Immigration Committee Staff

Harbani Ahuja, *Legislative Counsel*

Elizabeth Kronk, *Senior Legislative Policy Analyst*

Florentine Kabore, *Financial Analyst*

Criminal Justice Committee Staff

Agatha Mavropoulos, *Legislative Counsel*

Matthew Thompson, *Legislative Policy Analyst*

Jack Storey, *Financial Analyst*



## THE COUNCIL

# **committee report and briefing paper OF THE Justice Division**

*Jeffrey Baker, Legislative Director*

*Brian Crow, Deputy Director, Justice*

**COMMITTEE ON IMMIGRATION**

*Hon. Carlos Menchaca, Chair*

**COMMITTEE ON CRIMINAL JUSTICE**

*Hon. Keith Powers, Chair*

#### June 9, 2021

**Oversight:** New York City’s Detainer Laws

**Preconsidered Int. No.:** By Council Member Menchaca

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to creating a private right of action related to civil immigration detainers

**Ad. Code:** Amends §§ 9-131, 9-205, 14-154

**Preconsidered Int. No.:** By Council Member Powers

**Title:** A Local Law amend the administrative code of the city of New York, in relation to limiting the circumstances in which a person may be detained by the police department on a civil immigration detainer

**Ad. Code:** Amends § 14-154

**Preconsiderd Int. No.:** By Council Member Powers

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to limiting communication between the department of correction and federal immigration authorities

**Ad. Code:** Amends § 9-131

**Res. No. 1648-2021:** By the Public Advocate (Mr. Williams) and Council Member Menchaca

**Title:** Resolution calling on the New York State Legislature to pass, and the Governor to sign, the New York for All Act (A.2328 / S.3076), which would prohibit and regulate the discovery and disclosure of immigration status by New York state and local government entities

# **Introduction**

On June 9, 2021, the Committee on Immigration, chaired by Council Member Carlos Menchaca, and the Committee on Criminal Justice, chaired by Council Member Keith Powers, will hold an oversight hearing on the Department of Correction’s (‘DOC’) implementation and enforcement of New York City’s detainer laws. The Committee on Immigration will consider the following legislation: Preconsidered Int. No. \_\_\_ (Menchaca), in relation to creating a private right of action related to civil immigration detainers; Preconsidered Int. No. \_\_\_\_ (Powers), in relation to limiting the circumstances in which a person may be detained by the police department on a civil immigration detainer; Preconsidered Int. No. \_\_\_ (Powers), in relation to limiting communication between the department of correction and federal immigration authorities; and Res. No. 1648 (The Public Advocate, Menchaca), calling on the New York State Legislature to pass, and the Governor to sign, the New York for All Act (A.2328 / S.3076), which would prohibit and regulate the discovery and disclosure of immigration status by New York state and local government entities. The Committees expect to receive testimony from the Mayor’s Office of Immigrant Affairs (‘MOIA’), DOC, public defenders, as well as advocates and members of the public.

# **Background**

*New York City’s Detainer Laws*

 In response to growing concerns regarding federal immigration enforcement priorities, such as the presence of U.S. Immigration and Customs Enforcement (‘ICE’) agents at DOC facilities, the Council enacted Local Law 62 of 2011 to ensure that DOC’s cooperation with ICE was limited to facilitating the detention and removal of individuals with criminal records, those with prior immigration violations, or those who posed public safety or national security threats.[[1]](#footnote-1) The law established guidelines for DOC to follow to determine when to honor immigration detainers, providing that, among other things, a detainer would not be honored on an individual who had no criminal record.[[2]](#footnote-2) Pursuant to Local Law 62 of 2011, between March 9 and September 20, 2012, DOC did not honor 267 detainers, which accounted for 20 percent of the detainers received by DOC from ICE.[[3]](#footnote-3)

 On May 15, 2012, ICE expanded a program entitled “Secure Communities in New York City.”[[4]](#footnote-4) Secure Communities was launched by President George W. Bush during his last year in office and was designed to utilize the criminal justice system to quickly identify immigrants who might be deportable.[[5]](#footnote-5) Generally, at the time of arrest, an arrestee’s fingerprints are sent to the FBI for statistical and criminal justice purposes.[[6]](#footnote-6) Under Secure Communities, local and state jurisdictions could choose to also share those fingerprints with DHS, where information relating to the arrestee’s immigration history is used to assess whether the arrestee may be deportable.[[7]](#footnote-7) If DHS suspects deportability, the agency sends the local authority a request to detain that individual for an additional 48 hours past the time they would have been released from custody.[[8]](#footnote-8) This extended detention gives ICE additional time to take custody of the arrestee, presumably to initiate deportation proceedings or commence the repatriation process.[[9]](#footnote-9) Participation in the Secure Communities program was voluntary until DHS made participation mandatory starting in 2013.[[10]](#footnote-10)

