welfare System, Executive Summary* (2011), *available at* http://arc.org/shatteredfamilies.
[2] National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence* (2010), *available at* http://www.avp.org/documents/IPVReportfull-web.pdf.
[3] L.2008, c. 326, eff. Jul. 21, 2008; N.Y. Fam. Ct. § 812(1)(e).

Anti-Violence Advocates Against Deportation

The High Cost of Collaboration Between Police & Immigration:

Perspectives from Survivors of Violence, Sex Workers, and LGBTQ People

Our communities are increasingly threatened by deportation—which in almost all cases is permanent exile. The U.S. has deported more people in the past 10 years—over 3 million—than in the preceding 110 years combined. The government increasingly uses the criminal legal system—most notably the police and jails—to identify people that they funnel into a unjust mass deportation system. Collaboration between police and jails and immigration has expanded rapidly, with very little scrutiny, despite the well-documented problems with the criminal legal system, including the discriminatory policies and policing practices that fuel it.

One devastating example is Immigration and Customs Enforcement (ICE) "Secure Communities" (S-Comm) program. Under S-Comm, when police collect fingerprints at booking, this information is sent to ICE via the FBI. This allows ICE to rapidly identify potential deportees, and issue a detainer request (a request that the police detain this person for ICE to pick up after release from criminal custody) or apprehend this person at home, work, at court, or elsewhere. After being picked up by ICE, these people are often locked up in detention centers in remote locations, with severely limited access to lawyers, medical care, family, witnesses, and evidence to defend against deportation. Many jurisdictions have stopped detaining immigrant residents on behalf of ICE to ensure that the City is acting within the confines of its legal authority and not subjecting itself to liability. We call on the City to end all collaboration with ICE. We cannot allow ICE to undermine decades of advocacy to end violence in our communities.

The following stories focus on the impact on survivors of domestic, intimate partner and trafficking violence, LGBTQ people, and/or sex workers—groups already susceptible to gender policing, surveillance and other harmful interactions with law enforcement. Based on actual cases, these stories remind us that ICE's presence in local law enforcement places individuals at an increased risk for detention, deportation, and other forms of violence. The police should not play a role in limiting survivors' options in attaining safety and accessing resources by collaborating with ICE's deportation regime. Funneling abusers into the deportation system severely undermines survivors' agency in making their own safety determinations. These stories illustrate how there is no place for ICE collaboration with the criminal legal system.

Jessica fled to the U.S. to escape a violent relationship and family. Jessica shoplifted and has received three convictions for petty larceny. Jessica later married Daniel, a U.S. citizen, who also abused her. Upon return from Brazil where Jessica traveled to see her ill father, she was put in deportation proceedings because of her petty larceny convictions. Her immigration attorney never pursued a VAWA self-petition application even though she told him about her abuse, and she was ordered deported. Jessica tried to piece her life back together but continued to find herself caught in the criminal legal system. One evening, the police stopped her while she was driving her drunk cousin. She panicked, refused to take the breathalyzer test, and the officer arrested her. Fearing extended separation from her children, Jessica pled guilty to driving while under the influence on her attorney's advice. While in the criminal legal system, Jessica was never identified as a survivor nor was she ever advised of the immigration consequences of her pleas.

Jessica recently became a priority target because of her prior deportation order and convictions and ICE agents searched for her for months at her previous jobs and addresses. She was mandatorily detained in an Alabama facility. Jessica was not able to access the highly specialized attorneys that she needed to successfully fight her detention and deportation. She was deported and is now separated from her three children and exiled to a country she fled to escape abuse after 20 years in the U.S.

ICE uses the words "fugitives" and "criminals" to provide the political justification for its mass deportation agenda. ICE's presence in the criminal legal system allows it to easily and neatly deport hundreds of thousands in the name of "public safety" without scrutiny. Survivors with prior orders of deportation ("fugitives") and/or prior convictions ("criminals") are especially vulnerable.

Survivors are vulnerable to retaliatory arrests and convictions that do not always appear to be related to the dynamics of abuse.

Clara has been physically, sexually, emotionally and verbally abused by her former U.S. citizen boyfriend. He hired someone to break into her home to intimidate her and a private investigator to track her activities. Clara is the cooperating witness in two criminal cases pending against him and the petitioner in a pending family court order of protection case. The abuser's mother, in retaliation, falsely accused Clara of credit card fraud. Despite Clara's efforts to report her abuser and to seek protection, the police arrested her without investigation based on the mother's allegation. At booking, the police sent her fingerprints to the ICE database under S-Comm. ICE identified her as deportable as she overstayed her visa and lodged a hold request against her. At arraignment, Clara was eligible to post bail but the judge did not permit her to do so because of the hold request. Clara was frantic as she has a young child and was emotionally and physically at her breaking point. Unlike most others, she had a legal advocate when this retaliatory arrest happened who presented ample evidence of the violent history in the relationship to get the hold request lifted. Many survivors do not have evidence or access to suitable legal resources.

Survivors of trafficking are often arrested for activities stemming from their subjugation. Rarely identified by police and prosecutors, they often do not assert themselves because of trauma and social stigma. Advocates pushed New York to develop an extensive statutory scheme to protect trafficking survivors. ICE presence in the criminal legal system severely undermines these efforts by interfering with access to benefits under these laws.

Mary is a survivor of human sex trafficking from Poland who overstayed her tourist visa when she came to visit her parents in the 1990s. She was trafficked by her intimate partner for over fifteen years. Mary suffers from a mental illness that was not diagnosed until she was in her twenties. She first began using drugs as a coping mechanism and later as a way to be able to continue performing commercial sex acts. Before S-Comm's implementation, she was arrested numerous times and convicted of numerous controlled substance offenses. But she was always released from criminal custody. After S-Comm's implementation, Mary was arrested for allegedly trespassing at a New York City Housing Authority building. ICE almost immediately dropped a hold request to initiate deportation proceedings against her. Although the charges against Mary were going to be dismissed, she could not get out of jail by posting bail because if she did the City would turn her over to ICE.

Mary's public defender identified her as a possible trafficking victim and reached out to an immigration attorney to see if she could qualify for immigration relief. Mary had to remain incarcerated the ENTIRE time that her immigration attorney was working on her case because she faced the risk of being detained by the immigration authorities as a result of the hold request. Mary did not want to take this risk for many reasons and her advocates feared she would have less access to the medical attention she needed in immigration detention. Working on her application while incarcerated was no easy task for Mary. She spent countless hours reliving horrible experiences in a tiny, cramped interview room with no one to talk to afterwards to help her professionally deal with the trauma she had disclosed.

Mary spent three months more in jail than she should have because of the ICE hold request. Through tremendous advocacy and effort, her immigration attorney filed an immigration application for her as a victim of human trafficking and convinced ICE not detain her but instead to allow her to pursue the mental health and medical treatment she desperately needed while her case was pending. Today, she receives drug treatment, mental health services and job training while she awaits the outcome of her immigration application. Mary is also seeking to vacate her convictions under New York State's "Vacating Convictions Law."

Two transgender women were walking home one night and were assaulted by a man who had previously attacked them. They fought back in self-defense. The police refused to interview any witnesses and arrested only the women despite their statements to the contrary. They were charged with felony assault and received ICE hold requests. Both women were trafficking victims and neither had any prior convictions. Both women experienced repeated physical and sexual violence while incarcerated. They are now both fighting their deportation cases and fear serious abuse in Mexico because of transphobic violence they experienced there.

LGBTQ non-citizens are often arrested in self-defense scenarios when they are defending themselves against homophobic or transphobic violence.

The NYPD frequently targeted Tracey, an undocumented transgender woman from Trinidad, while she was living on the Upper West Side of Manhattan. The police profiled her as a sex worker and constantly harassed her outside of her home. They often charged her with loitering with the intent to engage in prostitution. Once the police charged her with a felony of luring a child simply because she was with a 16-year-old minor, and in another instance with public lewdness while she was eating pizza near her home. Because of this harassment, Tracey was arrested approximately 30 times in a two-year period. Tracey pled to many of the charges because she could not bear the violence she experienced inside the men's jail where she previously had been physically assaulted.

LGBTQ non-citizens face higher rates of negative encounters and harassment from the NYPD if gender non-conforming.

Laura is a transgender woman from Colombia. The U.S. granted her asylee status in 2004 because of the extreme abuse and harassment she endured by the Colombian government due to 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 Laura while in Rikers and she is currently fighting her deportation.

People face enormous pressure to accept pleas, which may have immigration consequences, and LGBTQ people, especially those who are transgender, often face additional pressure due to gender-related abuse.

Teresa had been living in the U.S. for over ten years when she married her citizen husband Zack. They had a baby girl named Natasha. Zack became physically, emotionally and economically abusive. One day, Teresa was arrested for shoplifting and sent to Rikers. Teresa had a prior deportation order (she was identified by ICE when previously convicted of criminal contempt based on false allegations by her former abuser) but never left the country. Although the charges in the shoplifting case were dismissed, Rikers still transferred Teresa into ICE custody. ICE sent her to detention in Texas even though her four-month-old daughter Natasha, who remained in New York, was still nursing. Zack then initiated a custody case against Teresa. Her time in detention was extremely traumatic because she could not easily obtain counsel and could not physically appear in family court on her child's custody case. If her country's embassy had not intervened with ICE to have her released from detention, Teresa's due process rights to litigate custody of her child would have been violated. She is back with her child, under ICE supervision, fighting her deportation back to Mexico. Although Teresa now has custody of Natasha, she requires Zack's consent (which he will not provide) to bring Natasha with her if deported.

ICE's presence in the criminal legal system makes it extremely difficult for parents to exercise their rights. Immigration detention isolates survivors with children, substantially diminishing their ability to reunify with them and obtain needed resources and support.

Batterers are adept at using the criminal legal system to perpetuate violence against survivors. The complex dynamics of abuse scenarios are difficult for law enforcement to sort out, often leading to survivors getting criminal convictions and placing them at serious risk of deportation. The NYPD's mandatory and dual arrest policies only exacerbate this problem given the current state of cooperation between the police and ICE.

Lourdes came to the U.S. in 1999 from Peru and was deported when crossing at the border. As part of the expedited removal process, she was fingerprinted. She reentered and later met her abuser, a U.S. Citizen, and they have two young children. Her abuser always used her immigration status as a threat to maintain power and control. Although they separated years ago, Lourdes' abuser still wanted to have a relationship. When she refused, he made false allegations to the Administration for Children's Services (ACS) in 2011 that she was abusing their children. During the ACS investigation, Lourdes disclosed that he had been threatening to get her deported and take custody of their children. She told ACS about the time that he called the police and based on false allegations, she was charged with assault and harassment. ACS referred Lourdes to domestic violence services and instructed her to go to Family Court to obtain an order of protection. ACS closed the case because they could not substantiate the allegations of abuse and she was seeking appropriate services. Yet, Lourdes was forced to drop her order of protection case when she found that using the family court system only escalated the abuse.

Lourdes continued to try to only deal with her abuser on issues involving the children. But when she refused his sexual advances again, he made a series of false allegations to the NYPD resulting in her arrest in 2013 on assault, harassment, and menacing charges. Because the NYPD sent her prints to DHS via S-Comm, ICE issued a hold request. Because of her prior removal order and her pending assault charge, Lourdes did not qualify for release at arraignment under New York's detainer discretion law. So she remained at Rikers for four months to avoid being taken into ICE custody.

Lourdes was incredibly distraught at being separated from her children while at Rikers. There, she met another survivor whose immigration attorney was working to obtain a U certification for her. Lourdes has no idea what this was but begged for the immigration attorney's number and frantically tried to reach her. With immigration representation, Lourdes was eventually able to obtain a timely U certification from ACS which was instrumental in advocating that ICE not take custody of her on the completion of her criminal case. On being shown credible evidence that Lourdes was in fact a domestic violence survivor whose abuser used the legal system in a retaliatory manner against her, the District Attorney dismissed Lourdes' case ahead of schedule. Lourdes is working on her U application to fight her immigration case.

The day after she was released from Rikers, her batterer called the police to make a false complaint against her. Unfortunately, the NYPD system still showed a valid order of protection in place against Lourdes even though it had technically been dismissed by the criminal court the previous day. The police officers assigned to the case insisted that she had to be arrested. They refused to acknowledge the court evidence that the case had been dismissed when it was provided by the public defender and even when the district attorney made a call to explain that there was no legal basis for the arrest. Lourdes was distraught at the thought of being arrested again, especially because the risk of going into ICE custody. It tooks several weeks for the warrant against her to be vacated.

During this time, she feared going to family court for fear of being arrested on the warrant and this led to a one month delay in filing for custody of her children. Since Lourdes' abuser had physical custody of the children during her incarceration, he took the opportunity to file for custody in family court. He has been granted temporary custody while the case is being litigated in family court. Even if she is granted custody, her abuser would most likely end up with court ordered visitation with their children. This means that she would require his consent to take them back to Peru with her if deported, which is unlikely given the ongoing history of abuse.

Anti-Violence Advocates Against Deportation, September 2014
http://newyorkagainstdeportation.wordpress.com/anti-violence-advocates-against-deportation

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New York City Council Hearing on ICE Detainers
Testimony of the New York Immigration Coalition
October 15, 2014

Dear City Council Members

Thank you for giving me an opportunity to testify today. The New York Immigration Coalition is an umbrella policy and advocacy organization for nearly 200 groups in New York State that work with immigrants and refugees. The NYIC aims to achieve a fairer and more just society that values the contributions of immigrants and extends opportunity to all. The NYIC has played a prominent role in the fight against the encroachment of immigration enforcement policies on our local law enforcement agencies. We commend the City Council for its efforts in ensuring that the criminal system does not become a funnel into the current, broken deportation system, and for creating new protections to restore criminal justice due process rights into the intersection of criminal and immigration law.

Federal initiatives such as the Criminal Alien Program (CAP) and Secure Communities dramatically blurred the lines between the civil immigration system and criminal justice system. In New York City, CAP allows federal immigration agents to interview immigrants in Department of Corrections (DOC) custody, share DOC inmate database information with ICE, and jail immigrants for up to 48 hours after their scheduled release from DOC custody based upon non-binding "immigration detainers" for what I.C.E. calls "investigative purposes." The Secure Communities Program forces cooperation between local and immigration law enforcement agencies by automatically syncing identification and communication databases.

Those subject to detainers include undocumented immigrants, as well as lawful permanent residents and even those with valid claims for immigration relief. Unlike judicial warrants issued in the criminal context by impartial courts of law, without laws such as those currently before the New York City Council, immigration detainers are issued uniformly to all non-citizens who interact with the criminal enforcement and justice system, regardless of offense or, indeed, culpability.

Immigration detainers have severe consequences for immigrants held in jails. Detainers directly impact an individual's due process rights and can have severe collateral consequences in a person's criminal case. New York City also incurs significant costs as a result of prolonged incarceration of immigrants who could have otherwise been released from DOC custody.

The widespread use of detainers has resulted in disparate treatment of immigrants in the criminal justice system.

ICE's indiscriminate issuance of detainers has led to rapidly increasing numbers of non-citizen defendants being subjected to significantly longer periods of incarceration. For example, a detainer often affects a non-citizen's ability to be released on bail pending criminal charges. When ICE issues a detainer, courts sometimes consider the detainer an adverse factor when determining a bail amount or whether to set bail at all. This not only leads to prolonged pre-trial detention but also significantly interferes with a non-citizens defendant's ability to defend

against criminal charges. According to research conducted by Justice Strategies, a non-profit research organization, non-citizens in DOC custody with an immigration detainer spend 73 days longer in detention, on average, than individuals not subject to an immigration detainer facing similar charges.[1]

Individuals subject to a detainer are also effectively disqualified from participating in drug or alcohol treatment programs, or other jail diversion programs. Notwithstanding the fact that such programs often allow defendants an opportunity to enter treatment instead of incarceration and have been proven successful in reducing recidivism and lowering the costs to the criminal just system.

The use of detainers has led to greater numbers of immigrants being held in DOC custody for prolonged periods of time at great expense.

According to the National Immigrant Justice Center, longer detention periods mean that more local tax dollars are spent on detaining immigrants. Although the Department of Justice's State Criminal Alien Assistance Program (SCAAP) reimburses a small fraction of the costs to localities for holding some individuals, the funds are usually insufficient, and do not apply to many detained immigrants, leaving tax payers to shoulder a large portion of the added financial burden.[2] The unreimbursed cost to New York City of this prolonged detention is estimated to be in the tens of millions of dollars.[3] The practice of jailing non-citizens based upon immigration detainers also exposes local governments to significant financial liability. In some cases, inmates held under detainers longer than 48 hours have successfully obtained civil damages from the detaining authority. In 2009, an immigrant obtained a $145,000 settlement with the City of New York after being held unlawfully for more than a month on an immigration detainer.

Collaboration between local law enforcement and ICE undermines public safety.

Detainers are the keystone of programs like CAP and Secure Communities, which increasingly rely on collaboration between local law enforcement and ICE. When local law enforcement agencies, like the NYPD and Department of Corrections, collaborate with federal immigration enforcement agents, immigrant communities become fearful that any kind of interaction with the police will lead to detention and deportation. As noted by federal, state and local law enforcement officials, fear of local enforcement of immigration laws discourages members of immigrant communities from reporting crimes and cooperating in the investigation of crimes,

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[1] Aarti Shahani, "New York City Enforcement of Immigration Detainers, Preliminary Findings" Justice Strategies (Oct. 2010), *available at* http://www.justicestrategies.org/sites/default/files/JusticeStrategies-DrugDeportations-PrelimFindings_pdf.

[2] "Challenge Unjust Immigration Detainers" National Immigrant Justice Center, *available at* http://www.immigrantjustice.org/detainers#.VDqgiCldU78.

[3] National Immigrant Forum, "Immigrants Behind Bars: How, Why, and How Much?" (Mar. 2011), *available at* http://www.immigrationforum.org/images/uploads/2011/immigrants_in_local_jails.pdf.

making citizens and on-citizens alike less safe. For example, with victims of domestic abuse, only 30% of documented women report their abusers, and a staggeringly low 14% of undocumented women do the same.[4]

Secure Communities continues to contribute to record number of detentions and deportations. Despite ICE's claim that the program was designed to keep communities safe, Secure Communities has instead served as nothing more than a tool in meeting ICE's goal of deporting 400,000 immigrants per year, channeling immigrants into deportation proceedings – regardless of whether they are guilty or innocent, how serious their criminal history is, how long ago their criminal charges occurred, what kind of rehabilitation they have demonstrated, or what ties they have to the community.

It is well established that ICE misled the public about the nature of Secure Communities

In 2010, ICE stated that a locality that elected not to activate Secure Communities could notify ICE of its intention not to participate. This was confirmed in a September 2010 letter from then Secretary for Homeland Security Janet Reno to then Chairwoman of the House Judiciary Immigration Subcommittee US Representative Zoe Lofgren (D-CA). However, subsequent Freedom Of Information Act litigations revealed that ICE had intentionally misrepresented the purpose and roll-out of Secure Communities to ensure its effectiveness before localities could object and reverse their decision to participate in the program. In 2011, after New York Governor Andrew Cuomo joined Governors from Illinois and Massachusetts in rejecting the program unilaterally, ICE announced it to be mandatory and imposed it state-wide, including in New York City.

Conclusion

The expansive use of detainers has allowed DHS to vastly increase deportations at local communities' expense. Countless families have been torn apart. The trust between local police and the communities they serve has been badly damaged. And the fairness of the criminal justice system has been severely compromised. The continued and proposed amendments to the Administrative Code to limit New York City's cooperation with ICE assures that our City will continue to become a welcoming community for immigrants, where their contributions are valued and encouraged.

Respectfully,

Oriana Sanchez
Training & Legal Initiatives Associate

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[4] Radha Vishnuvajjala, *Insecure Communities: How an Immigration Enforcement Program Encourages Battered Women to stay Silent*, 32 B.C.J. & Soc. Just. (2012), http://lawdigitalcommons.bc.edu/jlsj/vol32/iss1/7.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2014-2015

October 15, 2014

The New York City Council
250 Broadway
New York, NY 10007

Re: Hearing on Civil Immigration Detainers

Dear City Council Members.

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

AILA has over 13,000 members nationwide, with more than 1,500 members in New York whose practices span the entire scope of immigration law. Because of our knowledge, experience and expertise in immigration law – including dealing with the impact and effects of "Civil Immigration Detainers" on a daily basis – we are well-positioned to discuss the Council's proposal to limit the use of detainers in New York City. Given the financial burden of immigration detainers on the City and its taxpayers, and the devastating humanitarian toll on immigrants and their families, AILA-NY is extremely pleased that the City Council is taking a stand against detainers. We fully support the City Council's effort to amend New York City's administrative code to limit the use of detainers overall cooperation with the Department of Homeland Security's immigration enforcement apparatus.

In light of a number of recent court decisions holding that federal law does not require local law enforcement to honor detainers, a growing number of cities and municipalities across the country are

refusing to cooperate with Immigration & Customs Enforcement following a foreign national's release from police or Department of Corrections custody. There are a number of legal, policy and humanitarian reasons why it is critical for New York City to stop honoring immigration detainers except in the most extreme cases.

A. Financial Considerations

Since foreign nationals subject to a detainer are released from police or Department of Corrections into ICE custody once they post bail or plead guilty, attorneys often advise them to move the case toward trial to at least have a chance at avoiding a second detention. This is vastly more costly to the City than plea bargaining, and results in unnecessary expenses and preventable court delays and backlogs. And since the federal government does not reimburse New York City for continuing to incarcerate individuals who would have otherwise been released, the City wastes precious funding detaining people already determined not to be a threat to their community. Refusing to honor most detainers will save the City a considerable amount of money, which can be better directed at supporting – rather than punishing – immigrant communities.

In addition, requiring a judicial warrant before honoring a detainer will mean that the City no longer has to rely on its own personnel and resources to determine who should be subject to a detainer; aside from the fact that this is contrary to the most fundamental principles of due process, it is also an unwarranted expenditure of local resources.

Detainer policy also has a crippling effect on our overall criminal justice system. The lodging of a detainer undermines any incentive for incarcerated criminal defendants to resolve even minor offenses within a short period of time through the payment of a fine, community service, or the acceptance of a sentence of time served – as that will just speed up their transfer to ICE custody. Similarly, it often renders the posting of criminal bail useless, as the noncitizen will often wind up in ICE custody soon after bail is posted. As a result, hundreds- if not thousands - of criminal cases are kept pending for months, and sometimes years - far longer than they otherwise would. This is a huge financial expense to the City- both in terms of litigation and incarceration costs.

LEAs are also facing (and losing) lawsuits filed by prisoners who argue that extending their incarceration on the basis of an immigration detainer violated their constitutional rights. Such lawsuits are becoming increasingly frequent, with growing success for plaintiffs. We are delighted that the City Council recognizes all these reasons for significantly limiting the use of detainers.

Furthermore, aside from the direct financial burden there are also indirect ones to be considered, most notably the loss of the economic contributions of foreign nationals who find themselves indefinitely detained after being arrested for a relatively minor offense.

It is clear that ending the prolonged detention of immigrants will save the City considerable money while helping spur New York's economic sustainability.[1] The amendments to the City's detainer

[1] A recent report by New York State Comptroller Thomas DiNapoli notes that *"In 2008, immigrants accounted for $215 billion in economic activity in New York City, which represented about 32 percent of the gross city product. Between 2000 and 2008, the number of immigrant workers in the City grew by 68 percent, their wages increased by nearly 39 percent, and*

laws are a step toward fiscal sanity, not to mention a critically important way to keep families together.

B. Humanitarian Considerations

Even more important than the severely negative effect immigration detainers have on the City's finances is the devastating human toll they create by tearing families apart. AILA-NY members witness the cruel and unjust impact of the United States' immigration system on a daily basis. We see the how the combination of overly harsh rules, inflexible policy and nonsensical laws leads to massive suffering. This is why AILA-NY firmly believes that immigration detention should only be used in the rarest of cases – for individuals who are a safety risk.[2] Immigration detention should not simply be a second punishment.

Every father or mother who is kept in prolonged detention means a child grows up without a parent. Every breadwinner who remains locked away increases the likelihood that family members will go hungry. And every additional immigration detainee means one more person on the government's intractable pipeline to deportation. There are real, human victims to DHS' overreach – who suffer the agonizing emotional, psychological and physical trauma that can last a lifetime (and which the City will likely need to address in other areas). By honoring immigration detainers, the City has played a role in destabilizing thousands of families and weakening communities, every single year.[3]

Far too many noncitizens – both longtime permanent residents and individuals without immigration status – have been swept up by an overzealous immigration enforcement system that does not see them as individuals deserving of rights and respect.[4] Like many people of color in New York City (and elsewhere), immigrants often bear the brunt of unfair police policies and practices. Their interaction with law enforcement often begins with a traffic stop or other routine incident and ends with their banishment from the only country they call home. Whether the foreign national comes to the attention of ICE through the "Secure Communities" enforcement program or DHS' Criminal Alien Program that houses ICE officers at Rikers and other jails, the end result is far

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their contribution to the gross city product rose by 61 percent. These increases all exceed comparable figures for the City's native-born workforce."

[2] We believe that the Department of Homeland Security overstates the necessity of imprisoning individuals believed to be a flight risk, as there are a number of alternatives to detention that have been proven effective (not to mention cheaper than incarceration).

[3] Between October 2011 and August 2013, ICE issued over 6,505 detainers to New York City jails. See TRAC, "ICE Detainers Issued for Facilities by Level of Most Serious Conviction," (data by state/facility), *available at* http://trac.syr.edu/immigration/reports/343/include/table3.html

[4] *"From October 2005 through December 2010, the parents of 13,521 U.S. citizen children were apprehended in New York. This data is often not obtained by the agency, so the actual number is likely much higher. The parents of at least 7,111 U.S. citizen children were deported during this same period. The parents of at least 10,208 U.S. citizen children were detained without bond. At least 7,186 New Yorkers detained by ICE had U.S. citizen children. 87% of the resolved cases of individuals with U.S. citizen children have resulted in deportation."* INSECURE COMMUNITIES, DEVASTATED FAMILIES: New Data on Immigrant Detention and Deportation Practices in New York City. NYU School of Law Immigrant Rights Clinic, Immigrant Defense Project, Families for Freedom. July 23, 2012. Available at http://familiesforfreedom.org/sites/default/files/resources/NYC%20FOIA%20Report%202012%20FINAL_1.pdf

too often the same – lives destroyed. This is both unjust and unwise, and we commend the City Council for taking important steps to ensure that routine interaction with NYPD will not lead to prolonged detention and deportation. We also welcome the ending of CAP at Rikers and the removal of all ICE personnel from that and other jails.[5]

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

> *"ICE's policies have devastating effects on families in New York City. U.S. Citizen children are forced to endure the trauma of possibly permanent separation from a parent. Parents risk losing their parental rights while in detention. The city is forced to pay millions in additional social services when families lose economic support. According to the Applied Research Center, when parents of U.S. citizen children are detained, their children can end up in the care of local child welfare departments, like New York City's Administration for Children's Services. In every case that was studied, parents detained by ICE were unable to appear at dependency hearings, even when detained in the same jurisdiction as those hearings. On top of the burdens of physical incarceration itself, ICE's 'inconsistent' policy of providing phone access to parents for a telephonic appearance causes detainees to miss important hearings vital to the maintenance of their parental rights. ICE detention on its own, even without deportation, 'can result in children moving into permanent placements and ultimately into adoption.' The study also emphasized the 'traumatic effects on both parent and child' of separation due to immigration detention."*[6]

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

Thank you.

Neena Dutta
Chapter Chair

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[5] While we do not minimize the fact that some immigrants – like some U.S. citizens – are a threat to others, we believe that it should be left to the criminal justice system to determine when they should be released from custody. And once that system has determined the punishment to be sufficient and that the individual is not a safety threat, we do not think the City should enable ICE to continue to punish the individual.

[6] INSECURE COMMUNITIES, DEVASTATED FAMILIES: New Data on Immigrant Detention and Deportation Practices in New York City.

FOR THE RECORD

centerforconstitutionalrights
on the front lines for social justice

Testimony of the Center for Constitutional Rights
Before the New York City Council Committee on Immigration
RE: Int. Nos. 486 and 487

October 15, 2014

My name is Ghita Schwarz, and on behalf of the Center for Constitutional Rights, I would like to thank the Committee on Immigration for holding this hearing and inviting us to take part. The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization committed to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. These rights and protections must extend to everyone in the country regardless of race, national origin, or immigration status.

CCR supports Int. Nos. 486 and 487, which seek to limit the application in New York City of detainers issued by Immigration and Customs Enforcement (ICE). The problems that the City Council has identified raise precisely the concerns at the core of CCR's police accountability and immigrant justice advocacy and litigation. In well-known litigation, CCR has challenged the NYPD's stop-and-frisk policy,[1] and the federal district court has ordered a joint remedial process to implement monitoring and reforms. Along with co-counsel at Cardozo Law School's Immigration Justice Clinic and our client the National Day Laborer Organizing Network, CCR recently litigated a large Freedom of Information Act (FOIA) case to uncover information and bring transparency to the federal "Secure Communities" program run by ICE, the Department of Homeland Security (DHS) and the Federal Bureau of Investigations (FBI). Together with ICE's Criminal Alien Program, the Secure Communities initiative effectively transforms local police and corrections officers into federal immigration agents by requiring local law enforcement agencies to run the fingerprints of anyone they arrest through DHS's Automated Biometric Identification System database and to notify DHS of possible hits. Once notified, ICE can issue a request to detain the individual.

There are strong legal reasons to resist these detainers. Numerous federal courts have recognized that these detainers are not requirements but rather requests for a local law enforcement agency to detain an individual on civil immigration charges. They are not

[1] *See Floyd v. City of New York*, 959 F. Supp. 2d 691 (S.D.N.Y. 2013).

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judicial warrants, and ICE does not need probable cause to issue them. As the Third Circuit Court of Appeals and several district courts have recently held, compliance by local law enforcement agencies is not mandatory.[2] To the contrary, holding individuals without probable cause can subject the municipality to liability for Fourth Amendment violations.

Further, ICE programs such as Secure Communities and CAP undermine immigrant communities' trust in law enforcement, given that an individual's contact with police can result in long-term detention and deportation. Indeed, these programs funnel hundreds of thousands of individuals throughout the country into the draconian ICE detention and removal system, characterized by harsh conditions and minimal access to attorneys. Detained individuals are often shipped to faraway detention facilities where they have little to no contact with family members. Approximately 30% of detained immigrants are held in facilities run by private for-profit prison contractors. The emotional and financial effects not only on detained immigrants, but also on families left behind, are devastating.

Many of those swept into the immigration detention system are charged with minor misdemeanors, or, in many cases, no sustainable criminal violations at all. Data released by the Department of Homeland Security on October 1, 2014, show that DHS deported 438,321 individuals in Fiscal Year 2013, the highest annual number in U.S. history. Some 198,394 of these are designated "criminal" removals, a designation that captures a wide range of so-called criminal records, including a large proportion of individuals charged with low-level traffic offenses or minor misdemeanors. A record 240,027 are designated as having no criminal record whatsoever.

Thanks to the City Council, New York City has been at the forefront of measures to limit the cruel effects of immigration detainers. When the Council passed Local Laws 982 and 989 and in 2013, New York City was among a comparatively small number of municipalities determined to resist the DHS detainer system by limiting the application of these detainers to a narrower population. Since then, numerous counties and cities across the country have passed more expansive legislation or otherwise issued policies that prohibit the detention of most individuals at ICE's request unless ICE can provide judicial warrants based on probable cause. New York City must join them. The current local laws permit law enforcement officers to accede to detainer requests issued for individuals charged with numerous non-violent crimes as well as for individuals identified as "gang members" in federal databases who have never had the chance to

[2] *See, e.g., Galarza v. Szalczyk*, 745 F. 3d 634 (3d Cir. 2014) (holding that "detainers are not mandatory" and permitting plaintiff's complaint against the county for choosing to honor a detainer to go forward).

challenge that designation. CCR strongly opposes the use of inaccurate and unchallenged information in federal databases to detain individuals on civil immigration charges. We therefore support the provisions in the bills that end the use of federal databases to detain purported gang members and also urge the City Council to apply the same scrutiny and questioning of federal databases that contain so-called terrorist watch lists.[3]

New York City, like many other cities across the country, thrives because of its immigrant communities. The Council has laudably supported limits on detention as well as expanded funding for representation of New York City immigrants who face deportation and removal. We urge the Council to continue this tradition and to limit the enforcement of unjust detainers by passing this bill. Our immigrant communities, so much a part of New York City's identity, deserve the Council's support.

Thank you for inviting the Center for Constitutional Rights to submit testimony at this hearing.

[3] As CCR has alleged in its lawsuit challenging the no-fly list, there is no accountability or uniformity in the standards by which federal agencies place individuals on terrorist watch lists. Many individuals appear to have been placed on such lists temporarily, and others remain on the list after refusing to serve as informants. *See Tanvir v. Holder*, No. 13-cv-6951, Dkt. No. 15 (First Amended Complaint) (S.D.N.Y. Apr. 22, 2014). *See also Ibrahim v. Dep't of Homeland Security*, 03-cv-0545, Notice of Compliance with Court's February 3, 2014 Order (N.D. Cal. Feb. 6, 2014) (professor placed on no-fly list because agent checked the wrong box).

Northern Manhattan
COALITION FOR IMMIGRANT RIGHTS

TESTIMONY OF NORTHERN MANHATTAN COALITION FOR IMMIGRANT RIGHTS
New York City Council Committee on Immigrant Affairs
Hon. Carlos Menchaca, Chair

Int. No. 486-DOC and Int. No. 497-PD

No. 497-PD, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department* and **Int. No. 486-DOC**, *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.*

October 15th, 2014

Good Morning. I want to thank the members of the City Council for this opportunity to speak. My name is Carlos Rodriguez and I am an active member of the Northern Manhattan Coalition for Immigrant Rights, an organization that is at the forefront of defending immigrant communities.

I am a long-time New York City resident, with a US citizen daughter and US citizen wife. I am also a chef who is a valued and hard-working employee at the restaurant I work in presently. I am very grateful that the City Council has introduced two bills that would have spared me much suffering if they had been introduced and implemented sooner.

In February of 2013 I visited a friend in a building in Washington Heights and was wrongfully arrested for trespass after an illegal stop-and-frisk by the New York City police. Even though the trespass charges were immediately dropped, ICE sent the Department of Corrections a detainer request, asking that I be held because of an old deportation order. New York City complied with this voluntary request from ICE, even though ICE did not have a warrant for me and I had no criminal convictions. The old order of deportation resulted from very poor legal assistance and advice I received from an immigration attorney years ago.

When New York City honored the detainer request from ICE, what began as a significant disruption in my life turned into a terrifying nightmare.

When I was transferred from Manhattan Detention Complex, also known as "The Tombs", to an ICE detention center in New Jersey, I lost all physical contact with my family. Because they all live in New York City and do not own a car they could not visit me. While in the custody of ICE I had no idea how long I was going to be in detention and lived in constant fear that I would be deported at any moment. Little did I know at the time of transfer that I was going to spend 8 endless months languishing in detention, not knowing when the end would be and what it would bring.

During those 8 months my family suffered tremendously. I lost my job as a chef, and my wife's income as a nursing assistant was not enough to make ends meet. My income also supported my sister and mother, and without that support they were at risk of losing their apartment. Even my former boss said that his restaurant suffered by my not being there. I had a loyal following of customers due to my cooking, and the costumers stopped coming after I no longer there.
But the worst was not knowing when, if ever, I was going to see my 2 year old daughter again. It was hard for me to understand how an arrest for simply being in a building could lead to my sitting in immigration detention for 8 months. Fortunately, thanks to the lawyers at Cardozo Law School, with the support of Northern Manhattan Coalition for Immigrant Rights, they were able to win my release from detention and they are now fighting my deportation case on appeal.

If New York City had passed both of these bills sooner I would have been released from the Department of Corrections once the trespass charges were dropped. I could've returned to my job and been with my family while fighting my deportation case. I am personally grateful that Speaker Melissa Mark-Viverito, Councilmember Carlos Menchaca, Councilmember Ydanis Rodriguez and the rest of the City Council are working to pass bills, so that people like me, in the future, will not have to suffer the same nightmare I did.

Thank you.

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TESTIMONY OF DONNA LIEBERMAN

ON BEHALF OF THE NEW YORK CIVIL LIBERTIES UNION

Before

THE NEW YORK CITY COUNCIL IMMIGRATION COMMITTEE

In Support of

Int. 486 and 487

October 15, 2014

I. Introduction

The New York Civil Liberties Union ("NYCLU") respectfully submits the following testimony in support of Intros No. 486 and 487, legislation that will put New York City at the forefront of a national movement to disentangle local law enforcement from immigration enforcement. With 50,000 members and supporters, the NYCLU is the foremost defender of civil liberties and civil rights for all New Yorkers, including immigrants, across the state. The NYCLU strongly supports this legislation, which will end the practice of unconstitutionally imprisoning people without a judicial warrant so that federal agencies can investigate them for immigration purposes.

Immigration enforcement is the responsibility of federal immigration authorities, not local law enforcement, whose job is to protect and serve all residents and visitors, regardless of immigration status. By prohibiting the NYPD and Department of Corrections ("DOC") from honoring detention requests ("detainers") and other administrative requests issued by federal

immigration agencies in the absence of a judicial warrant, New York City will join Boston, Los Angeles, and Chicago, as well more than 225 other local law enforcement agencies nationwide.[1]

This legislation also separates local New York City authorities from federal immigration enforcement by evicting Immigration and Customs Enforcement (ICE) from its office at Rikers Island, and prohibiting the Department of Correction from expending resources to enforce civil immigration laws. With the enactment of Intros No. 486 and 487, New York City will reject the role of enforcing immigration laws and will become a leader in a national movement to treat immigrants in accordance with constitutional standards, simultaneously promoting the safety and trust of New York City's immigrant communities and preserving the City's financial resources.

II. The Problem with ICE Detainers

Since the Bush administration, the federal government has aggressively implemented a series of immigration enforcement programs that rely on local law enforcement agencies to enforce federal immigration laws. ICE detainers, or "Forms I-247" are at the center of one of the largest of these programs: requests from ICE that a local law enforcement agency ("LEA") detain an individual on its behalf for up to 48 hours (plus weekends and holidays) after the LEA's legal authority has expired.

From the beginning, the NYCLU has had serious concerns about the constitutionality of this practice. Detainers can be issued without judicial oversight simply because ICE has "determined that there is reason to believe that the individual is an alien subject to removal from the United States"– far short of alleging, much less demonstrating, probable cause.[2] When a person is detained pursuant to an arrest or other lawful basis (e.g., bench warrant, parole violation), once the state no longer has a legal basis for the detention, the individual is entitled to be released. A state or local law enforcement entity that chooses to keep an individual in detention beyond that point engages in a new seizure for Fourth Amendment purposes. This new seizure must be supported by a separate showing of probable cause. To deprive a person of liberty based

[1] *See* Cindy Carcamo, "More Jails Refuse to Hold Inmates for Federal Immigration Authorities," L.A. TIMES, Oct. 4, 2014, *available at* http://www.latimes.com/nation/immigration/la-na-ff-immigration-holds-20141005-story.html

[2] Immigration Detainer– Notice of Action Form I-247, *available at* https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf (last accessed Oct. 9, 2014).

solely on an ICE detainer, unsupported by a judicial warrant, solely because the government seeks to investigate that person's immigration status, violates the Fourth Amendment, due process and fundamental principles of justice.

In addition to the constitutional concerns, ICE detainers are a financial burden, increasing the overall operating costs for local jails. Even though ICE detainers often prolong the time that individuals spend in the custody of LEAs, the federal government typically assumes "no fiscal obligation" to pay for the costs of holding individuals pursuant to detainers.[3] This includes the 48-hour period after an individual would otherwise be entitled to be released, but also indirectly during the pre-trial and sentence phases of detention. Moreover, ICE detainers can discourage judges from setting bail, and often have the devastating impact of disqualifying detainees from rehabilitation programs that would shorten or avoid detention.[4]

Finally, ICE detainers undermine the relationship between immigrants and their local government. When the NYPD becomes -- and is seen by the community as an agent of -- federal immigration enforcement, immigrant communities may understandably avoid contact, for fear of deportation. This may result in unwillingness to report when they have witnessed or been a victim of a crime.[5] When community members don't trust law enforcement, both the community and police are at increased risk.

Given this constitutional and practical context, the NYCLU supported Local Law 62 of 2011 and Local Laws 21 and 22 of 2013, laws that City Council passed that enumerated certain

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[3] *See* 8 C.F.R. § 287.7(e).The one exception 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, State Criminal Alien Assistance Program, available at https://www.bja.gov/Funding/14SCAAP_Guidelines.pdf (last visited Oct. 9, 2014).

[4] *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.").

[5] *See e.g.,* Rebecca T. Wallace, "The Terrible Toll of ICE Detainers," Jun. 6, 2014, https://www.aclu.org/blog/immigrants-rights-racial-justice/terrible-toll-ice-detainers (last visited Oct. 9, 2014).

situations in which DOC and the NYPD would decline to honor ICE detainers.[6] While not addressing the constitutional questions involved, these laws sought to limit ICE detainers and to begin to repair the damage to community trust caused by the City's assistance in federal immigration actions.