The expansion of Secure Communities in New York City resulted in detainers being lodged more quickly against deportable individuals, often while those individuals were still in the custody of the New York City Police Department (‘NYPD’).[[11]](#footnote-11) In 2013 the Council passed Local Laws 21 and 23 which expanded the universe of detainers that could not be honored by the NYPD and DOC by eliminating detainers lodged against those with open misdemeanor cases and those with misdemeanor convictions that were more than ten years old.[[12]](#footnote-12)

 Despite these changes, in 2013, DOC held 3,070 people past their scheduled release date to accommodate ICE.[[13]](#footnote-13) Less than 5 percent of individuals held pursuant to a detainer had a felony conviction, and only 27 percent had a misdemeanor conviction.[[14]](#footnote-14) Between October 1, 2013 and September 30, 2014, DOC transferred 2,061 individuals to ICE pursuant to an immigration detainer; during that same time period, NYPD received 2,635 immigration detainers, transferred three individuals to ICE, and did not honor 179 requests.[[15]](#footnote-15) It is also important to note that in addition to the human cost that implementing federal immigration detainers placed on communities and families in New York City, there was also a substantial financial cost to the City.[[16]](#footnote-16) Therefore, changes to the City’s detainer laws became necessary to ensure that the City was not cooperating with federal immigration authorities in a way that adversely affected the City’s immigrant population, imposed significant financial costs on the City, and provided no actual benefit to public safety.[[17]](#footnote-17)

In 2014, the Council again strengthened its detainer laws in response to the federal government’s increased reliance on local authorities to enforce immigration policy by limiting the City’s cooperation with federal immigration authorities except where there are public safety concerns.[[18]](#footnote-18) Local Laws 58 and 59 of 2014 provide that DOC and NYPD may not honor a federal detainer request for an individual unless: (1) ICE presents a judicial warrant as to probable cause; and (2) the individual in question has been convicted of a violent or serious felony within the last five years or is a possible match on the terrorist watch list.[[19]](#footnote-19) Additionally, the laws prohibited ICE from maintaining an office at the Rikers Island detention facility in order to enforce civil immigration law.[[20]](#footnote-20)

In 2017, one of President Trump’s first actions in office was to lay out a mass deportation agenda in an Executive Order, titled “Enhancing Public Safety in the Interior of the United States.”[[21]](#footnote-21) This agenda, among other things, specifically held that it “is the policy of the executive branch to empower state and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.”[[22]](#footnote-22) Express federal reliance on local entities to enforce immigration laws contravened New York City policy and local laws. The City Council passed two new laws that rounded out its existing detainer laws and clarified the role of local government vis-à-vis immigration enforcement.[[23]](#footnote-23) Local Law 226 of 2017 applied similar detainer restrictions and reporting requirements to the city’s Department of Probation as Local Laws 58 and 59 of 2014 discussed above.[[24]](#footnote-24) Local Law 228 of 2017 prohibited City agencies from partnering with the U.S. Department of Homeland Security in the enforcement of federal immigration law.[[25]](#footnote-25) The law additionally prohibited the use of City resources, property, and information obtained by the City in furtherance of federal immigration enforcement.[[26]](#footnote-26) Any federal requests for such partnership must be compiled, anonymized, and shared with the City Council on a quarterly basis.[[27]](#footnote-27) The law did not restrict the City from entering into cooperative agreements with the federal government, so long as those agreements were not solely for the purpose of immigration enforcement.[[28]](#footnote-28)

*New York Immigrant Family Unity Project*

 The City Council’s New York Immigrant Family Unity Project (‘NYIFUP’) is the nation’s first government-funded legal representation program for detained immigrants.[[29]](#footnote-29) The project began as a pilot program in 2014 and was expanded as the need for deportation defense was better understood.[[30]](#footnote-30) NYIFUP funds public defenders to provide high quality holistic representation to New Yorkers detained and facing deportation who cannot afford an attorney, as these individuals are not entitled to government-appointed legal representation. In response to the increased number of deportation cases filed under President Trump, the Council expanded funding for NYIFUP to $16.6 million in Fiscal 2020,[[31]](#footnote-31) sustained at the same level in FY2021.[[32]](#footnote-32) Research has shown that detained individuals with legal representation experience disproportionately better legal outcomes than those without representation: for example, an analysis by the Vera Institute of Justice estimates that 48 percent of cases will end successfully for clients represented by NYIFUP attorneys, which is dramatic increase from the observed 4 percent success rate for unrepresented cases at Varick Street immigration court before NYIFUP began.[[33]](#footnote-33) For unaccompanied minors, data shows that more than 80 percent of immigrant children are able to secure either permanent legal status or a form of long-term permission to “remain safely in the U.S.,” with the help of legal representation.[[34]](#footnote-34)

*Allegations of Violations of the City’s Detainer Laws*

 In April 2021, public defenders affiliated with NYIFUP presented Council Committee Staff with seven instances in which their clients appear to have experienced violations of the City’s detainer laws. These instances are described below and are the subject of scrutiny in today’s hearing.[[35]](#footnote-35)