Although the city has previously refused to comply with ICE detainers in certain statutorily enumerated situations, it has nonetheless continued to enforce the vast majority of detainers. After the 2011 law established limited criteria for refusing to comply with ICE detainers, DOC reported a compliance rate of approximately 75-80%.[7] Under the 2013 law, which expanded those criteria, the DOC complied with approximately 60-65% of ICE detainers, holding an average of 200 individuals per month beyond the time when such individuals would otherwise have been released (for the three months for which data is available). Of those detained following the 2013 reforms, approximately two-thirds had no misdemeanor or felony conviction, and less than 4% had felony convictions.[8] Though ICE detainers have been touted as taking dangerous immigrants off the streets, they instead almost exclusively have been targeted at low level offenders.

III. Recent Federal Rulings on ICE Detainers

The principle that LEAs should not comply with any detainer that is not accompanied by a judicial determination of probable cause has now been upheld by multiple federal courts that have held local authorities liable for constitutional violations for holding immigrant in custody exclusively based on ICE detainers.

There is no longer any debate about whether compliance with detainers is mandatory. In March of this year, in *Galarza v. Szalczyk,* 745 F.3d 634 (3d Cir. 2014), the U.S. Court of Appeals for the Third Circuit held that ICE detainers are mere requests, a holding which ICE itself has reaffirmed.[9] As a result, courts have also ruled that a LEA may not rely on an ICE detainer to

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[6] *See* Local Law No. 62 Int. No. 656-A (2011); Local Law No. 21 Int. No. 982-A (2013); Local Law No. 22 Int. No. 989-A (2013).

[7] *See* New York City Department of Correction, SUMMARY OF DISCHARGES OF INMATES WITH FEDERAL IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) DETAINERS, http://www.nyc.gov/html/doc/html/about/ ICE_Report_2013.pdf (last visited at Oct. 9, 2014).

[8] *Id.*

[9] *See e.g.,* Immigration and Customs Enforcement, "Ice Detainers: Frequently Asked Questions," https://www.ice.gov/news/library/factsheets/detainer-faqs.htm. (last visited Oct. 9, 2014) ("An immigration detainer

shield it from liability for an individual's unlawful detention. For example, in *Galarza*, since the defendant, a Pennsylvania county, "was free to disregard the ICE detainer," the court held that it "cannot use as a defense that its own policy did not cause the deprivation of Galarza's constitutional rights."[10] For the same reason, another court recently permitted a plaintiff held on an ICE detainer to proceed with claims against the director of the Rhode Island Department of Corrections.[11]

In April 2014, the U.S. District Court for the District of Oregon, in *Miranda-Olivares v. Clackamas County*, found the county liable for damages for violating a plaintiff's constitutional rights, by holding her in the local jail beyond the time when she otherwise would have been released.[12] "Prolonged detention after a seizure, such as full custodial confinement without a warrant, must be based on probable cause," the court stated. "[I]t was not reasonable for the Jail to believe it had probable cause to detain Miranda–Olivares based on the box checked on the ICE detainer." Thus, the *Miranda-Olivares* court made clear to LEAs around the country that when they held individuals pursuant to ICE detainers, they did so at their own risk.[13]

IV. National and Statewide Reactions

In the wake of these legal decisions, in the spring of this year, LEAs across the country began refusing to comply with ICE detainers without a judicial finding of probable cause, citing constitutional concerns and the threats of civil liability. All told, more than 225 jurisdictions nationwide (including the entire state of Colorado), now refuse to comply with ICE detainers if

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serves three key functions: 1) to notify an LEA that ICE intends to assume custody of an alien in the LEA's custody once the alien is no longer subject to the LEA's detention; 2) to request information from an LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA's custody; and 3) to request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody." (emphasis added).

[10] Galarza, 745 F.3d at 645.

[11] *See* Morales v. Chadbourne, 2014 WL 554478 (D.R.I. Feb. 12, 2014).

[12] Miranda-Olivares v. Clackamas County, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014).

[13] On October 1, 2014, the Northern District of Illinois also granted class certification in a federal class action lawsuit challenging the federal government's use of detainers to hold immigrants in the custody of LEAs. The class certification grant could affect all detainers originating from the Chicago ICE field office, which issues detainers against individuals in 30 states. *See* Jimenez Moreno et al v. Napolitano et al., 11-cv-05452 (N.D. Ill). *See also* Press Release, National Immigrant Justice Center, "Federal Court Certifies Class Action Challenging Immigration Detainers," Oct. 1, 2014, *available at* http://www.immigrantjustice.org/press_releases/federal-court-certifies-class-action-challenging-immigration-detainers.

they are not accompanied by a judicial warrant.[14] As noted in *The Los Angeles Times*, this has affected the entire landscape of immigration enforcement: "These 'holds' created a pipeline for the deportation of thousands of people from the United States in the last decade. Now, that enforcement tool is crumbling."[15] This is of the utmost importance in a city like New York, with large and vibrant immigrant communities, and a reputation as a "sanctuary city."

Meanwhile, in New York State, local law enforcement agencies are increasingly abandoning the practice of complying with detainers. In May of this year, the NYCLU wrote to the New York State Sheriff's Association and to every sheriff in the state, advising them that honoring ICE detainers without judicial warrants was illegal and opened them up to potential liability. Citing the NYCLU's correspondence, the Sheriffs' Association recommended to its members in June that detainees no longer be held in custody solely due to an ICE detainer: "jail inmates who are held in custody solely by virtue of an ICE detainer are being held illegally, in violation of their 4th Amendment rights protecting them from unreasonable searches and seizures," the Association wrote. "Furthermore, since ICE detainers are requests that are not legally binding, counties and Sheriffs can be held liable for complying with them and holding an inmate for longer than they would otherwise be authorized to do."[16]

Currently at least 40 of the 57 counties in the state, outside of the five boroughs, have taken the advice of the NYCLU and the New York State Sheriff's Association and now refuse to honor ICE detainers unless they are accompanied by judicial warrants.[17] With the passage of Intros No. 486 and 487, New York City will join the vast majority of New York State counties, by

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[14] *See* Carcamo, *supra* note 1. *See also* Press Release, The American Civil Liberties Union, "All Colorado Jails Now Reject Federal Immigration Detainers," Sept. 18, 2014, *available at* https://www.aclu.org/immigrants-rights-prisoners-rights/all-colorado-jails-now-reject-federal-immigration-detainers.

[15] *Id.*

[16] The New York Civil Liberties Union, "NY Sheriffs Stop Unlawfully Jailing Immigrants Thanks to NYCLU Advocacy," Oct. 9, 2014, *available at* http://www.nyclu.org/news/ny-sheriffs-stop-unlawfully-jailing-immigrants-thanks-nyclu-advocacy. *See also* Kirk Semple, New York State Sheriffs Shying Away From Immigration Detention," THE N.Y. TIMES, Jul. 30, 2014, *available at* http://www.nytimes.com/2014/07/31/nyregion/new-york-state-sheriffs-shying-away-from-immigration-detention-.html?_r=0.

[17] *See* NYCLU Phone Conversations with New York State Sheriffs, June-September 2014.

having both the NYPD and the DOC refuse to honor ICE detainers unless they are accompanied with a judicial warrant.[18]

V. ICE on Rikers Island

With these bills, New York City is also on the verge of changing its entire relationship with immigration enforcement by finally limiting ICE agents' access to the facilities on Rikers Island. In particular, under Int. 486, DOC personnel will no longer spend any time or resources disclosing information about detainees' incarceration status, release dates, or court appearance dates to federal immigration authorities, nor will it allow ICE officials to maintain a physical presence at the jail.[19]

This is a landmark step, given that since at least 2003, the DOC has allowed ICE to maintain a presence on Rikers Island through the "Criminal Alien Program" ("CAP"). At Rikers Island, ICE has maintained a physical office staffed by agents, who hold daily interviews with detainees whom ICE suspects are undocumented immigrants, or documented immigrants who may become eligible for deportation because of the criminal offense with which they are charged. Under CAP, ICE officers have been given access to lists of inmates and often select those who are foreign-born or who have Latino-sounding last names for interview. CAP, and not the detainer system, is still the primary program under which individuals in the criminal justice system are identified for removal.[20]

Under CAP, ICE officers have been known to threaten detainees with indefinite detention or permanent expulsion if they don't sign forms for voluntary departure.[21] With deportations at an all-time high, the physical presence of and cooperation with ICE through CAP sends the message

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[18] Intro No. 487 has one exception for the NYPD: it may honor a detainer if the detainee "A. has been convicted of a serious or violent crime, or is identified as a possible match in the terrorist screening database, and B. has previously been deported." Intro No. 487 §6(2)(i)(2)(A)-(B).

[19] Intro No. 486 includes a few exceptions to this rule: communication or response to ICE can occur if it "(i) relates to a person convicted of a violent or serious crime or identified as a possible match in the terrorist screening database; (ii) is unrelated to the enforcement of civil immigration laws; or (iii) is otherwise required by law." And immigration officials can maintain a physical presence on Riker's Island only to the extent that "the mayor may, by executive order, authorize federal immigration authorities to maintain an office or quarters on such land for purposes unrelated to the enforcement of civil immigration laws. See Intro No. 486, § 4(h)(1)-(2).

[20] Immigrant Legal Resource Center, CAP ADVOCACY GUIDE, *available at* http://www.ilrc.org/files/documents/cap_advocacy_guide.pdf (last accessed Oct. 9, 2014).

[21] *Id.*

that local law enforcement is aligned with ICE and should not be trusted. Ending DOC's special partnership through CAP should reduce the incidence of abuse and the City's complicity in those abuses.

VI. Conclusion and Next Steps

The NYCLU commends City Council for its leadership on Intros. No. 486 and 487: with these bills, New York City will end the double standard that had resulted in the unlawful detention of too many New York City immigrants for too long, and establish a groundbreaking new model for LEAs across the country by refusing to allow ICE to enjoy special access to local resources or facilities.[22]

As New York City becomes a leader in this nationwide movement for reform, the Council should continue to monitor and review both its implementation and federal immigration policies and practices. Moving forward, the Council may need to adopt further measures that become necessary to ensure the fair and respectful treatment of immigrant New Yorkers and foster an atmosphere of trust between immigrant communities and the police.[23]

We thank the Council for providing this opportunity to share our strong endorsement of Intros. No. 486 and 487. The NYCLU looks forward working with the Council in an ongoing effort to maintain our identity as a sanctuary city. We applaud the city for addressing the most fundamental issues at hand: community trust, public safety, and respect for the constitutional rights of all New Yorkers.

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[22] *See* Carcamo, *supra* note 1.

[23] The City Council should review the detainer policies and practices of all other city agencies that might be asked to hold an individual based solely on an ICE request. Department of Probation (DOP) officials have recently informed advocates that it has stopped honoring ICE requests, though it did honor those requests in the past. Temporarily detaining a probationer until ICE arrives to pick them up constitutes a new seizure, which must be justified by a new probable cause finding, and an internal ICE administrative warrant that is not signed by a judge does not meet the probable cause requirement.

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Testimony of
Hispanic Federation

Submitted by
Jessica Orozco, Esq.
Director of Immigration and Civic Engagement

Before the New York City Council
Committee on Immigration

October 15, 2014

Speaker Mark-Viverito, Chairman Menchaca, Councilmember Dromm and Members of the Committee on Immigration:

My name is Jessica Orozco, Director of Immigration and Civic Engagement for Hispanic Federation. Hispanic Federation is the premier Latino membership organization in the nation founded to address the many inequities confronting Latinos and the nonprofits that serve them. For more than 20 years, Hispanic Federation has provided grants, administered human services and coordinated advocacy for our broad network of agencies that serve more than 2 million Latinos in areas of health, education, economic empowerment, immigration and civic engagement.

To begin, I wish to thank you for the opportunity to testify today. Before you are several pieces of proposed legislation restricting the conditions under which local law enforcement complies with immigration detainers. Specifically, local law enforcement would only be permitted to honor immigration detainers if accompanied by a warrant from a federal judge, and also only if the individual has not been convicted of a "violent or serious" crime during the last five years or was listed on a terrorist database. Federal law does not require that local law enforcement comply with an immigration request to hold persons beyond the time when they are otherwise eligible for release. As such, we ask you to support Int. No. 0486-2014 and Int. No. 0487-2014.

Summary

An immigration detainer (also known as an "ICE hold" or an "ICE detainer") is a notice issued by Immigration and Customs Enforcement ("ICE") to a state or local law enforcement agency or detention facility. The purpose of an immigration detainer is to notify the agency that ICE is interested in a person in the agency's custody, and to request that the agency hold that person for up to 48 hours, excluding weekends and federal holidays, after the person is otherwise entitled to be released from the criminal justice system, giving ICE extra time to decide whether to take the person into federal custody for administrative proceedings in immigration court. Despite statements made by the Department of Homeland Security ("DHS") to enforce immigration laws

in a targeted manner that prioritizes those who present serious threats to public safety and our nation's security, immigration detainers issued by ICE can be and have been issued on individuals never actually charged with or convicted of a crime.

DHS Initiated Removal Proceedings Against Many Who Presented no Threat to Public Safety or National Security

In just the past two years, ICE has issued nearly half a million requests for state and local police to hold people in jail, without a warrant or the guarantee of a prompt hearing.[1] Of those, 14,584 immigration detainers were issued in New York. Many of these individuals – at least 50 percent nationally and 48 percent in New York - pose no danger to the community and have never been convicted of a crime in their lives. Yet, counties and cities continue to spend millions of their tax dollars to comply with the federal government's request to incarcerate people who are not public threats.

Research by government and nongovernment organizations demonstrate that the immigration enforcement system is not acting pursuant to defined priorities by DHS. With the lives of so many individuals and their families at stake, as well as the broader impact on the community, Hispanic Federation supports state and local efforts to push back against civil immigration detainers issued by ICE.

State and Local Involvement in Immigration Enforcement Undermines Immigrant Communities' Trust in Local Law Enforcement and Community Safety

Law enforcement officials, mayors and governors across the state and the country have expressed concern that when local law enforcement agencies are involved in immigration enforcement, immigrants will avoid coming forward to seek protection, report crimes, and cooperate in investigations out of fear that any contact with local law enforcement will result in their deportation or that of others. Everyone in the community is less safe when people are afraid to report crimes or suspicious activity. Because immigration detainers undermine community trust in local law enforcement, Hispanic Federation supports the proposed legislation.

Detainers Incur Costly Expenses to Counties and Cities

Immigration detainers impose substantial cost on local communities that are not reimbursed by the federal government. By prolonging detention for people who are otherwise eligible for release, detainers raise the cost of incarceration for local facilities. For example, in Los Angeles County, a study estimated that the "Los Angeles County taxpayers spend over $26 million per year to detain immigrants for ICE."[2] In addition, local enforcement agencies that honor immigration detainers risk legal costs defending detainer-related lawsuits, which are becoming increasingly frequent with increase success for plaintiffs.

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[1] *See* TRAC Immigration, "Targeting of ICE Detainers Varies Widely by State and by Facility," available at http://trac.syr.edu/immigration/reports/343/.

[2] *See* Justice Strategies, "The Cost of Responding to Immigration Detainers in California," available at http://www.justicestrategies.org/sites/default/files/publications/Justice%20Strategies%20LA%20CA%20Detainer%20Cost%20Report.pdf.

Conclusion

With this proposed legislation, New York will demonstrate respect for civil rights, increase public safety and restore local government control. Hispanic Federation commends the New York City Council and the Committee on Immigration for taking a step in the right direction and urges the Mayor and the City Council to safeguard the rights and safety of New Yorkers by adopting a broad policy prohibiting New York agencies from imprisoning anyone based solely on and ICE detainer request.

32BJ SEIU
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Testimony of Lenore Friedlaender

Assistant to the President, 32BJ SEIU
October 15, 2014
In Support of Intro 486 & Intro 487
New York City detainer policies

Good morning Speaker Mark-Viverito and Councilmembers. My name is Lenore Friedlaender, and I am the Assistant to the President at SEIU 32BJ. 32BJ represents 145,000 building service workers along the East coast. Our union includes the full breadth of America today. 32BJ members come from 64 different countries, speak 28 different languages, and represent a microcosm of immigrants as well as families with long histories in the U.S. We all share the American Dream, a commitment to making life better for working families, and a fundamental respect for the dignity of all people.

On behalf of my union, I am here to express my support for Intro 486 and 487, both of which would go a much needed step further to ensure that local law enforcement resources are not misspent on immigration enforcement activities that target working people, undermine community safety and violate individuals' Fourth Amendment rights.

I commend Speaker Mark-Viverito for championing detainer policies in 2011 and 2013 that limited the city's participation in the misguided federal Secure Communities. However, even with limited participation, the Department of Corrections has complied with 3,047 detainer requests between October 2012 and September 2013.[i] The program is supposed to target individuals with serious criminal convictions, yet more than 75% of the individuals deported had not committed a serious offense and many had no prior criminal record at all![ii]

Behind these statistics is an even grimmer picture. These numbers tell the story of families torn apart by detentions and deportation; of immigrant communities where crimes, like domestic violence, go unreported and where those who do report a crime risk being detained and deported. It also tells the story of workers whose rights are being violated, but are forced into silence by a boss who threatens to reveal their immigration status to local law enforcement.

I would like to elaborate on this last point and really highlight why this bill is important for workers. Immigration status does not impact workers' legal right to organize, join a union or otherwise enforce their workplace rights. In fact, 32BJ has run successful organizing campaigns involving immigrant and non-immigrant workers standing shoulder-to-shoulder to improve their workplace conditions. However, bad-actor employers often use threats of immigration enforcement to intimidate workers who are organizing or enforcing their rights.

The case of a Long Island resident underscores just how real and close to home this threat is. This individual was a Laundromat worker, a leader in an organizing campaign, and the named plaintiff in a bitter dispute with his employer. The employer called the police on him on bizarre charges that appear to have been trumped up by the employer in an effort to chill organizing efforts. All charges against him were dismissed, but it was too late. He was already identified by ICE and taken into federal custody. He is currently facing deportation and may soon be separated from his wife and child. His case shows us that when local police and corrections officers are involved in immigration enforcement it threatens workers efforts to enforce their rights on the job.

That is why the bills before you today are so important. They will go a long way towards protecting the rights and safety of NYC residents and ensure better use of scarce resources. They reflect some of the most progressive and legally up-to-date efforts by cities to put their residents' rights first and to push back against misguided and inhumane enforcement practices. Moreover, they are an example to other localities and New York State about what can and must be done to make New York home to our immigrant communities. Cities and states cannot wait for the gridlock in Congress to pass. We must act now and do what is within our power to make New York inclusive and safe.

For these reasons, I urge you to support and pass Intro 486 and Intro 487. Thank you.

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[i] http://www.capitalnewyork.com/article/city-hall/2014/10/8553776/mark-viverito-bids-reduce-city-role-immigration-enforcement

[ii] http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf

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Testimony of the Immigrant Defense Project before the New York City Council Committee on Immigration, in support of Introduction 0487-2014

Alisa Wellek

October 15, 2014

My name is Alisa Wellek. I am the Co-Executive Director of the Immigrant Defense Project.

The Immigrant Defense Project applauds Speaker Mark-Viverito, Chairman Menchaca, and others in the City Council for their continued leadership in protecting New York City residents from mass deportation programs that tear apart families, waste City resources, erode community trust and public safety, and perpetuate systems that deny equal justice and due process to all New Yorkers.

The Immigrant Defense Project works towards fundamental fairness for all immigrants. We seek to minimize the harsh and disproportionate immigration consequences of contact with the criminal justice system, both locally and nationally. We do this by serving as a legal resource and training center for immigrants, advocates, and attorneys; engaging in impact litigation and policy advocacy; and building capacity of community-based organizations through outreach and education. As part of this work, we run a hotline that receives over 2000 calls per year, mainly from NYC residents facing deportation or their attorneys. Along with Families for Freedom, we also conduct Know Your Rights trainings for noncitizens on Rikers Island. Lastly, we serve as a convener of different advocates and legal service providers who care about these issues– including a roundtable of immigration attorneys at all the public defender offices in the City as well as a group working to end domestic violence, human trafficking, and violence against LGBTQ communities.

Our mission and experiences have long made us passionate about ending ICE's use of the criminal justice system to detain and deport immigrants. I hope my testimony will provide a little more context for the immigration landscape in which the Council is considering these bills.

You have heard compelling stories of those who will be most impacted by this bill. Unfortunately, at IDP we hear stories like these every day. They are stories of lawful permanent residents, asylum seekers, and undocumented people who have often lived in the country for decades and are now facing permanent exile and separation from their families. Few other legal systems, criminal or civil, are as rigid or mechanical as our current immigration laws. An offense that disqualifies someone from getting legal status or from keeping their legal status lasts forever, even if it was a mistake that occurred

years ago. By vastly expanding the number of crimes that can trigger deportation and making deportation a mandatory minimum for a wide range of offenses, these punitive immigration laws not only impose punishments often disproportionate to any criminal sentence, but deny people their fair day in court. Noncitizens who get ensnarled in the criminal justice system -- one that disproportionately targets and convicts people of color -- face double jeopardy: they serve a sentence, and then, with few exceptions, get deported without an opportunity for a judge to consider any other aspect of their lives, such as how long they've been in the county, whether they're a veteran, or whether they have U.S. citizen children. The coupling of these laws with an increasingly massive and brutal deportation machine has resulted in untold devastation for New York residents.

We should not take for granted that this is what immigration policy needs to look like at the federal or local level. In fact, the federal government's mass detention and deportation programs are relatively new in our history. More people have been deported in the last 15 years alone than the last 150 years combined. We know from FOIA lawsuits that ICE now essentially has a de facto quota of deporting 400,000 people per year. They require 34,000 detention beds to be filled by immigrants on any given day. Immigration enforcement is funded at over 18 billion dollars, more than all other federal law enforcement combined. This scale of detention and deportation is unprecedented and the means by which ICE is going about it results in unequal access to justice for noncitizen New Yorkers at every stage of their criminal case.

If the City Council passes these bills, thousands of immigrant New Yorkers will have increased access to justice and a better chance at avoiding this black hole that is our current immigration system. ICE's tactics are always evolving though. When IDP starting working with the ICE out of Rikers Coalition over five years ago, ICE officials were interviewing immigrants on Rikers Island to get information that could be used against them in immigration court without identifying themselves as ICE agents. In fact, they called these "legal visits" so people actually thought they were meeting with their lawyer and many signed away their rights in a language they didn't understand. Through advocacy with the Department of Correction and the help of many of you, we were able to end some of these wrongful practices.

However, likely in response to the nationwide backlash against ICE's use of warrantless detainers in jails, we are documenting new egregious ICE practices every day – including middle of the night coercive home raids, courthouse arrests, and targeting of immigrants in homeless shelters. The provisions of these bills that remove ICE offices from Rikers and limit City resources from assisting in federal immigration enforcement will provide significant protections for many immigrants. Likewise, ensuring that no one will be handed over to ICE from DOC without a judicial warrant will thwart ICE's current unconstitutional practices of seeking warrantless arrests. We commit to keeping the City Council informed of ICE's evolving tactics and encourage the passage of this and other legislation that will protect all immigrant New Yorkers to the fullest extent possible under the law. Thank you all again for your leadership on this important issue.

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Testimony of the Benjamin N. Cardozo School of Law's
Kathryn O. Greenberg Immigration Justice Clinic
Before the New York City Council Committee on Immigration,
In Support of Introduction Nos. 0486-2014 and 0487-2014
Jenny Alcaide
October 15, 2014

Thank you Speaker Mark-Viverito, Chairman Menchaca, and thank you to the rest of the committee for the opportunity to speak today. I would like to thank all of you for your serious consideration of this legislation.

My name is Jenny Alcaide. I'm here today on behalf of the Kathryn O. Greenberg Immigration Justice Clinic, from the Cardozo School of Law, here in Manhattan. The clinic was founded in 2008 to provide pro bono legal representation to indigent immigrants facing deportation and to provide legal support to community based organizations, like Make the Road New York, which are engaged in public advocacy, media, and litigation efforts on behalf of immigrant communities.

My testimony will first provide a brief background and history of the legislation. Second, I will discuss the improvements that the new bills under consideration would make to the city's current detainer discretion laws, as well as what makes the new bills so necessary.

Immigration detainers (or "holds") are the primary mechanism by which thousands of New Yorkers are funneled into immigration detention each year. Detainers are merely pieces of paper, drafted by low-level federal Immigration and Customs Enforcement ("ICE") officials. Detainers are requests to local law enforcement agencies to hold people whom they already have in their custody for up to 48 additional hours, beyond the time they would otherwise be released, so that the immigration authorities may place the individuals into immigration detention to face deportation.

You've already heard from affected individuals and from representatives of immigrant communities about the devastating harms detainers cause to our city's immigrant communities. You've heard (and will hear more) about how detainers destroy trust between immigrant communities and law enforcement and thereby undermine public safety and weaken community-policing efforts. But in 2009, when our clinic started working with Make the Road New York on this issue, it was practice in New York City, as it was it every jurisdiction across the nation, to comply with any and all detainer requests from ICE, regardless of the harms visited on our City. As a result, New York City was participating in the deportation of approximately 3,000 to 4,000 of its own residents every year. Working with Make the Road New York, and a Councilwoman

from East Harlem named Melissa Mark-Viverito—the first elected official in the nation to identify and push for legislation on this issue—we developed the concept of "detainer discretion."

Detainer discretion is simply a concept. It recognizes that the federal government has not, and could not, compel our city, or any locality or state, to participate in its massive and brutal deportation programs. For years, local criminal justice agencies wrongly assumed they were obligated to honor immigration detainers. But they aren't. Our federalist system of government guarantees that New York City can decide when, if ever, it is in our local interest to participate in the deportation of one of our own residents. It is now generally accepted, and ICE itself concedes, that the federal government may not force localities to comply with detainers.

In 2011, as the coalition of organizations advocating for detainer discretion expanded, New York City became one of the first jurisdictions in the nation to enact a detainer discretion law. The City refused to transfer certain immigrants into the broken federal immigration system. After ICE activated its controversial program called Secure Communities here, the City responded in February 2013 by expanding its detainer discretion policy even further. New York City's forward-thinking policy, and Speaker Mark-Viverito's leadership, helped catalyze a national movement. Today over 250 jurisdictions nationwide have detainer discretion policies, including the states of California and Connecticut, major jurisdictions such as Chicago, San Francisco, Philadelphia, Miami, New Orleans, Washington D.C., and many others. But it all started in New York City with the Speaker and the advocates before you today.

While substantial success was achieved with the passage of the local laws in 2011 and 2013, those bills still left many people unprotected against the issuance of immigration detainers. ICE would continue to make detainer requests with no regard to its own enforcement priorities nor to the family and community ties of each individual. By our estimates, we have spared approximately 3,000 New Yorkers and their families from deportation, but our work, and Speaker Mark-Viverito's work, was not done. The political realities of working with the prior administration meant that the majority of detainers are still being honored and New York City continues to participate in the deportation of thousands of its own residents each year. Now working with Mayor de Blasio, a mayor who understands the grave harms the deportation programs have caused our city, with these bills, we are improving public safety, keeping families intact, and preventing racial profiling and violations of due process.

So how do the proposed bills improve on the City's current detainer discretion laws? The first substantial improvement relates to the requirement of a judicial warrant. Under the previous bill, the City still honored ICE's detainer requests even though ICE issues them without regard to whether they meet the Fourth Amendment's requirement of probable cause. Yet the City cannot continue to hold an individual who would otherwise be released if it does not comply with the Fourth Amendment to the Constitution. This raised a significant concern. Several recent court decisions, including one from the Third Circuit, confirmed that detainers are voluntary requests that do not, on their own, provide sufficient authority for arrest or detention, and that local jurisdictions may be held liable for holding individuals in custody without probable cause. In the latest decision out of Oregon, *Miranda-Olivares v. Clackamas County*, a federal district court held that the county was liable for violating the plaintiff's Fourth Amendment rights by

extending her detention only because of an ICE detainer request. New York City has faced similar litigation in the past. For example, in 2009, the City paid $145,000 to settle a civil rights case brought by a Lawful Permanent Resident held in custody due to a detainer.

It is now well established that detainers are voluntary requests and detainers alone do not demonstrate that there is probable cause, required by the Constitution, to hold an individual. Therefore, the new bills require ICE to provide a judicial warrant before the City will honor a detainer request. By not honoring detainers that are not based on judicial warrants, the City protects itself from substantial exposure to litigation and ensures that individuals are not wrongfully sent into immigration detention.

The second significant improvement contained in these new bills relates to the categories of people New York City will hold for deportation. These bills recognize that it is not in the City's best interests to hand over anyone for deportation unless that person poses a significant and current threat to public safety. That is why the new bill permits the City to hold a person on a detainer only if she has been convicted of a serious or violent felony within the last five years, or if she is on the terrorist watch list. Knowing that only people convicted of serious crimes will be transferred to immigration authorities will significantly reduce the fear immigrants often feel in approaching police officers as victims and witnesses of crimes. By increasing cooperation, we will make law enforcement's job easier and will make us all safer.

The final significant improvement relates to ICE's physical presence on Riker's Island. For decades, ICE has operated a permanent office, rent free, on Rikers Island. ICE's physical presence within the Department of Corrections has eroded community trust. In response, the new bill prohibits federal immigration authorities from keeping an office on DOC property. Federal authorities will not be able to use DOC's facilities and resources for the purposes of investigating potential violations of civil immigration law, other than for that limited category of individuals not protected by these bills.

The City does not have the power to rewrite federal immigration law, but we can choose for ourselves when it is, and when it is not, in the City's interest to participate in the broken federal deportation machine. This bill will position New York City, once again, as the jurisdiction leading the way towards protecting the constitutional rights of its residents, building trust with immigrant communities and making us all safer.

Remarks of Robert M. Morgenthau
Regarding Bills Addressing ICE Detainers
October 15, 2014

Thank you, Madame Speaker. I am Robert Morgenthau, former district attorney of New York County, former United States Attorney for the Southern District of New York and of-counsel at the law firm Wachtell, Lipton, Rosen & Katz. I appreciate the opportunity to testify in favor of this important legislation.

The City Council should be congratulated on setting a national precedent by tackling this serious issue. I take great pride in the fact that our City and this Council have long recognized that we should not be in the business of helping the U.S. Department of Homeland Security detain and deport immigrants whose greatest crimes are minor misdemeanors or traffic violations. The current law already prohibits the police and corrections officials from honoring federal immigration detainers unless the target individual is either charged with or has been convicted of a felony or serious misdemeanor, or appears on a terror watch list.

However, a criminal charge is not the same thing as a conviction. According to statistics from the Office of Court Administration, 40% of people arrested in the City eventually have their cases dismissed. The City should not be handing over immigrants who have had criminal charges against them dropped or dismissed. In addition, a wide range of offenses qualify as "felonies" under Homeland Security's broad definition. The City must draw its own clear lines about what crimes are serious enough to justify detainers and eventual deportation.

This legislation is the necessary and logical next step. By limiting the City's enforcement of federal immigration detainers to convicted violent felons and threats to national security, these bills would safeguard our City and our country while also protecting the rights of immigrants who came to this country seeking a better life and the American dream.

Throughout the Obama administration, the federal government has been too aggressive in deporting people for minor violations. President Obama has repeatedly promised to deport only "criminals" and "gangbangers," but he has not followed through.

Out of the 370,000 immigrants deported last year, a mere 12% had been convicted of a crime that Immigration and Customs Enforcement ("ICE") considers to be serious. In fact, an analysis by the not-for-profit Syracuse University policy group TRAC found that over 100,000 people were deported in 2013 for either minor traffic violations or illegal entry, which is a petty misdemeanor. More than 150,000 people deported last year had no criminal conviction at all.

To achieve these deportation numbers, the federal government piggybacks off of arrests made by local and state authorities. Under a mandatory federal program called "Secure Communities," local law enforcement submits the fingerprints of people they arrest to a FBI database and the FBI automatically sends those fingerprints to Homeland Security. ICE then looks for non-citizens who can be deported for immigration or criminal violations. Through this program, ICE has already reviewed 32 million fingerprint records. New York State tried to opt out of Secure Communities in 2012 but was denied.

Once it identifies removable immigrants, ICE issues detainers, which are requests to keep people in jail after their local charges have been satisfied (either by dismissal or sentence-served) so that Homeland Security has time to transfer them directly into federal custody. Those detainers are not limited to violent felons or terrorists. Instead, Homeland Security uses a definition of "convicted criminal" that is so broad it includes anyone who gets a speeding ticket and pays his fine. As a result, the City has previously turned over to ICE immigrants who were arrested for sleeping on the subway or drinking in public.

Even worse, Homeland Security sometimes issues detainers against immigrants who have no criminal conviction at all. That is because the City has to submit a person's fingerprints at the time of arrest. Even if an immigrant is eventually never charged with a crime or is found not guilty, his fingerprints will already be in the database. It is likely that a significant proportion of the 32 million people reviewed by ICE do not have a criminal conviction, and there is no process or provision for purging people's records after charges have been dismissed.

The City has a moral obligation to do everything it can to prevent its residents from being deported for trivial offenses. If the City blindly agrees to Homeland Security's detainers, our immigrant communities will not trust or cooperate with law enforcement.

As I mentioned, City law already blocks detainers except those issued against immigrants charged with or convicted of a felony or serious misdemeanor. But local law enforcement may still be enforcing detainers against immigrants who were charged but were never convicted of any crimes. Furthermore, the "felony" category is broadly interpreted by Homeland Security and includes offenses that are not violent or otherwise egregious. Lawyers I have talked to estimate that the current law blocks only one-third of all detainers.

These bills close the gaps in the current law and ensure that the City only enforces detainers against immigrants who have been found guilty of certain serious or violent felonies, or who appear on terrorism watch lists. The bills define which crimes qualify as "serious or violent" felonies. The bills also provide an additional layer of protection for New York City immigrants with the requirement that Homeland Security obtain arrest warrants from a federal court. This legislation will guarantee that immigrants arrested for minor offenses will not be turned over to Homeland Security for deportation. At the same time, it will allow local law enforcement to continue to work with Homeland Security to remove dangerous immigrants from our community. I urge the City Council to pass these bills.

I would also like to take this opportunity to ask this Council to consider additional legislation to bar Homeland Security from keeping a mobile base at Rikers Island and from entering City prisons and jails. Prison officials regularly furnish immigration agents with the names of all inmates who indicate on their questionnaires that they were born overseas. No other federal law enforcement agency camps out at Rikers. Psychologically, the on-site presence of immigration agents instills fear and paranoia among immigrants held at Rikers. Practically, being on-hand gives agents the opportunity to interview immigrants in the absence of counsel. We have to get federal immigration agents out of Rikers and other local jails and prisons.

TESTIMONY

The Council of the City of New York

Committee on Immigration

Int. 486
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

Int. 487
A Local Law to Amend the Administrative Code
Of the City of New York, in Relation to Persons
Not to be Detained by the Police Department

October 15, 2014
New York, New York

The Legal Aid Society
199 Water Street
New York, NY 10038

Presented by: Cynthia Conti-Cook, Attorney
Criminal Practice Special Litigation Unit

Good morning. I am Cynthia Conti-Cook, an attorney with The Legal Aid Society's Criminal Practice Special Litigation Unit. I submit this testimony on behalf of The Legal Aid Society, and thank Speaker Melissa Mark-Viverito, Chairperson Menchaca and the sponsors of the two legislative proposals for inviting our thoughts on the issue of the detention of persons held on administrative warrants from United States Immigration and Customs Enforcement ("ICE detainers").

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is an indispensable component of the legal, social and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of criminal, civil and juvenile rights matters, while also fighting for legal reform. The Society has performed this role in City, State and federal courts since 1876. With its annual caseload of more than 300,000 legal matters, the Society takes on more cases for more clients than any other legal services organization in the United States, and it brings a depth and breadth of perspective that is unmatched in the legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Society accomplishes this with a full-time staff of nearly 1,900, including more than 1,100 lawyers working with over 700 social workers, investigators, paralegals and support and administrative staff through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City. The Legal Aid Society operates three major practices — Criminal Defense, Civil and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program.

The Society's Criminal Defense Practice is the primary public defender in the City of New York. During the last year, our Criminal Defense Practice handled nearly 230,000 trial, appellate, and post-conviction cases for clients accused of unlawful and criminal conduct. It is in the context of this practice that many of our lawyers represent persons who have civil administrative immigration detainers filed against them. The impact of the proposed legislative initiatives will largely be determined by whether they are able to operate effectively in the high volume criminal courts of our City.

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; consumer law; education law; community development opportunities to help clients move out of poverty; prisoners' rights, and reentry and reintegration matters for clients returning to the community from correctional facilities.

Since the 1980's the Society has operated an Immigration Law Unit (ILU) which is nationally recognized, and provides low-income New Yorkers with free, comprehensive, and high caliber immigration services ranging from deportation defense to adjustment of status to legal permanent residence and citizenship applications. The Unit specializes in the intersection between immigration and criminal law. In addition to comprehensive immigration representation, the Unit works collaboratively with all of the Society's practice areas to serve our diverse immigrant clients through an integrated service model, providing clients assistance with public benefits, heath care and family

law, employment and tax matters, and other issues faced by low-wage earners. Unit staff represents immigrants before U.S. Citizenship and Immigration Services (USCIS), immigration judges in removal proceedings, and the Board of Immigration Appeals, as well as in family courts in ten counties and in federal court on habeas corpus petitions and petitions for review. In addition, the Unit has long partnered with the Criminal Defense Practice to provide accurate legal advice to non-citizen clients regarding the immigration consequences of arrests and convictions. In 2013, the Unit provided direct legal representation and/or comprehensive advice in over 4,000 client matters.

Because of the breadth of The Legal Aid Society's representation, we are uniquely positioned to address the issue before you today. Our perspective comes from our daily contact with people who are detained by the New York City Police Department and the New York City Department of Correction on civil administrative immigration detainers.

The Impact of ICE Detainers

For over ten years, the lodging of ICE detainers has become a persistent and prevalent issue in the representation of non-citizen New Yorkers in criminal court. The prevalence of this issue has only increased since the initiation of the Department of Homeland Security's Secure Communities Program in New York in 2012. As a result, Legal Aid Society defenders frequently find that ICE detainers are lodged against non-citizen New Yorkers in arraignments, thus creating an impediment to the client's release and to the resolution of the criminal case. Many of the individuals who have been subject to these detainers have no prior criminal record and are before the court for a non-

criminal offense. The presence of a detainer effectively prevents the resolution of the criminal case at arraignments as our defenders investigate the eligibility of the client for release. Because some of the New York City detainer law's eligibility requirements are impossible to determine during arraignments, defenders frequently have to request that bail be set and that the client be committed to the custody of the New York City Department of Correction, even in non-criminal matters.

Over the past year or so, Federal Courts and various Attorneys General nationwide have re-examined: first, whether state and local authorities are obligated to cooperate with ICE regarding detainers; and second, whether it is even legal for local authorities to hold a non-citizen solely because of a civil immigration detainer. In response to these legal developments, this past summer attorneys in our Criminal Defense Practice, Sabina Khan and Elysia Fedorczyk, first in Queens and then city-wide, began to file writs of habeas corpus challenging the right of the Department of Correction to detain clients pursuant to ICE detainers once their criminal cases had been resolved. As a result of these efforts, more than twenty non-citizen New Yorkers were released despite the detainers lodged against them.

We would like to share the stories, and disparate results, of four clients who should have never been sent to Riker's Island but, combined, spent 135 days in New York City custody.

1. Client D.C.

D.C., a married mother of a 3 year old son with no criminal record was arrested and charged with resisting arrest, an A misdemeanor, and disorderly conduct, a violation on

July 28, 2014. The arrest arose after D.C. and a friend called the police to report a stabbing they witnessed. When the police arrived her language barrier prevented her from communicating with the police officers. At the arraignment in Queens Criminal Court, an ICE detainer was lodged against D.C. and bail was set solely because of the ICE detainer. On August 20, 2014, after spending almost a month in Rikers, the case was adjourned in contemplation of dismissal, meaning after six months, it would be dismissed and sealed without the client needing to appear. A Writ of Habeas Corpus was filed and heard on its merits on August 21, 2014 in Bronx Supreme Court. The writ was denied and D.C. was turned over to ICE custody.

2. Client M.C.

M.C. escaped to the United States after enduring years of violence in Honduras for coming out as a gay man. Despite not having a criminal record, bail was set in M.C.'s case because of an immigration detainer that was lodged against him at arraignments. M.C. feared that he would be killed if he were deported back to Honduras because of his sexual orientation. Fortunately, in response to Legal Aid filing a Writ of Habeas Corpus on M.C.'s behalf, DOC did not honor the ICE detainer and released M.C. into his community here in New York City.

3. Client C.R.

C.R. was arrested on August 19, 2014 and charged with a violation of restricted areas and activities for allegedly crossing between subway cars. This was C.R.'s first arrest, but because an ICE detainer had been lodged at arraignments, bail was set and C.R. was detained at Rikers with instruction not to post bail. C.R. spent over a month on Rikers for no reason other than the ICE detainer that had been lodged against him. He spent more

time incarcerated due to the ICE detainer than the maximum sentence allowed for a conviction of a violation. After the case was adjourned in contemplation of dismissal with a promised one day sealing of record, his Legal Aid attorney filed a Writ of Habeas Corpus on his behalf. In response to the ICE Writ, DOC decided not to honor the ICE detainer and released C.R. to the community where he was able to return to his family and friends.

4. Client C.F.

C.F spent 2 months incarcerated on Rikers Island because an immigration detainer had been lodged. His case was resolved with a non-criminal disposition. After a Writ of Habeas Corpus was denied by a Supreme Court Judge in Queens, C.F. was handed over to ICE, where, upon information and belief, he was released, in part because the photograph that ICE had attached to their prior order of removal was not a photograph of C.F.

In all four cases, bail would never have been set and clients would never have been incarcerated beyond arraignments if New York City had a clear policy against honoring ICE detainers. In these cases the ICE detainers caused our clients to be separated from their families, caused them to be incarcerated for sometimes double the maximum jail sentence possible for the offenses with which they were charged, and caused financial hardship to the family because in most cases the person incarcerated was the sole means of the family's support. New York City taxpayers spent approximately $460 a day housing, feeding and transporting these four clients for a combined 135 days.[1]

[1] "New York City incarceration nearly as costly as 4 years at Ivy League college", RT, September 30, 2013, *http://rt.com/usa/new-york-incarceration-ivy-league-560/* ("[The] city paid $167,731 to feed, house and guard each inmate in 2012").

That is $62,100 more than we would have spent if they had been released at arraignments, like anyone without an ICE detainer.

The Legal Aid Society supports legislation that will limit the number of people who are detained and subsequently deported due to immigration detainers. While this bill is an enormous step forward we ask that you consider the following issues:

New York City Needs a Consistent Policy across Agencies

Our extensive experience with the past versions of New York City's detainer law indicates that simple and straightforward rules are easiest to enforce. We therefore urge the City to adopt the bright-line rule that, pursuant to the Fourth Amendment of the United States Constitution, neither the Department of Correction nor the Police Department shall be authorized to honor an ICE detainer absent an arrest warrant from an Article Three judge. We are concerned that the creation of a different standard for the Police Department will result in disparate treatment of non-citizens at arraignments and thus result in prolonged incarceration for some.

The United States Constitution prohibits the continued detention of any person without probable cause.[2] The proposed bill (Int. 487) clearly conveys an intention to not have DOC unconstitutionally detain anyone solely based on immigration status by requiring judicial warrants as a minimum standard for continued detention. However, it is less clear that the bill written for the NYPD requires a judicial warrant prior to the continued detention. Specifically in section (b)(2) of 14-154, the proposed legislation seems to allow the NYPD to continue detention for 48-hours after arraignment without a

[2] *Miranda–Olivares v. Clackamas Cnty.*, No. 3:12–CV–02317–ST, 2014 WL 1414305 (D.Or. April 11, 2014) (finding that detention pursuant to an immigration detainer is a seizure that must comport with the Fourth Amendment).

warrant based only on prior convictions and previous deportations. This provision does not exist in the DOC bill.

Practically speaking, the NYPD bill controls what will happen after arraignments if an arrested person is otherwise ready for release and is not going to Rikers. Longstanding New York law requires that arraignments be held within 24 hours of an arrest. *People ex rel. Maxian on Behalf of Roundtree v Brown*, 164 AD2d 56, 66-67 [1st Dept 1990] *affd,* 77 NY2d 422, 570 NE2d 223 (1991). The proposed legislation regarding the NYPD essentially undermines this law for people the NYPD believe have been previously deported. Conceivably, two people with the same criminal history could be arrested for the same low-level offense and yet one may be released immediately after arraignment while another, also ready for release from arraignment, will be held up to 48 hours longer only because the NYPD believes they may have been previously deported. This inconsistency is confusing. Further, it undermines the confidence of immigrant communities in the NYPD, who need to be able to report crime, without fear of deportation, and it continues to treat people coming through the criminal justice system differently based on their immigration status.

The Terrorist Watch List

Both the New York City Police Department and the New York City Department of Correction legislation, see e.g., Int 486 §2(b)(ii)(B), propose that a person could be detained and transferred to ICE custody based on a "possible match" to a "terrorist screening database," which is defined as the United States terrorist screening watch list. This list is one of a series of inter-related lists that are maintained by the United States Terrorist Screening Center, which includes the Federal Bureau of Investigation.

We understand that the inclusion of this factor was intended to prevent the release of terrorists from custody. The "terrorist watch list" however, is so overbroad that reliance on it is likely to result in the detention of people who have no connection to terrorism. Because this watch list is grossly over-inclusive, we ask that you reconsider this factor. Consider the following:

- Over all, the number of people listed in the center's database of terrorism suspects surpassed one million in June 2013. Of those, approximately 680,000 were on the watch lists, which can keep people off planes or from entering the country and subject them to extra scrutiny at airports, traffic stops or border crossings.[3]
- Nelson Mandela remained on one terrorist watch list until 2008, when Congress removed him through special legislation.[4]
- Mikey Hicks, an 8-year-old boy, a New Jersey Cub Scout, and frequent traveler who has seldom boarded a plane without a hassle because he shares the name of a suspicious person, is on a watch list.[5]
- The late Senator Edward M. Kennedy was once on a watch list.[6]
- The Federal Bureau of Investigation is permitted to include people on the government's terrorist watch list even if they have been acquitted of terrorism-related offenses or the charges are dropped. [7]
- "The incentive structures surrounding terrorist watch lists encourage agents and agencies to exaggerate dangers, putting names on watch lists that do not belong there . . .". "If you've done the paperwork correctly, then you can effectively enter someone onto the watch list ... There's no indication that agencies undertake any kind of regular retrospective review to assess how good they are at predicting the conduct they're targeting."[8]
- There has been a substantial expansion of the watch list system. Inclusion on the list involves a secret process that requires neither

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[3] Charlie Savage, *Secret Papers Describe Size of Terror Lists Kept by U.S.*, The New York Times, August 5, 2014

[4] Editorial, *Watch Lists The Black Hole of Terrorism*, The New York Times, December 15, 2013

[5] Lizette Alvarez, *Meet Mikey, 8: U.S. Has Him on a Watch List*, The New York Times, January 14, 2010

[6] Id.

[7] Charlie Savage, *Even Those Cleared of Crimes Can Stay on F.B.I.'s Watchlist*, The New York Times, September 27, 2011

[8] Anya Bernstein, *The Hidden costs of Terroristwatchlists*, 61 Buffalo L. Rev. 461,(2013)

> concrete facts nor irrefutable evidence to designate an American or a foreigner as a terrorist.[9]

We ask that you conduct a thorough review of the recent investigations into the unreliability of the watch list before making it a factor that justifies one's detention. Please note that these bills would not even require a positive identification that a person is on the list. Instead they merely call for a "possible match" to the terrorist screening database. Under this standard even an eight-year-old cub scout could be detained. There are substantial problems in terms of due process rights under any of these lists. A more selective standard should be considered.

We would like to thank the Council for your continued attention to this important issue which affects our clients, their families and communities. We invite questions to clarify or discuss our testimony and again thank the Council for the opportunity to express our thoughts on the proposed legislation.

[9] Conor Friedersdorf, *The Constitutional Nightmare of the Terror Watch List,* The Atlantic, July 24, 2014

Testimonio de Gabino Hernandez
15 de Octubre 2014
Propuesta para limitar la colaboracion entre NYC y Inmigracion (ICE)

Buenos dias. Mi nombre es Gabino Hernandez y soy miembro de Se Hace Camino New York. Gracias a la Portavoz Melissa Mark-Viverito, el Concejal Menchaca, y todos los concejales aquí por haberme dado la oportunidad de compartir mi historia. Yo soy de Puebla, Mexico. Vine a este país hace 20 años para buscar una vida mejor. Aquí encontré a mi esposa. Hoy tenemos cuatro hijos ciudadanos. La mas grande tiene 18 años. Quiero apoyar la propuesta que esta sobre la mesa hoy porque ayudaría a familias inmigrantes como la nuestra no tener que pasar lo que pasamos y enfrentar lo que estamos enfrentando.

Yo fui arrestado después de una pelea en un bar. Yo estuve tratando de proteger a un señor mayor, y al tratar de hacer eso llamaron a la policía por una puerta que había rota, y me llevaron arrestado.

Pase dos meses y medio en la cárcel. No podía salir y pagar la fianza porque tenia un pedido de la migra. Tuve que esperar allí adentro. Mientras eso yo sabia que mi familia estaba pasando hambre – no tenían dinero. Por eso yo acepte un cargo mas bajo – "negligencia criminal" o algo asi. Era para salir.

Pero me trasladaron directamente con la migra. Alli, gracias a dios me dejaron salir para estar con mi familia, pero estoy todavía peleando un caso contra la deportacion. Yo estoy con la organización mi abogada esta haciendo un buen trabajo, pero de todas maneras nunca hubiera estado aquí si no fuera por la colaboración con la migra y la ciudad. Hubiera pagado una fianza y estaría apoyando a mi familia, como siempre.

Por eso creo que es clave pasar esa propuesta – para que padres como yo no tenemos que enfrentar separaciones de familia que dejarían a mis hijos solos, y depiendiendo del gobierno. Tambien ahora se que no confio en la policía. Porque les voy hablar si cualquier cosa podría arriesgar todo lo que he trabajado. Pasando esta propuesta va crear un pocito mas confianza entre mi comunidad y ellos y eso va crear mas seguridad en la comunidad. Muchas gracias.

Testimony of Gabino Hernandez
October 15th, 2014
In Support of Legislation to Limit the Collaboration between Immigration and NYC

Good morning. My name is Gabino Hernandez and I'm a member of Make the Road New York. Thank you to the Speaker Melissa Mark-Viverito, the Councilmember Carlos Menchaca, and all the councilmembers here for having given me the opportunity to tell my story. I am from Puebla, Mexico. I came to this country 20 years ago to look for a better life. I found my wife here. Today we have 4 kids, all citizens. The oldest is 18 years old. I want to support the proposal on the table today because it would help immigrant families like my own not have to go through all that I went through and contront what we are confronting.

I was arrested after a fight at a bar. I was trying to protect an elderly gentleman who was being harrased, and when I tried to do that they called the pólice because of a door that had been broken, and they arrested me. I spent two and a half months in jail. I could not leave or pay bail

because I had a hold from immigration. I had to wait there. While I was inside I knew that my family was hungry – they did not have any money. That was why I accepted a lower charge – a plea deal – criminal negligence or something like that. It was to get out.

But they just took me directly to Immigration. There, thank God, they let me get out to be with my family, but I'm still fighting a case against deportation. I am with the organization and my lawyer is doing good work, but regardless I would never have been in this situation if it had not been for the collaboration between ICE and the City. I would have paid my bail and been back with my family, as always.

That's why I think it is is critical to pass this proposal – so that fathers like me don't have to confront family separation that would leave my kids alone, and depending on the government. Also now I do not trust the pólice. Because why would I call them if any situation could risk everything I have worked for. Passing this proposal would créate a little more confidence between the community and the police which will make us all safer. Many thanks.

Testimony of Jasmine Rodriguez,
Domestic Partner of Luis Dejesus-Minaya

New York City Council Committee on Immigration Hearing:

Int. 0486-2014, *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* and **Int. 0487-2014,** *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department*

October 15, 2014

Good morning. My name is Jasmine Rodriguez. I was born at Elmhurst Hospital, Queens, to an Irish mother and a Dominican father. I am a U.S. citizen and I am a New Yorker. I have lived my entire life here. I now live in Ozone Park with my partner, Luis, and our three U.S.-born children—that is, Chris and Roman who are from a prior relationship of mine, and our six-year old daughter Jazlyn.

Thank you for giving me the chance to speak today. I would like to share with you the chaos, confusion, and incredible sadness my family went through while Luis was held at Rikers Island for four long months under an immigration detainer. I believe no family should have to suffer in this way. I know you have the power to change the law to protect families like ours, and I ask you to support the changes that will help keep families like us together.

Luis and I have been together for eight years now. When I first met him, I had lost everything. I was in a homeless shelter with my sons after their biological father had taken all my savings and abandoned us. Luis was a constant comfort to us. He still is. Most men get scared off by a woman who is 100% devoted to her children, but Luis wasn't like that. If I needed to go to the hospital for my kids, he was there with me. He would bring me baby things I needed to whichever shelter I was staying in. He helped me get my first apartment and then helped me move into it. He takes care of Chris and Roman—now [fifteen and twelve]—as if they were his own sons. They both have educational disabilities and Roman suffers from some health problems. Luis is very patient with them and he is a good role model for them. And he is the most devoted dad to our little girl. Luis has been a taxi driver with the same private livery service in Ozone Park for as long as I have known him. He works steadily and hard all the time. And he has supported me, and all our children, financially, mentally, physically, and more for all these years.

In July of last year, Luis was arrested in Brooklyn. He was driving his taxicab, and a cop pulled him over for failing to signal while driving. What would have and should have been a ticket and maybe a fine turned into a nightmare for us. When the cop ran Luis' driver's license against a database, the cop saw that Luis had an old deportation order. So Luis was arrested and, once he was arrested, an immigration detainer dropped against him. Luis couldn't come home that day, or the next day, even though the prosecutor in the criminal case was willing to dismiss the charge.

Because of the immigration detainer, Luis was jailed and couldn't come home to us for the next four months. My children and I were so scared and worried, for him and for us. Jazlyn was waking up at night with nightmares and couldn't sleep by herself in her own bed. My sister had to move in with us to help because Luis wasn't there to raise the kids with me. I know it was tearing Luis apart too, not to be home with us and taking care of us. He is our only breadwinner, so my children and I were thrown into financial crisis with his detention.

All of this because Luis is not a U.S. citizen and there was an immigration detainer against him. Luis came to this country from the Dominican Republic as a teenager and has been living in the United States for more than thirty years. He had received his green card as far back as 1986. Still, Luis was ordered deported in the 1990s for the one and only criminal conviction he had from twenty years ago, a felony drug possession case. He was sentenced only to probation for that offense, and he successfully completed probation, even discharged early. But back then, the immigration laws had just changed for the worse and immigration judges were wrongfully denying people like Luis their chance to ask for a deportation pardon.

Luis' lawyers at Brooklyn Defender Services explained that they could help him reopen his deportation case and seek the pardon denied to him so many years ago. They worked hard to prepare the papers to the immigration court asking for that reopening. Because of the immigration detainer, Luis had to make the painful choice of staying in at Rikers Island during those four months it took for the reopening. The other choice he had to face was simply far worse—getting a quicker resolution of his criminal case (the failure to signal) only to disappear into immigration jail and risk being deported, and separated from me and our children forever.

I thank this City Council for listening to me today. I hope what I have told you today will help you decide to change the local laws so that other families will not suffer the way we did. I hope you continue to work to protect people against being held in jail unnecessarily and against being turned over to immigration. Thank you.

Written Submission By Brooklyn Defender Services—

Testimony of Marie Mark, Immigration Staff Attorney

New York City Council Committee on Immigration Hearing:

Int. 0486-2014, *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* and **Int. 0487-2014,** *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department*

October 15, 2014

Good morning. My name is Marie Mark. I am an immigration staff attorney at Brooklyn Defender Services ("BDS"). BDS is a public defender office that protects the legal rights of more than 40,000 indigent Brooklyn residents every year, primarily through criminal defense, family defense, and immigrant deportation defense. We estimate sixteen to twenty percent of our clients are not U.S. citizens and at risk of immigration detainers and deportation upon a criminal arrest. Thank you for this opportunity to speak in support of the proposed local law amendments and about BDS's experience with U.S. Immigration and Customs Enforcement's use of civil detainers against our clients.

As an immigration attorney at BDS I advise clients about the immigration consequences of criminal convictions and other contacts with the criminal justice system. I also take on some cases for representation where I am able to help a client apply for immigration status or defend against their deportation. I have seen the protective effects of New York City's increasing support for fairness and justice for immigrant New Yorkers in our court systems. Under the City Council's leadership this city has previously placed welcome limitations on cooperation between city agencies and immigration by limiting the city's honoring of immigration detainers. These local laws have been significant steps forward that have helped more than a thousand New

Yorkers return to their communities. Today I'd like to talk about the ways in which detainers are still a problem in our criminal justice system today, and how the local law amendments now under consideration will dramatically improve fairness and justice for immigrant New Yorkers and their families.

New York has a measured system for determining when and under what circumstances individuals should be subject to incarceration. Our system is meant to reflect the city's goals and priorities. By their nature, detainers interfere with this system by preventing the release of immigrants to their communities even when a state judge deems release appropriate. While the detainer laws that have been passed by city council in the past have mitigated some of the harm of detainers, there is still room for considerable improvement.

Clients with an immigration detainer still spend unnecessary time in pre-trial detention. New York City judges make a determination at arraignments after hearing from both the prosecutor and the defense counsel whether pre-trial detention may be necessary. In the majority of cases in Brooklyn, judges find that pre-trial detention is unwarranted completely or that it is unnecessary if a client is able to post a modest bail. This determination takes into account the circumstances of each individual client. Since the implementation of the fingerprint-sharing program, Secure Communities, we have increasingly seen detainers lodged against clients upon their arrest and before they even see a judge on their criminal case. These detainers are issued without any individualized assessment of the criminal case, the client's ability to defend against his deportation, or whether incarceration is appropriate given the client's circumstances.

Under the current law, some clients are turned over to immigration based on the pending charges, old convictions, or their immigration history. Those clients with a detainer who a judge would like to release during the pendency of the criminal case must make a difficult decision. They have only two options: ask a judge to set bail so they can stay in DOC custody to appear for court on the criminal charges or ask a judge to release them from custody knowing they will be taken into the immigration system. You heard a case example of this exact problem earlier today when a BDS client's wife, Jasmine Rodriguez, testified about how her husband spent four months at Riker's Island after being pulled over for failing to signal while driving.

Clients with detainers are still denied access to alternative to incarceration programs, including mental health court and drug treatment programs. These programs are meant to be available to all New Yorkers but clients with ICE holds cannot participate in them. We have had many instances where the client, the judge, the prosecutor, and the defense counsel agree that justice would best be served by letting a client participate in a program. However because clients will be transferred in to ICE custody once ordered released by a judge, they are unable to participate in the program.

Case Examples:

1. **John.** BDS represented "John," a young refugee from Kazakhstan who was a permanent resident. He became addicted to drugs in high school when he tried to fit in with the popular crowd. After arrests for a series of drug-related offenses, our client was placed and participating in drug treatment through the criminal court in Brooklyn. After his urine tested positive for drugs on one occasion (very common for program participants – the court acknowledges that relapse is part of recovery) the judge put him in for what was supposed to be a few nights in jail to remind him of the consequences of not succeeding in drug treatment. While he was at Rikers, an immigration hold dropped. He was not eligible for release under the detainer law because of prior misdemeanor convictions. Even though the criminal court judge personally wrote a letter to ICE asking them to lift the hold so the client could continue drug treatment, they refused. He was turned over to ICE and spent almost a year in an ICE detention facility in New Jersey fighting against his deportation. He was unable to receive drug treatment in ICE custody.

2. **Steve.** BDS represented "Steve," a man in his thirties from Trinidad, who spent almost two years of pre-trial detention in DOC custody because of an immigration detainer. He suffers from severe depression and was admitted to Brooklyn Mental Health Court where he could have been enrolled in an alternative to incarceration treatment program. He could not benefit from the current DOC law because he had pending felony charges. The immigration hold prohibited his release and access to the treatment he needs. While at Riker's under the immigration hold, Steve was stabbed by another inmate and rushed to the hospital for surgery. As a crime victim, he was eligible for a U-visa. BDS helped him

apply for the U visa and then advocated with ICE for his release so that he could participate in mental health treatment through the court. This process took more than two years. Steve was incarcerated the entire time.

Detainers cause more time in custody for every client against whom they are lodged. Immigration's use of detainers has, in effect, been like a crude, blunt tool, and ICE has been unwilling in many cases to lift detainers even for clients whose circumstances are compelling. Instead, ICE had told us repeatedly that they will not consider lifting detainers and will make a determination as to whether custody is appropriate only after a client is transferred pursuant to the detainers. For those clients whose circumstances warrant release, this means that even the best case scenario is that they spend an extra night or two in jail, only to be released from ICE custody after being transferred.

Detainers are issued by ICE without any review of whether they are appropriate given the circumstances. Individuals with viable claims to relief, health issues and other mitigating circumstances are subject to incarceration due to detainers. This deprivation of liberty without any independent assessment of whether incarceration is warranted is unacceptable and, as some courts have held, unconstitutional.

Case Example

Robert. BDS represented a young man from Guatemala, "Robert," who was caught by Border Patrol when crossing the US / Mexican border. He was subject to "expedited removal" by immigration (which counts as a deportation even though he was given no due process). On his second attempt he was kidnapped and held for ransom by Coyotes. He was held with other victims in a house until a child was able to crawl out a window and escape and seek help. The police rescued him and his fellow prisoners. He travelled to New York where he worked as a laborer. He was arrested for misdemeanor assault arising out of a fight with another man. The DA was willing to dismiss the criminal case, but he waited at Rikers Island for one month while we tried to apply for a "U" visa for Robert as a crime victim. The time in jail and uncertainty of relief was too much for him and he decided to be transferred into immigration custody. He was quickly deported. At

the time of his deportation his girlfriend was pregnant with his first child and she has had to raise the child on her own without his support.

Brian. BDS is representing a young man fleeing gang violence and recruitment in El Salvador who was incarcerated at Riker's Island for over two months because of an immigration hold. He could not benefit from the current detainer law because, unbeknownst to him, he was ordered removed *in absentia* nine years ago. Brian was targeted by local gangs as one of few college students in his El Salvador neighborhood. After repeated harassment and threats, including being held at gunpoint while gang members attempted to forcibly tattoo him, Brian fled, as an unaccompanied minor, to reunite with his adopted parents in the US. He was stopped at the border and released with a notice to appear in immigration court in New York. When Brian went to court on the date identified in that notice, he was told there was no record of him in the system. He went home and continued adjusting to the US, where he was still getting used to walking down the street without having to be afraid of who might be following him. He learned English, started working and paying taxes. He never received any subsequent notice about further immigration proceedings and had no idea he was ordered removed until he was arrested. He was depressed and frightened in jail but even more terrified of being deported to El Salvador where he fears he will be killed. Although the DA was willing to dismiss his case early on, Brian waited in criminal custody for two months while our office worked to have his immigration case reopened. We advocated for his release from ICE custody and he is currently in immigration proceedings.

There is little remedy for clients while they are being held on invalid detainers. Detainers have been issued against people who not deportable. This results in prolonged detention for individuals who should not be subject to immigration custody at all. Detainers are issued by immigration enforcement officers who are not lawyers and are often working with incomplete information. However, the immigration law is constantly in flux and is very complicated. Although ICE may lift detainers in their discretion once alerted to a mistake there is no mechanism built in to the system to allow individuals to challenge the validity of the detainer.

Case Example:

Matthew. "Matthew" is a lawful permanent resident. Two years ago, he was arrested and charged with a felony. He pled guilty on the advice of his attorney who assured him the

conviction would not make him deportable. He served a short jail sentence and was released. However when Matthew was arrested this past summer an immigration detainer lodged against him based on a determination that his prior conviction did make him deportable. Because that conviction was a felony, he was not eligible for release under New York City's detainer law. Matthew is married and has five children. His youngest child was two months old at the time of his arrest. His five year old child has autism and needed a lot of care and supervision. Matthew was desperate to get out of jail so he could help his wife care for his children and return to his job. He spent nearly three weeks in jail while his BDS attorney advocated with ICE to lift the hold based on case law showing his conviction did not make him deportable.

Thank you again for allowing me to testify today. In the absence of federal reform of immigration laws that are harsh and subject our community members to disproportionate consequences, I am hopeful that city council will continue to support the full right to justice for immigrant New Yorkers. I trust that the testimony you hear from others today, and me, underscores for you the tremendous importance of further limiting the harmful use of immigration detainers.

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Testimony Submitted to the New York City Council Committee on Immigration
Wednesday, October 15, 2014

Good morning. My name is Nabila Taj and I am a third-year law student at the CUNY School of Law. At CUNY, I practice as a student attorney in the Immigrant and Non-Citizen Rights Clinic, where we represent individuals in myriad immigration proceedings. I am here today to talk to you about one of my clients, Andres Taveras Pujols, who is currently in removal proceedings after being subject to an ICE detainer.

Andres was raised in a single-family household in the Dominican Republic. Frustrated with the lack of opportunities and upward mobility, he moved to Puerto Rico to pursue a career in professional boxing. In Puerto Rico, he became a Lawful Permanent Resident, which allowed him to later join his older sister in the Bronx. His limited ability to communicate in English made it difficult to obtain a steady job. He worked odd jobs as a kitchen helper at a restaurant, a security guard at a discount store, a handyman, a parking lot valet, and as a welder. During this time, he also enrolled in English language classes.

Just a few years after moving to the Bronx, Andres had what he describes as one of the proudest moments of his life. His first child, Andrew was born. A second proud moment occurred when his daughter, Emily, was born seven years later. But his proudest moment was when he held his granddaughter Grace, Andrew's daughter, in his arms for the first time.

Andres treasures his time with his children and has a close relationship with both of them. However, the pressure of supporting a family and finding a steady job still proved to be difficult. His neighborhood in the Bronx was rife with temptation to make "easy money." In June 2012, Andres succumbed to the pressure. He was arrested near his home for possession of a small amount of drugs and detained at the Vernon C. Bain Center, also known as the Boat, for seven months before his case was finally adjudicated. On March 7, 2013, he accepted a disorderly conduct violation. At this point, he should have been released to go to back to his family.

Instead, ICE issued a request for the corrections department to detain Andres without a warrant until it could pick him up. The corrections department detained Andres for another five days at Riker's Island. ICE then detained Andres at the Hudson County Correctional Facility in New Jersey for an additional three months.

Andres felt completely helpless in ICE custody. He was anxious about being separated from his friends and family. He did not know what would happen to him. In fact, a psychologist assessed Andres while he was in custody and found that he suffered from symptoms of post-traumatic

stress disorder because of his constant fear of being forced to leave a life that he worked so hard to build in New York City and of being deported to a country that he had chosen to leave thirty years ago.

The CUNY legal team was able to get Andres released on bond. Since then, we have been working to obtain relief so that he can remain in the United States with his friends and family and maintain his lawful permanent status. If Andres is deported, he would no longer be with his friends, his sister, his children, or his granddaughter. He would be forced to restart his life at age fifty-one in a country where he will be entered into the system as a "criminal deportee" upon arrival. This label will only make it more difficult for Andres to find a job. He would also lose the support that he has here in the United States.

The bill that is up for consideration today would allow individuals like Andres to avoid the hardships that he experienced and continues to experience. Andres is just one of countless hardworking New Yorkers who is needlessly funneled into removal proceedings because of the criminal justice system's relationship with ICE. It is time for the city's police and corrections department to stop using its resources to honor ICE detainer requests. The New York City Council should take this opportunity to prevent the flawed immigration system from tearing families apart, as it is attempting to do with Andres and his family.

Thank you.

Neighborhood Defender Service of Harlem

Written Comments of the
Neighborhood Defender Service of Harlem
New York City Council Committee on Immigration
Oversight Hearing

October 15, 2014

Good morning. My name is Caroline Solis 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. We represent clients from the beginning of their criminal case through their immigration hearings and in any applications for immigration benefits. As attorneys representing non-citizen defendants in the criminal justice system, we have seen firsthand the ways in which immigration detainers infringe upon our clients' basic rights to due process and humane treatment. The proposed bill before the Council today will have a profound impact on the lives of our non-citizen clients and their loved ones. We applaud the City Council for taking another big step to protect non-citizen New Yorkers from getting caught in our nation's broken immigration system.

Since the City Council first passed legislation limiting its cooperation with ICE detainers, we have seen many benefits to our clients and their families. Our clients are spending less time in the Department of Corrections' (DOC) custody, at the City's expense, as a result of an immigration detainer. They are being reunited with their families, instead of being transferred to an ICE detention center outside of New York City. They are able to return to work and to taking care of their children--physically, emotionally and financially.

Unfortunately, not all of our clients benefited from the prior legislation. As a result of immigration detainers, there are still individuals in DOC custody forced to choose between exercising their constitutional rights in their criminal cases and spending lengthy amounts of time in jail. When an immigration detainer is lodged, an individual cannot be released from custody during the pendency of their case. So, non-citizens are more likely to be held in jail during the long process of defending against their criminal charges. For example, one of our non-citizen clients spent nearly one and a half years in jail at Rikers Island awaiting trial before his criminal charges were dismissed. More often, tired of languishing at Rikers, clients choose to plead guilty to a crime of which they have been wrongly accused, which then leads to their deportation.

Lengthy detention—at Rikers Island or at an immigration jail—has devastating consequences for the families in Northern Manhattan that we at NDS represent. In one instance, our client's wife and children were unable to afford their rent after the loss of the client's income to the household. As a result, the family was forced to move out of their home and into a City-funded homeless shelter.

The bill before you today will ensure no New York City residents are unnecessarily detained by the City. They will be free to exercise their constitutional rights without sacrificing their liberty and their ability to support their families. And fewer New Yorkers will suffer the devastating consequences of being transferred to ICE custody and subjected to our failing immigration system.

Testimony by the New York Legal Assistance Group (NYLAG)

Before the New York City Council Committee on Immigration

Int. No. 487, *A Local Law to amend the administrative code of the City of New York, in relation to persons not to be detained by the police department* and **Int. No. 486,** *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.*

The Speaker Council Member Mark-Viverito, and Council Members Dromm, Menchaca, Espinal, Arroyo, Chin, Constantinides, Eugene, Johnson, Koo, Lander, Levine, Richards, Rose and staff, good morning, and thank you for the opportunity to speak here today. My name is Helen Drook, and I am a Senior Staff Attorney with the Immigrant Protection Unit of the New York Legal Assistance Group (NYLAG).

Founded in 1990, NYLAG is a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG has always been at the forefront of responding to any legal and humanitarian crisis. We were the first nonprofit law firm to respond to the events of September 11, serving hundreds of victims of 9/11 and their families. We were also one of the first organizations to assist members of the Haitian community in New York following the earthquake in Haiti.

We at NYLAG are excited about all the things that the Council is already doing to improve the lives of immigrants in New York City, including the introduction of Municipal IDs. The Speaker's recently proposed bill to drastically curb the use of immigration detainers will go a long way towards helping ensure that New York City's immigrants, many of whom are our clients, feel safer in their communities and in interacting with the New York City Police Department. Fear of deportation is an everyday reality for thousands of undocumented New Yorkers, which directly impacts how safe they feel in accessing

services and cooperating with criminal investigations. This is especially true for New York's LGBTQ immigrant community, who face horrific treatment within immigration detention, including violence, deprivation of necessary medical care, psychological torture in solitary confinement, and rape. According to a 2013 report, LGBTQ immigrants held in immigration detention are 15 times more likely to be sexually assaulted. Many LGBTQ immigrants in detention are asylum seekers or survivors of torture who have fled their home country to escape persecution for their sexuality and continue to face violence and harassment here in New York and the added burden of fearing deportation when seeking the assistance of local police.

Detainers deprive thousands of men and women of basic constitutional due process rights. Seizures conducted outside the judicial process are *per se* unreasonable. Legislation requiring detainers to be accompanied by judge's warrant, and affording judges wide discretion in honoring retainers, would afford New York City immigrants additional degree of protection, and prevent more immigrant families from being separated. Many of our clients with relatively minor criminal backgrounds will be spared the great hardship of immigration detention and deportation. The Obama Administration has deported a record number of individuals – 1.5 million – during the first term alone. At a time when so little is being done in Washington to protect this population's interests, it is extremely heartening that New York City, following the example of many other localities, is choosing to provide a safe harbor and a sanctuary for its immigrants.

Testimony of Daniel Coates
October 15th, 2014
In support of proposal to Limit NYC – ICE Relationship through detainer discretion

Good morning. Thank you for the opportunity to testify. On behalf of MRNY's 15,000 members in NYC and NY State, I want to thank the Speaker Mark-Viverito for her leadership as well as Councilmember Menchaca, Councilmember Dromm, Councilmember Espinal, the Mayor and his team, and all of the members of the ICE out of Rikers Coalition for getting us to this point today, almost five and a half years after we launched a campaign to end the City's collaboration with ICE, get them out of Riker's Island, and get New York City out of the deportation business.

This legislation will draw a clear line between local authorities and immigration authorities, protect immigrant families, and put NYC back in the lead across the country in terms of immigrant protections. The idea that municipalities could use their discretion and not cooperate with an unjust federal deportation machine was in some ways born in New York City and we are glad to have the opportunity to step back onto the leading edge with this proposal. At a time of much cynicism about immigration, and a complete lack of legislative and administrative action from Washington, this is yet another example of how we can move the ball forward at a local level.

There are many stories like the ones we have heard and will hear today that this law will protect. In addition to the MRNY members testifying today, I want to highlight Cesar, a US citizen youth leader for MRNY who is unable to be here. His father, who was arrested during a fight after work a few weeks ago, would otherwise be back at home with him, but because of a deportation order from 1994 that his father did not know about, he is now currently in Rikers Island hoping for some help before being transferred to ICE when his criminal case is done.

Cesar is working right now because, as he told me, "he has to manage the money issues right now" with his father in jail. After work Cesar makes phone calls to get people out to vote in the elections, he connects with other youth members at our office in Queens. We should pass this bill because what is happening to Cesar's family should have nothing to do with the immigration system, and the fact that it does has devastating consequences. Thousands of families have stayed together because of the current detainer legislation that we have on the books, and thousands more will stay together as a result of this proposal.

In addition, this proposal is strong because it takes into account what ICE could do in the future by not only requiring a judicial warrant to honor detainers, but also declaring under which limited situations the city would comply if ICE is able to produce a warrant. This proposal will also improve all NYC residents' safety. The legislation will make clear the local authorities are not immigration agents and will help build trust with immigrant communities over time. The value of this cannot be overstated. Many of our members look at the police as one of their last resorts, given how much they risk by talking with them. This bill will help to change that calculation, and I am proud to speak in support.

NEW YORK
CITY BAR

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WRITTEN TESTIMONY OF
THE IMMIGRATION AND NATIONALITY LAW COMMITTEE,
THE CRIMINAL COURTS COMMITTEE,
THE CRIMINAL JUSTICE OPERATIONS COMMITTEE, AND
THE COMMITTEE ON CORRECTIONS AND COMMUNITY REENTRY

OF THE NEW YORK CITY BAR ASSOCIATION

NEW YORK CITY COUNCIL
COMMITTEEE ON IMMIGRATION HEARING

October 15, 2014

My name is Farrin Anello, and I am a member of the Immigration and Nationality Law Committee of the New York City Bar Association and chair of the Detention Subcommittee. I am testifying today on behalf of the Immigration and Nationality Law Committee, the Criminal Courts Committee, the Criminal Justice Operations Committee, and the Committee on Corrections and Community Reentry. Our Committees collectively represent a broad cross-section of the legal community, including defense attorneys and prosecutors, professors, immigration lawyers, and lawyers with expertise in civil rights, community reentry, and corrections law. Our testimony today is based on the expertise of our members and the experiences of their clients.

Our Committees commend the City Council for once again taking action on the critical issue of detainer reform. We support Int. 0486-2014 and Int. 0487-2014. These bills would limit the constitutional violations arising from current detainer practices. They would improve the NYPD's ability to keep all New Yorkers safe by building trust between police and immigrant communities, while relieving the City of potential liability and of detention costs that will not be reimbursed by the federal government. Under current law, the City complies with 63 percent of ICE detainers, which are non-binding requests to hold individuals for investigation.[1] To more fully address the concerns that I will discuss today, our Committees urge the City to end compliance with all ICE detainers.

The City Council's action on detainer reform is timely and justified. This reform comes at a critical time. The federal government is increasingly embedding itself in state and local criminal justice systems with programs such as Secure Communities. In response, localities around the country have taken action. As of October 2014, over 250 localities, including major cities, have limited or ended their compliance with immigration detainer

[1] Kirk Semple, *New York City Increases its Resistance to Federal Entreaties on Foreign-Born Detainees*, N.Y. Times, Dec. 5, 2013, www.nytimes.com/2013/12/06/nyregion/city-increases-its-resistance-to-federal-entreaties-on-foreign-born-detainees.html.

requests.[2] This summer, the New York State Sheriffs' Association recommended that its members refuse all ICE detainer requests.[3] Suffolk and Nassau Counties, among many others, have followed this recommendation.[4]

On May 15, 2012, ICE implemented the Secure Communities program in New York City, despite opposition from the City Council and the Governor. Under Secure Communities, fingerprint information collected at arrest and booking is automatically shared with U.S. Immigration and Customs Enforcement (ICE). Based on this information, ICE will lodge a detainer on anyone it believes is removable, regardless of whether that person has a substantial defense to the removal charges, is eligible for discretionary relief, or may even be a derivative United States Citizen. As a result, ICE is not only issuing detainers for thousands of people in DOC custody, but it is also issuing detainers at the time of booking and arraignments, increasing detention throughout the criminal justice system.

Accepting ICE detainer requests violates the Due Process and Fourth Amendment rights of immigrant residents, and exposes New York City to financial liability. New Yorkers subjected to ICE detainers are generally placed in detention during removal proceedings,[5] which often results in denial of access to counsel and other due process concerns. People in immigration detention are separated from their families and homes in the City, often transferred to remote facilities, and typically forced to defend themselves without access to counsel, evidence, or witnesses.[6] Perhaps unsurprisingly given these circumstances, detained

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[2] Amanda Peterson Beadle, Why 250 Counties Have Stopped Honoring Local ICE Detainers, Sept. 22, 2014, http://immigrationimpact.com/2014/09/22/why-250-counties-have-stopped-honoring-local-ice-detainers/. Access to all local laws or policies that currently limit compliance with detainers is available on the website of the Immigrant Legal Resource Center, at www.ilrc.org/resources/detainer-policies. An interactive map of these localities is available at www.ilrc.org/enforcement. A list of jurisdictions with anti-detainer laws or policies is also available on the website of Catholic Legal Immigration Network, Inc., at https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014.

[3] Kirk Semple, *New York State Sheriffs Shying Away from Immigration Detention*, N.Y. Times, July 30, 2014, http://nyti.ms/1ocMul0.

[4] Beadle, *supra* n.2.

[5] A recent study found that 80 percent of people in immigration detention are denied bond, while only one percent of individuals in New York City criminal custody are denied bail entirely. NYU Immigrant Rights Clinic & Families for Freedom, *Insecure Communities, Devastated Families: New Data on Immigration Detention and Deportation Practices in New York City* 10 (July 23, 2012), http://immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf. Moreover, even when ICE sets bond, it is often prohibitively high. 75% of immigration bond settings are $5,000 and up, with 35% $10,000 and up. This contrasts with New York criminal pretrial detention, in which context 80% of bond settings are $1,000 or *below*. *Id.* at 11.

[6] Nationally, only 22% of detained immigrants had counsel, with much lower rates of representation in some detention centers. *See* Lenni B. Benson and Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* Appendix 3 (2012), 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* (2009); Office of Inspector General, Dep't of Homeland Security, *Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers*, OIG 10-13 (2009); York City Bar Association, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings*, New (2009), http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf.

individuals have a much lower success rate in removal proceedings compared with the success rate of non-detained individuals.[7]

ICE detainers also raise serious Fourth Amendment concerns. When the City continues to detain an individual on an ICE detainer after he or she otherwise should have been released, this detention constitutes a new arrest, which must meet Fourth Amendment requirements.[8] The Fourth Amendment prohibits unreasonable seizures and generally requires a showing of probable cause to justify an arrest.

For these reasons, federal courts have found that localities can be financially liable for wrongfully holding an individual on the basis of an ICE detainer.[9] As the federal Third Circuit Court of Appeals recently held, the fact that a locality is detaining someone pursuant to an ICE detainer – which is not legally binding – does not cure the underlying constitutional violation.[10]

Complying with ICE detainers creates new, unreimbursed costs for City taxpayers. Individuals with ICE detainers are kept in detention 73 days longer, on average, than similarly situated individuals without ICE detainers.[11] ICE detainers can cause judges to deny bond during pretrial proceedings, and at sentencing they can prevent individuals from receiving access to less expensive alternative to incarceration programs in lieu of jail sentences. At $76 per day of detention, the average cost of each ICE detainer honored by New York City is approximately $5,546.[12] The current policy results in the detention in DOC custody of approximately 2,400 individuals beyond the time they would normally be held.[13] Thus, a conservative estimate suggests that New York City is subsidizing ICE activities at a cost of over $13.3 million per year.

Finally, the City's compliance with ICE detainers undermines community trust in local law enforcement. The perception that a criminal arrest will lead automatically to deportation has a chilling effect on immigrant New Yorkers. Immigrant residents who are victims or witnesses of criminal activity often fear that any interaction with police will place

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[7] *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings: New York Immigrant Representation Study Report: Part I*, 33 Cardozo L. Rev. 357, 363-64 (2011).

[8] *Illinois v. Caballes*, 543 U.S. 405, 406 (2004); *Morales v. Chadbourne*, No. 12-0301, at *28 (D. R.I. Feb. 12, 2014) (holding that detention pursuant to an immigration detainer is a seizure must comport with the Fourth Amendment); *Miranda-Olivares v. Clackamas Cty.*, 2014 WL 1414305, No. 3:12-cv-02317-ST, at *9 (D. Or. Apr. 11, 2014) (same); *Villars v. Kubiatowski*, No. 12-cv-4586, --- F. Supp. 2d. ----, 2014 WL 1795631, at *10-12 (N.D. Ill. May 5, 2014) (same); *see also Galarza v. Szalczyk*, 745 F.3d 634, 640 (3d Cir. 2013) (holding that detainers are not mandatory and therefore cannot be used as a defense to a Fourth Amendment claim).

[9] *See, e.g., Miranda-Olivares*, 2014 WL 1414305; *Morales*, 2014 WL 554478; *see also Galarza*, 745 F.3d 634.

[10] *See Galarza*, 745 F.3d 634.

[11] *See* Aarti Shahani, *New York City Enforcement of Immigration Detainers Preliminary Findings*, Justice Strategies (Oct. 2010) (using data collected from detainees with top charges of drug related offenses), www.justicestrategies.org/sites/default/files/publications/JusticeStrategies-DrugDeportations-PrelimFindings.pdf.

[12] *See* Timothy Rudd et al., *Financing Promising Evidence-Based Programs*, MDRC, December 2013 (using $28,000 as the marginal cost per year of detention for a person in DOC custody, or about $76 per day, to evaluate financial savings of ABLE program for adolescents in DOC custody), *available at* www.mdrc.org/sites/default/files/Financing_Promising_evidence-Based_Programs_FR.pdf.

[13] This figure comes from the NYC DOC's reported data mandated under Local Law 2013/022. The report for the period spanning July 2013 to September 2013 reflected that 600 detainers were honored over three months; for the purpose of an estimate, this figure can be extrapolated to 2400 detainers over twelve months.

them or family members at risk of deportation. As a result, ICE detainers undermine public safety. They also encourage racial profiling by creating incentives to conduct arrests based upon perceived immigration status.

Our Committees commend the City Council for introducing the pending legislation, and also encourage the Council to consider several additional steps.

First, our Committees encourage the City Council to adopt a clear rule that the NYPD and DOC will not accept ICE detainers. The City Council should consider expanding the legislation to cover all individuals in NYPD and ICE custody, not only those with certain records. Under current law, the City still honors 63 percent of ICE detainer requests.[14] The proposed bills would address some of these cases, and its warrant requirement provides a critical protection. But further action is needed. Our Committees emphasize that all people are entitled to due process and Fourth Amendment protections. Likewise, detention costs and potential financial liability accrue regardless of the records of those being detained. Finally, because the current and proposed rules are complex, they do not provide a sense of security that someone may report a crime without fear that that person or a family member will be deported. A bright-line rule would make clear that all residents may safely communicate with the police.[15]

Second, we encourage the City Council to clarify that the City will not expend its resources on non-mandatory immigration enforcement, and will not permit ICE to interview detainees without access to immigration counsel. Our committees support the City Council's decision to remove ICE offices from City property. They encourage the City to take at least two additional steps: first, to stop expending any local resources on federal immigration enforcement, except as required by law; and second, to protect detainees in City custody from being interviewed by ICE until they have had an opportunity to speak with immigration counsel. These rules would conserve City resources for protecting public safety, build trust, and protect the right to retain counsel in immigration proceedings.

In conclusion, the proposed bills significantly improve upon the present detainer policies. A bright-line rule that the City will not accept immigration detainers would go even further to address the constitutional, fiscal, and public safety concerns raised by ICE detainers.

Respectfully Submitted,

Farrin R. Anello
Chair, Detention Subcommittee
Immigration and Nationality Law Committee
New York City Bar Association

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[14] Kirk Semple, *New York City Increases its Resistance to Federal Entreaties on Foreign-Born Detainees*, N.Y. Times, Dec. 5, 2013, www.nytimes.com/2013/12/06/nyregion/city-increases-its-resistance-to-federal-entreaties-on-foreign-born-detainees.html.

[15] *See* Nik Theodor, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago (May 2013), https://greatcities.uic.edu/wp-content/uploads/2014/05/Insecure_Communities_Report_FINAL.pdf.

Testimony of

Marissa Ram, Attorney,

Safe Horizon Anti-Trafficking Program

Int. No. 0486-2014, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department* and

Int. No. 0487-2014, *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.*

Committee on Immigration
Hon. Carlos Menchaca, Chair

New York City Council

October 15, 2014
City Hall

Introduction

Thank you, Chair Menchaca and members of the Committee, for the opportunity to testify before you today on Intros. 486 and 487, which would reduce the impact of the federal government's Secure Communities program on countless of New York City's victims of domestic violence, trafficking, and other crimes, as well as homeless and street-involved young people that experience violence and abuse. My name is Marissa Ram, and I am an attorney at Safe Horizon. Safe Horizon is the nation's leading victim assistance organization and New York City's largest provider of services to victims of crime and abuse, as well as these victims' families and communities.

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 immigrants in their VAWA battered spouse self-petitions, U Visa applications for crime victims, and asylum petitions. We assist immigrant children and youth who are victims of abuse, neglect or abandonment in filing for Special Immigrant Juvenile Status. We counsel clients in numerous other areas of immigration law, including permanent residency, naturalization, work authorization applications, as well as defense in deportation and removal proceedings.

Safe Horizon's Anti-Trafficking Program (ATP) is the largest such program on the East Coast. Since its founding, ATP has assisted over 500 survivors from more than 60 countries. We offer intensive case management and legal services to survivors of trafficking, work on legislative advocacy at the federal, state, and local levels, and provide comprehensive training to our partners in government, law enforcement, medical care and social services.

Safe Horizon applauds the New York City Council for taking a stand and joining the growing number of jurisdictions across the country that either refuse to comply with ICE's

detainer requests, or comply with them only in limited circumstances. We commend Speaker Melissa Mark-Viverito, Immigration Committee Chair Carlos Menchaca, and the entire City Council for recognizing that detainer requests from the federal government are voluntary, differ from criminal detainers or criminal warrants, fail to provide a lawful basis for arrest or detention, and that municipalities may be violating the U.S. Constitution by holding someone based on a detainer without sufficient cause.

Continued Impact of ICE's Secure Communities Program on Clients

As many of you know, between October 2012 and September 2013, more than 3,000 people in New York City were transferred to federal immigration authorities for deportation "pursuant to an ICE detainer." According to information obtained under the Freedom of Information Act (FOIA), no more than 14 percent of the detainers issued by the government in FY 2012 and the first four months of FY 2013 met ICE's stated goal of "target[ing] individuals who pose a serious threat to public safety or national security." In fact, nearly 350,000 individuals subject to an ICE detainer (47.7 percent) had no record of a criminal conviction — even a minor traffic violation. As advocates and service providers who work with survivors of human trafficking, sexual assault, intimate partner and domestic violence, and other forms of abuse and exploitation, we have witnessed firsthand the tragic impact of New York City's collaboration with ICE on countless immigrant survivors that we serve, along with their families and communities.

As we noted in our testimony to the City Council in January 2013, it is the rare occurrence that a victim reaches our program without at least one previous interaction with law enforcement. In many cases, victims of human trafficking will be arrested for prostitution, theft, or other crimes. Our clients, including those using weapons to defend themselves from their

abuser or trafficker, will often plead out to lesser charges in order to avoid deportation. Having a victim arrested is often the goal of abusers and traffickers. Threats of criminalization and the possibility of deportation are used as tools of coercion and control, creating a situation where both the criminal justice system and immigration enforcement work to the perpetrator's advantage, rendering victims of crime even more fearful of seeking help from law enforcement. Dual and mandatory arrests are common in cases of intimate partner violence or domestic abuse; this can expose a victim with a criminal history that may appear unrelated to their abuse, to detention, deportation, and separation from their children, family, and community.

We encourage the City Council to ensure that the NYPD is provided with additional support and direction on how to proceed when they suspect someone may be a victim of intimate partner violence, domestic violence, human trafficking, and other forms of abuse and exploitation. In our experience, proper screening for trafficking and identification of victims remains extremely challenging. Despite prosecutorial discretion, victims of human trafficking are consistently deported without crucial screening and services that would have identified them as victims – at times right back into the hands of their trafficker or trafficker's associates. The multiple arrests and deportations of our clients suggest that screening and identification of human trafficking victims by local and federal law enforcement remains inadequate and places victims in extreme jeopardy. Safe Horizon continues to offer our assistance as a referral source and for future trainings and technical assistance.

ICE's presence in our criminal legal system and involvement in our clients' lives is very seldom helpful, and nearly always harmful. Our LGBTQ clients, already at higher risk of profiling, arrest, and incarceration by local enforcement, also remain the most vulnerable to abuse in immigration detention. According to recent findings by the Congressional Research

Service, as many as 40% of allegations of sexual abuse are not reported to ICE, with transgender detainees experiencing a disproportionately high rate of sexual abuse in detention settings. The Department of Homeland Security weakened protections provided by the DOJ Prison Rape Elimination Act by refusing to include protections already routinely provided by many corrections and law enforcement agencies around the country. As a result, we remain extremely concerned about the safety of any transgender clients in ICE custody.

In our experience working with survivors, we have found that it takes time to build a trusting relationship, and that clients typically do not disclose the full extent of their circumstances for many months or even years. The full story emerges long after their initial screening and only when their immediate needs have been already stabilized and the survivor feels a sense of safety. Once clients are ensnared in the deportation process, it is often impossible for clients to obtain crucial social services support and obtain immigration relief. Moreover, immigrant detainees, unlike citizen prisoners, can be transferred between detention facilities without notice. Accordingly, immigrant victim of crimes are often transferred to one of the many detention centers that are part of the privatized patchwork immigration enforcement system, including those in remote areas of other states. These arbitrary transfers make it extremely challenging for immigration detainees, particularly survivors with special needs, to obtain or retain meaningful legal representation.

Conclusion

Safe Horizon is grateful to New York City Council for its significant, groundbreaking efforts to protect our clients and communities. By refusing to honor detainers except in extremely limited circumstances and eliminating ICE's presence at Rikers Island, the majority of

our clients will no longer fear transfer to ICE detention, subsequent deportation, and potential separation from their families and communities. Thank you again for inviting us to testify today.

Testimony from Abraham Paulos, Executive Director, Families for Freedom

New York City Council hearing on detainer policy 10/15/2014

My name is Abraham Paulos, I am Executive Director at Families for Freedom, a New York City-based human rights organization led by people with convictions affected by Immigration and Customs Enforcement's (ICE) policies. We educate people about deportation and we organize and advocate for policies that promote our human right to remain with our families. I learned about ICE's presence in Rikers Island while I was imprisoned there. I avoided ICE apprehension thanks to a fellow prisoner who informed me of their presence at Rikers. I went home, received support from Families for Freedom, and I beat my case. Citizens and noncitizens should all have the right to remain and to reintegrate. Because of ICE, thousands of New Yorkers suffer a different fate. Loved ones are banished forever, detained indefinitely, or they perish in detention.

Our members witness ICE trauma daily: we know children left without a parent; we see spouses or partners doing the work of two; we hear from people in detention with their nutrition, medical and mental health needs unmet; we know people are beaten and some have been driven to suicide.

All collaboration with ICE must end, because it amounts to being complicit in violating human rights.

We support legislation to get ICE out of Rikers and we recognize the advocates who helped champion this move, yet we remain concerned for the safety of immigrant New Yorkers. We would like clarity about how city employees will be held accountable if they illegally collaborate with ICE under the new proposal. While ICE will not have an office on Rikers, or be on city property to do their bidding, proposed legislation does not explicitly prohibit ICE's access to city jails, to investigate, interrogate and apprehend New Yorkers; nor does it prohibit sharing of information with ICE on our whereabouts, our addresses, our phone numbers where we work etc., particularly after release of those who are on probation.

New York must heed the warning of organizers in localities with detainer policies. According to the National Day Labor Organizing Network's (NDLON) recent report, "Destructive Delay," ICE is pivoting to employ aggressive tactics, ramping up raids, detaining people at court buildings and in probation programs, and arresting people on the basis of old criminal convictions. As members of the ICE FREE NYC campaign – we call on support from city council and the local immigrant rights and criminal justice movements to join us and urge Mayor de Blasio to use his executive authority to amend previous orders 34 and 41 to:

1. Explicitly prohibit the NYPD, DOC, and any City agency from holding someone for an immigration violation at the request of ICE.

2. Explicitly prohibit the sharing of information about New Yorkers between ICE and all City agencies, via use of such probation databases and any other way that may reveal and individuals' immigration status, and

3. Explicitly prohibit ICE near sensitive locations including hospitals, courts, homeless shelters, public demonstrations, community centers, places of worship and schools.

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Testimony before the New York City Council Committee on Immigration
Joseph Rosenberg, Executive Director of the Catholic Community Relations Council
October 15, 2014

Good morning Chairman Menchaca and members of the Committee on Immigration. I am Joseph Rosenberg, Director of the Catholic Community Relations Council ("CCRC"). CCRC was established by the Archdiocese of New York and the Diocese of Brooklyn in 2008 to represent the Church throughout New York City on local legislative and policy matters. I am pleased to be here today to testify in support of Intros 486 and 487.

Intros 486 and 487 establish very limited and specific criteria for detaining an individual by NYPD or the Department of Corrections ("DOC") at the request of the Federal Immigration and Customs Enforcement Department ("ICE"). Federal judges have ruled that detainers based on probable cause are insufficient and may actually be in violation of an individual's rights under the U.S. Constitution. In response to this determination, these bills clarify that immigration detainers issued by ICE will not be honored by DOC or the NYPD unless a federal judge issues a warrant for such detention based upon the conviction of a violent or serious crime, or the identification of the subject as a possible match in the United States terrorist screen database.

Over the last several years, the City Council has moved in the direction of protecting immigrants in our City from unjust detention. In 2011, the Council limited DOC's cooperation with ICE by creating a category of persons not to be detained for deportation proceedings. Just last year, in 2013, you further clarified that individuals defined under the New York State Penal Law as trafficked immigrant victims forced into prostitution could not be detained and deported. Current law, however, still requires the City to comply with detainer requests without requiring a judicial warrant or for alleged misdemeanors. Such harmful enforcement policies serve only to disrupt and destroy households. Families find themselves crippled with the detainer and deportation of loved ones based only on accusations of minor violations. The bills before you, however, remedy this unfortunate situation and are another important step in your successful efforts to continue to welcome, embrace and protect the immigrant community of our City.

The protection of this growing community regardless of one's place of origin or religious beliefs is at the heart of the mission of both the Immigrant and Refugee Services of Catholic Charities of the Archdiocese of New York, and of Catholic Migration of the Diocese of Brooklyn. The Church has been at the forefront of immigration reform in this country and City for over one hundred years. Over the last several decades Catholic Migration and Immigrant and Refugee Services have worked to help immigrants and refugees find a safe haven in our City, reunite with their families, learn English, obtain housing, receive employment counseling and obtain legal services to protect them from unwarranted detainer and deportation -- an essential protection that you are advancing today with your Committee hearing on these measures.

This City Council has consistently been a champion of New York's immigrant community and your actions today further solidify your commitment to improving and protecting the lives of thousands.

Thank you.

1011 First Avenue, 16th Floor
New York, New York 10022

The Bronx Defenders **Redefining public defense.**

WRITTEN TESTIMONY OF THE BRONX DEFENDERS

New York City Council's Committee on Immigration
Hearing Regarding Int. No. ___, *A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the police department,*
and
Int. No. ___, *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.*
October 15, 2014

My name is Genia Blaser and I am an attorney in the Civil Action Practice at The Bronx Defenders. I submit these comments on behalf of the Bronx Defenders and thank the City Council for both the opportunity to testify and also for their ongoing support of non-citizen New Yorkers.

The Bronx Defenders is a holistic, community-based public defender office located in the South Bronx. We provide client-centered criminal, civil, and family defense legal services to low-income Bronx residents and to detained non-citizens in removal proceedings. Working collaboratively with our clients, The Bronx Defenders seeks to end cycles of poverty, addiction, violence, family separation, and court involvement. Today our staff of over 200 represents 35,000 individuals each year and reaches hundreds more through outreach programs and community legal education. Our Immigration Practice works closely alongside criminal defense attorneys and other advocates to advise non-citizen clients of the draconian immigration consequences of contacts with the criminal justice system. Additionally, we represent clients in Immigration Court and fight to keep them here in the United States with their families. Many of these clients end up in immigration custody as a result of contacts with the criminal justice system.

Through its collaborative and holistic Immigration and Criminal Defense Practices, The Bronx Defenders is in the unique position to witness firsthand how the current policies of the New York Police Department ("NYPD"), the Department of Corrections ("DOC"), and Immigration and Customs Enforcement ("ICE") have devastating and unjust consequences to non-citizen New Yorkers, their families, and their communities. Under the current policy, when ICE has lodged a detainer against a non-citizen, the NYPD and DOC inform ICE when that individual's criminal matter is resolved and the individual is then released directly into ICE custody. There are very few exceptions to this rule. This policy, although a crucial first step toward shielding non-citizens from ICE, still leaves out thousands of New Yorkers who are not eligible under its narrow protections. Due to its narrow scope, the current policy has led to a lack of due process for non-citizens facing criminal charges, the suffering of their family members, and an overall lack of trust in the

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police and the criminal justice system by immigrant communities. Thankfully, the current policy has paved the way for the introduction of new legislation that will extend protections to a large majority of New Yorkers who were ineligible under the previous law.

Non-Citizens Receive Unequal Treatment in the Criminal Justice System under Current Detainer Policies

I. Non-Citizens Are Often Unable to Access Their Due Process Rights in Criminal Proceedings

Every day, advocates at our office witness firsthand how the promise of due process held out by the 5th Amendment is unrealized by our non-citizen clients solely because of immigration status. Whenever ICE has lodged a detainer against a non-citizen client and the client's criminal case carries potential immigration consequences, that client is unable to access the same Due Process rights as a US citizen client would, regardless of the seriousness of the charge he is facing. Once ICE has lodged a detainer against a non-citizen, that individual must decide whether to prioritize his criminal or his immigration matters. This very difficult decision is often made within the first few minutes of meeting with a criminal attorney and learning that ICE has lodged a detainer. Most clients choose to fight for their right to stay in this country. For an undocumented client who faces open criminal charges – no matter how minor or serious the charges – this frequently means waiting in jail for months awaiting the resolution of his case so that he will be eligible to be released under the current detainer policy. Criminal attorneys fight to resolve these cases with dismissals or non-criminal resolutions in order to preserve eligibility under the current detainer policy, but our clients have often wasted months in jail before the District Attorney will agree to this. The majority of the time these clients are incarcerated on low amounts of bail, which their families and communities would pay were there not the threat of the clients being turned over to ICE.

Client examples:

Mario, an undocumented client who fled violence in Honduras at the age of 17 to come to the US, was arrested on felony criminal charges after an argument with his girlfriend and a detainer was lodged at arraignments. The criminal case was not presented to a Grand Jury by the 180.80 day. Had Mario been a US citizen, he would have been released from jail on that day but because of the detainer and his open felony charges, Mario's criminal defense attorney had to advocate with the judge to set bail so that he would not go into ICE custody. The District Attorney never presented the felony charges to a Grand Jury and instead waited for the 30.30 time to expire before dismissing the case, even after the criminal attorney informed the District Attorney that the client remained incarcerated because of the detainer and that the complaining witness had told our investigator that she did not want to continue with the case. Mario, who had no criminal record, had two young children in the US whom he had previously been supporting. He was unable to see or contact them throughout

the case due to an Order of Protection held by their mother, the complaining witness. Mario was incarcerated for four months before his case was dismissed and he was released under the DOC law.

Nancy, a Spanish-speaking visa overstay from the Dominican Republic with an infant son, was arrested after she called the police when her ex-boyfriend, who is the father of her son, attacked her. When the police arrived, Nancy's ex-boyfriend, who speaks English, told them that she was the one who attacked him. Nancy had never been arrested before and was in shock when she was handcuffed and put in the police car. She was panicking about who would care for her seven-month-old son, for whom she was the primary caregiver. When she appeared before a judge at arraignments and learned that there was an ICE detainer and that she would not be going home if she wanted to avoid being deported, Nancy fell to the ground. She agreed to have her criminal defense attorney set bail, even after the criminal judge planned to release her on her own recognizance, so that she would not be turned over to ICE. Once she arrived at Rikers, however, she realized that she could not be apart from her son. She told her family to pay bail, which they did. Yet instead of being released to take care of her son, Nancy was turned over to ICE because she still faced open criminal cases. Ultimately, Nancy was released on an order of supervision by ICE so that she could care for her son, but she is currently in deportation proceedings. Her criminal case was dismissed at the next court date following her arraignment.

Similarly, our non-citizen clients are faced with deciding whether to fight their criminal cases or to plead guilty with the sole purpose of avoiding being turned over to ICE and ending up in deportation proceedings. In essence, the current detainer policy forces our clients to choose between defending themselves in the criminal process and pleading guilty – even where there are strong and viable defenses in their criminal cases – exclusively to avoid being in deportation proceedings. US citizen clients are not faced with this situation. They are able to decide whether to defend themselves against the criminal charges or to plead guilty based on the merits and strengths of their criminal cases.

Many of our non-citizen clients who choose to prioritize their immigration situations remain incarcerated on open cases as a result – even on minor charges such as turnstile jumping, driving on a suspended license, low-level marijuana possession, and trespass. These cases often remain open for months while clients' criminal attorneys fight to resolve the cases in ways that will leave them eligible to be released under the current detainer policy. These cases backlog an already overburdened and broken criminal justice system. We have seen that cases for clients who have ICE detainers – especially when they are facing minor charges – often take longer to resolve than cases for clients who are not incarcerated pretrial.

Client example:

Fernando, a young Mexican client, was arrested after returning home from his job in construction when he was illegally stopped and frisked and then accused of carrying a gravity knife (also known as a switchblade). Our clients who work in construction who are arrested are frequently charged with possessing gravity knives, even though the knives they carry to use in cutting through drywall do not meet the legal definition of a gravity knife.[1] Fernando had no prior criminal record, lived with his undocumented wife and young children, and was the main breadwinner of the family. At arraignments, the District Attorney offered Fernando a plea bargain of a non-criminal disposition: disorderly conduct. Because there was an ICE detainer, however, and thus a concern that Fernando would be immediately turned over to ICE if his case was resolved at arraignments, Fernando was forced to decide whether to prioritize his liberty or potential immigration consequences. Fernando spent a week at Rikers while we investigated his immigration history to ensure that he would be eligible under the current detainer policy once his case was resolved. A week later, Fernando pled guilty to disorderly conduct – same plea that was offered at arraignments – in order to avoid entering into ICE custody and facing deportation, even though the knife that he was carrying was not a gravity knife and the stop by the police had not been legal. Although Fernando only spent a week at Rikers, we have clients who have been incarcerated for months on similarly minor charges.

Our non-citizen clients who are complaining witnesses in criminal cases are also forced to decide between pursuing their rights to pursue prosecution in the criminal process and withdrawing their charges based on their own open criminal cases where there are ICE detainers. Often, when one individual calls the police against another but both parties make accusations against the other, the police will arrest both parties. This is called a cross-complaint because both parties have complaints against the other for the same incident. Sometimes both of the cases are dismissed in what is called a "cross-drop." Other times, depending on the strength of the allegations and the cooperation of the complaining witness, the case against one party will go forward. Non-citizens with ICE detainers who have cross-complaints are forced to choose between cooperating with the District Attorney on allegations that they made against another person or dismissing the charges so that they can be released under the current detainer policy.

Client example:

Gregory, a visa overstay from Jamaica who was about to start the process of applying for a green card through his US citizen wife, was arrested after he called the police to file a complaint against a man who assaulted him, causing him to have staples put in his head. Unbeknownst to Gregory, his assailant called the police accusing Gregory of

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[1] For recent documentation of this problem see: Campbell, John, "How a '50s-Era New York Knife Law Has Landed Thousands in Jail," *The Village Voice*, Oct. 7, 2014; available at: http://blogs.villagevoice.com/runninscared/2014/10/nyc-gravity-knife-law-arrests.php?page=all

assault while Gregory was in the hospital. Gregory had been unable to call the police himself because he was in the midst of receiving emergency medical attention. Both parties were arrested by the police. When Gregory appeared at arraignments, he discovered that ICE had lodged a detainer against him. Gregory now faced the decision of whether to pursue the criminal charges against his assailant or to agree to a "cross-drop." In essence, Gregory had to decide whether he wanted to fight the false charges against him or walk away from prosecuting the man who violently attacked him. Although Gregory had a strong case against his assailant – especially given the severity of his injuries – Gregory agreed to drop the charges against his assailant in exchange for the dismissal of his case so that he would be eligible for release under the current detainer policy. Gregory spent two weeks at Rikers while his wife and family agonized over the fact that Gregory could be facing deportation if he chose to go forward with the charges against his assailant. Had Gregory been a US citizen, his family would have immediately paid his bail so that he could receive proper medical treatment for his head injury and avoid deciding between pursing his criminal case and addressing potential immigration consequences.

II. Non-citizens with Detainers are Unable to Take Advantage of Programs and Treatment Options Because of the Threat of Being Released to ICE

By barring non-citizens from having their sentences withheld, ICE detainers often prevent individuals who struggle with drug addiction or mental illness from participating in treatment programs. Non-citizen clients for whom enrollment in a treatment program would be beneficial are unable to do so during the course of their criminal cases because release from DOC would mean being turned over to ICE. Many non-citizen clients opt to plead guilty merely for the purpose of preserving eligibility under the detainer policy, even if it is detrimental to them on a personal level.

Client examples:

As a child growing up in Honduras, Jesus's safety and health were placed in constant jeopardy. He experienced levels of corporal punishment that amount to torture. Jesus crossed the United States border nearly ten years ago and became part of the undocumented population. When he was arrested on misdemeanor charges following an argument with the mother of his children, Jesus's life fell apart. The threat of an immigration detainer foreclosed for Jesus a number of resolutions available to all other defendants in the criminal justice system. After the Assistant District Attorney and presiding judge ignored any and all mitigating details about Jesus, he received a 60-day jail sentence, followed by an immigration detainer. He spent an additional six months in immigration detention as his attorneys advocated for the Immigration Judge to set bond in his case and his family worked to gather the money they needed to pay his bond. More than two years later, Jesus's case is still languishing in Immigration

Court as he waits for a decision on his application for asylum and for designation as a survivor of domestic violence.

Carlos, an undocumented man from Mexico, had been living in the United States with no criminal history for over a decade when the estranged mother of his children made false allegations that he had physically and sexually abused one of their children. Carlos had been separated from the mother of his children for a while but he financially supported his children and saw them whenever he could. Carlos was arrested on felony charges and an ICE detainer was lodged against him because he was undocumented. There was also a concurrent Family Court investigation stemming from the allegations, which were determined to be unfounded and were ultimately dismissed. Carlos's criminal charges were reduced and he sat in DOC custody for over five months until the District Attorney finally offered him a non-criminal disposition that would allow him to be released under the DOC law. Had Carlos not been incarcerated, the District Attorney would have offered this disposition earlier under the condition that he complete an anger management program prior to taking a plea. This option, of course, was not available since Carlos was incarcerated. Although Carlos maintained his innocence throughout his criminal case, when the District Attorney finally offered a non-criminal disposition without the requirement of first completing an anger management program, he decided to plead guilty to preserve his eligibility under the DOC law and to avoid spending more time in DOC custody. Because of his guilty plea, however, Carlos's children have an Order of Protection against him and he has had to go to Family Court to try and modify the terms of it. He has also had physical and mental health consequences as a result of his months of incarceration.

III. Non-citizens who Have Criminal Records or Prior Orders of Deportation are not Eligible for Release Under Current Detainer Policy Regardless of the Outcome of Their Criminal Case.

Likewise, non-citizen clients with prior orders of deportation or prior criminal convictions must fight their criminal cases knowing that regardless of the outcomes, they will be released to ICE to face deportation. Under the current detainer policy, unless a non-citizen has a misdemeanor conviction from 10 years ago, he will be released to ICE no matter the outcome of the current criminal case. Similarly, non-citizens who have prior orders of deportation, regardless of how old the orders are and the circumstances surrounding the orders, will be turned over to ICE. These clients are faced with the decision to either sit in DOC custody and fight their cases knowing that they will go into ICE custody or to take pleas early on in their cases in order to avoid spending months in jail followed by months in immigration detention.

Client examples:

Jose, Ecuadorian client who was ordered deported in absentia in 1992, was arrested after his school-age son swiped him into the subway station using a student metro

card. Because of Jose's old order of deportation, ICE lodged a detainer and Jose did not qualify under the current DOC policy regardless of the ultimate outcome of his criminal case and regardless of the fact that Jose had no criminal history. At arraignments, the District Attorney offered Jose to resolve his case with an ACD. However, Jose's criminal defense attorney advised him not to resolve the criminal case so that the attorney could determine if there were any grounds to reopen Jose's old deportation order and avoid having Jose enter Immigration custody. After learning that his options were to either sit in criminal custody and wait for a copy of his immigration file to investigate if there were legal grounds to reopen his order of deportation or to resolve the criminal case and go into ICE custody to be deported, Jose initially decided to sit in jail and wait for us to receive his immigration file, which can take months. After a few weeks of sitting in jail and waiting, however, Jose changed his mind and decided that he would rather be deported than sit in jail for months and months with only the slight chance that he could avoid being turned over to immigration custody. Jose resolved his criminal case with an ACD, was released to ICE custody, and was deported.

Antonio, a Dominican client who had been a lawful permanent resident for many years before being ordered deported in 1996 for an old drug conviction, was rearrested on charges of misdemeanor drug possession and gambling charges. A detainer was lodged because of his previous order of deportation. Antonio made the difficult decision to remain in DOC custody in order to allow his immigration counsel to investigate his immigration history and explore if there were any options to reopen his previous order of deportation. This process took almost eight months. Antonio was incarcerated this entire time, separated from his family, which included two teenage children who were terrified that their father would be deported. Eventually counsel was able to obtain a copy of Antonio's file and discovered that there were viable legal grounds to reopen his previous order of deportation. A few months after Antonio's arrest, the District Attorney made immigration-safe plea offers. Antonio had to wait for a motion to reopen his deportation order to be filed before resolving his criminal case so that he would not automatically be deported. Once the motion was filed, Antoino resolved his cases with non-criminal dispositions and entered Immigration custody. Antonio's motion to reopen was granted and he pursued his strong application for a pardon in deportation proceedings.

Salvador, a long-time lawful permanent resident from the Dominican Republic with diabetes and other health ailments, was arrested for low-level marijuana possession. Because of his criminal history – Salvador had a few misdemeanor convictions for trespass and shoplifting – ICE lodged a detainer against him. Salvador learned that he was deportable regardless of the outcome of his criminal case, and that he would be released to ICE once his family paid bail or upon the resolution of his case. Salvador and his entire family were shocked by this news. Salvador had a long work history in the United States and two US citizen children, both of whom were adults. Salvador felt like he had no options: he could either waste away at Rikers, where he was not receiving the appropriate medication for his diabetes, or he could just resolve his criminal case and go into deportation proceedings. Salvador's immigration counsel

advised him to resolve the criminal case in the best way possible so that it would leave him eligible for the pardon for which he would qualify in deportation proceedings. After three months of going back and forth about what to do, Salvador decided to plead guilty to misdemeanor marijuana possession, solely so that he could go into immigration custody and fight his deportation case. Salvador was lucky that he had such a strong immigration case and after a few months in immigration detention, he won his case. In total, Salvador spent almost a year incarcerated.

IV. Non-citizens with Mental Illness face DOC Incarceration or Immigration Detention, Neither of Which Is Equipped to Provide Adequate Mental Health Services.

Finally, current detainer policies have a devastating impact on non-citizens who suffer from mental health symptoms. These individuals are in a wholly unjust situation: they remain incarcerated in DOC custody – often without adequate mental health treatment[2] – to either await eligibility under the current DOC law or decide to resolve their criminal cases knowing that they will go into immigration custody, where they will also be without adequate mental health treatment, all the while facing deportation.

Recent articles and reports have shed light as to the widespread concerns of the quality of mental health services at the DOC and the potential for future federal investigation not only as to the adequacy of the services provided but also to the treatment of this population by the corrections officers. Many non-citizens in DOC custody have chronic mental illnesses that require various forms of treatment, none of which is provided adequately in DOC or Immigration custody. Instead of providing mental health treatment in DOC custody, inmates are often physically abused by the guards if they ask for mental treatment.[3] In some situations, inmates have attempted suicide and instead of receiving treatment, they are physically beaten and/or are tucked away in solitary confinement where they are unable to access treatment.[4] These clients leave DOC custody with unimaginable emotional scars, and physical scars, for how they were treated while under the care of the City.[5] We have had clients who, upon release from DOC custody, have gone directly to psychiatric wards for treatment because of the lack of treatment they received for their mental health symptoms while in DOC custody.

Under the proposed bill, our clients who suffer from mental health symptoms and have ICE detainers will no longer be forced to make this impossible decision and can

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[2] For recent articles on this, see: Winerip, Michael and Schwirtz, Michael, "Rikers: Where Mental Illness Meets Brutality in Jail," *The New York Times*, July 14, 2014; available at: http://www.nytimes.com/2014/07/14/nyregion/rikers-study-finds-prisoners-injured-by-employees.html?_r=0; and Gonnerman, Jennifer, "Before the Law," *The New Yorker*, October 6, 2014; available at http://www.newyorker.com/magazine/2014/10/06/law-3.

[3] *Id.*

[4] *See* Winerip and Schwirtz, "Rikers: Where Mental Illness Meets Brutality in Jail."

[5] *See*, Gonnerman, Jennifer, "Before the Law."

prioritize their mental health while they fight their criminal cases without worrying about being turned over to ICE at the end of their case.

Client example:

Jorge, a Mexican client with no prior criminal history was arrested and charged with forcible touching to a stranger on the street. A detainer was lodged and upon interviewing Jorge to advise him on his criminal and immigration options, counsel discovered that Jorge had previously been diagnosed with schizophrenia and was receiving no medication through DOC even though he had been hospitalized in the weeks leading to his arrest. Jorge, a monolingual Spanish-speaker, had been unable to communicate with the medical staff at DOC. Counsel had to reach out to DOC with a list of medications given to Jorge's family from his doctor so that he could receive some of the necessary treatment for his mental illness. In the meantime, Jorge's criminal case dragged on for months because the District Attorney initially offered a non-criminal disposition provided that part of the sentence would be Jorge's completion of a sex abuse program. It was very difficult for Jorge's criminal attorney and social worker to find a program that would accept an undocumented, monolingual Spanish-speaker, but they were able to find one that had open space. After Jorge's advocates provided the District Attorney with the necessary information, the District Attorney then withdrew the offer. With no other safe immigration options an after four months of sitting in DOC custody, Jorge decided to take the risk of trial in the hopes that he would be acquitted and avoid being turned over to ICE. At trial, Jorge was convicted of a B misdemeanor and was released into ICE custody. Upon Jorge's release to ICE, immigration counsel contacted ICE about her concerns over Jorge's mental health and lack of appropriate treatment in while in ICE custody. ICE released Jorge under an Order of Supervision so that he could receive the necessary mental health treatment that he had been unable to receive for four months and would be unable to receive in ICE custody. Jorge is currently in deportation proceedings with no options except to apply for humanitarian-based relief because of the discrimination in Mexico against individuals with mental illness.

We applaud the Committee on Immigration and Council Members who have introduced this bill recognizing that under current policy, non-citizen New Yorkers are not allowed the same constitutional rights as citizens are in the criminal justice system. This proposed bill will allow all New Yorkers – regardless of their immigration status – to choose to fight their criminal cases or to accept plea bargains without having to risk entering ICE custody. It will also allow non-citizens to fight their cases without being incarcerated pretrial.

Thank You.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Councilmember LaToya Cantrell

Address: _____

I represent: New Orleans

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: 10/15/14

(PLEASE PRINT)

Name: Larry Gossett (Councilmember)

Address: _____

I represent: King County, Seattle WA

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: Caroline Solis

Address: 317 Lenox Ave

I represent: Neighborhood Defender Service of Harlem

Address: 317 Lenox Ave.

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Emily Tucker

Address: 802 Kent Ave Brooklyn 11205

I represent: Center for Popular Democracy

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: Abraham Paulos

Address: 135 W. 31st, New York, NY

I represent: Families for Freedom

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: Alisa Wellek

Address: 28 W 39th #501 NY NY 10018

I represent: Immigrant Defense Project

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Captain Karl Johnson

Address: _____

I represent: New York City Dept. of Correction

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Susan Petito, Asst. Dep. Comm., Legislative Affairs

Address: 1 Police Plaza

I represent: NYPD

Address: 1 Police Plaza

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10-15-14

(PLEASE PRINT)

Name: Robert M. Morgenthau

Address: 51 West 52nd Street

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 486+487 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/14/2014

(PLEASE PRINT)

Name: Maya Wiley, Counsel to Mayor

Address: Cityhall, 1st Floor

I represent: Office of Mayor's Counsel

Address: as above

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10/15

(PLEASE PRINT)

Name: GABINO HERNANDEZ

Address: _____

I represent: Mohegan Road NY

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: 10/15

(PLEASE PRINT)

Name: AMADOU BELLO

Address:

I represent: Make the Road N.Y.

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Farrin Anello

Address:

I represent: New York City Bar Association (several committees)

Address: 42 W 44th St. NY NY 10036

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10.15.14

(PLEASE PRINT)

Name: CARLOS RODRIGUEZ

Address: 665 W. 182nd St. (APT 1A)

I represent: NORTHERN MANHATTAN COALITION

Address: FOR IMMIGRANT RIGHTS

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Jasmine Rodriguez Queens, NY

Address: 107-22 80th St. 1st Floor 11417

I represent: Brooklyn Defender Services

Address: 177 Livingston Brooklyn, NY 11201

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10/15

(PLEASE PRINT)

Name: DANIEL LOATES

Address: _____

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. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: 10/15/2014

(PLEASE PRINT)

Name: Marie Mark

Address: 177 Livingston St., Brooklyn, NY 11201

I represent: Brooklyn Defender Services

Address: 177 Livingston St., Brooklyn, NY 11201

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: Hedwin Sachen-Navarro

Address: 501 Fifth Avenue, Suite 903

I represent: AILA, American Immigration Lawyers

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

Date: 10/15/14

(PLEASE PRINT)

Name: Cory Forman

Address: 40 Fulton St, 7th Fl. NY NY 10038

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: 10/15/14

(PLEASE PRINT)

Name: Devin Maroney

Address: 1 Queens, New York

I represent: Hotel Trades Council

Address: 709 8th Ave, NY NY 10036

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. 487 + 486 Res. No. _____

☐ in favor ☐ in opposition

Date: 10/14/2014

(PLEASE PRINT)

Name: Nisha Agarwal

Address: 253 Broadway 14th floor

I represent: Mayor's office of Immigrant Affairs

Address: 253 Broadway 14th floor

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: Peter Markowitz

Address: _____

I represent: Cardozo Immigration Justice Clinic

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: Jenny Alcaide

Address: _____

I represent: Cardozo Immigration Justice Clinic

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. 486 & 487 Res. No. _____

☑ in favor ☐ in opposition

Date: 10/15/2014

(PLEASE PRINT)

Name: Oriana Sanchez

Address: 6807 Springfield Blvd. Bayside, NY 11364

I represent: On behalf of New York Immigrating Coalition

Address: 137-139 W. 25th Street, 12 Fl. New York, NY

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Helen Drook, Esq. - (NYLAG)

Address: 7 Hanover Square, NY, NY

I represent: New York Legal Assistance Group

Address: 7 Hanover Square, NY NY 10004

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Cynthia Counts Cook

Address: 199 Water St 6th fl NY NY

I represent: Legal Aid Society

Address: 199 Water St NY NY

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 10/15/2014

(PLEASE PRINT)

Name: GENIA BLASER

Address: The BRONX DEFENDERS, 360 E 161 St, Bronx, NY 10451

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 486 & 487 Res. No. _____

☑ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Joseph Rosenberg

Address: 80 Maiden Lane

I represent: Catholic Community Relations Council

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☒ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Devin Marmen

Address: 305 W. 44th St., New York 10036

I represent: Hotel Trades Council

Address: Same

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. 0486 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/15/2014

(PLEASE PRINT)

Name: Jessica Orozco, Esq. Hispanic Federation

Address: 55 Exchange Place, NY, NY 10005

I represent: Hispanic Federation

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 0487 Res. No. _____

☒ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Juana Peralta

Address: _____

I represent: Sylvia Rivera Law Project/

Address: Anti-Violence Advocates

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: Marissa Ram, Esq.

Address: 2 Lafayette St., New York, NY 10007

I represent: Safe Horizon

Address: 2 Lafayette St., New York, NY 10007

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

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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

☑ in favor ☐ in opposition

Date: 10/15/14

(PLEASE PRINT)

Name: Commissioner Jesus Garcia

Address: _____

I represent: Cook County

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: Lenore Friedlander

Address: 25 West 18th Street NY, NY 10011

I represent: SEIU 32BJ

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: Donna Lieberman (or Rebecca Engel)

Address: 125 Broad St. 18th Fl.

I represent: NYCLU

Address: same as above

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