**Case 1: Javier Castillo Maradiaga.** On December 14, 2019, Javier was arrested by NYPD for jaywalking and transferred to DOC custody.[[36]](#footnote-36) DOC transferred Mr. Castillo Maradiaga to ICE on December 16, apparently in violation of the City’s detainer law.[[37]](#footnote-37) The Law Department has claimed the DOC transfer to ICE occurred because of “an operational error involving the City’s local detainer law, which has since been addressed.”[[38]](#footnote-38) Mr. Castillo Maradiaga was freed in March 2021, after a 15-month detention in ICE custody.[[39]](#footnote-39) While the administration has assured advocates and the press that new regulations have been implemented to avoid a repeat infraction, nothing in writing has been shared.

**Case 2: W.S.** In March 2018, a Legal Permanent Resident client, “W.S.”, with a mental health diagnosis and one past conviction of attempted felony for reckless assault, violated probation and was returned to DOC custody. W.S.’ attorney negotiated another plea and W.S. was supposed to be released to mental health court. Instead, W.S. was taken to the DOC facility on Rikers Island, where they were turned over to ICE. ICE presented no judicial warrant. W.S. did not have a qualifying criminal record in the prior 5 years, and thus did not meet the qualifications under local law for a transfer to ICE. DOC claimed W.S. was transferred to ICE “due to safety issues.” W.S. was released following a change in case law that resulted in their case being moot.

**Case 3: S.S.** In spring 2020, S.S. was serving two consecutive 364-day sentences for two convictions eligible for detainer requests to be honored if other conditions were met. S.S. was supposed to complete their sentences in August 2020 but was selected for early release on March 26, 2020, per the Administration’s COVID early release policy for sentenced individuals. S.S. went to discharge planning, but a DOC Captain intervened and refused their release because they were “waiting for ICE pick-up.” S.S.’s attorney contacted a DOC Captain, who confirmed that there was no judicial warrant to keep S.S. detained, but that the DOC would hold S.S. because they had been convicted of statutes eligible for a detain request to be honored. The attorney notified DOC’s Legal Department that a judicial warrant was legally required to honor the detainer. S.S.'s attorney conferred with DOC’s Legal Department who said they would look further into this issue. The following day, S.S.’s attorney reached out again to DOC for more clarity. A DOC Corrections Officer informed S.S.'s attorney that "the individual in question has a conviction that requires ICE to pick [S.S.] up" and stated that DOC’s Legal Counsel reviewed the convictions and also agreed that S.S. could not be released.

Ultimately, DOC did not release S.S. under the COVID early release plan and held S.S. until the expiration of their sentence in August 2020. In August 2020, S.S. was immediately transferred to ICE custody after DOC reiterated to S.S.’s attorney detention that DOC was allowed to extend S.S.’s detention for notification purposes which allowed for the transfer into ICE custody. S.S. was transferred to Bergen County Jail (ICE custody) and shortly thereafter ordered deported, even though S.S. had a defense against deportation and a viable pathway to lawful status. At no point did DOC confirm that there was a signed judicial warrant to allow for the immediate transfer of S.S. from Rikers Island into ICE custody.

**Case 4: Rogelio L.S.** Mr. L.S’s attorney received documentation from ICE showing an ICE detainer lodged against him was honored by DOC. On December 4, 2020, Mr. L.S. was released from DOC custody on Rikers Island and transferred directly from DOC custody into to ICE custody while in a DOC facility. In February 2021, their attorney asked MOIA about the incident, as Mr. L.S. was never served with a judicial warrant by ICE while being held at DOC’s Rikers facility. MOIA representatives claimed that there was “supporting legal documentation of probable cause” but could not explain what this meant, or how this allowed for the transfer to ICE under local law.

**Case 5: Bronx Defenders Client No. 1.** In October 2017, DOC confirmed with Bronx Defenders Client No. 1’s attorney that they were being released that morning. The client’s attorney notified DOC that she would be at the Rikers Island facility by 10 a.m. to meet her client. DOC told the attorney that ICE had lodged a detainer against their client and the attorney had until midnight to pick up their client, despite failing to present a judicial warrant. DOC Officer White told her that ICE “had whatever papers they needed.” The attorney arrived at Rikers Island before 9:00am and spoke to a DOC Officer who confirmed that their client was being released that day but could not give more information and told the attorney to wait. Arriving at the specific facility after 10 a.m., the attorney requested to speak with her client as their counsel but was told the client was “in intake” and that the attorney would need to speak with DOC staff at the front desk. The attorney returned to the front desk where she proceeded to call a DOC Captain and speak with two DOC Officers, with no success. DOC Custody Management called the attorney around 11:00 a.m. and shared that her client was transferred to ICE. The attorney spoke with several other DOC Officers who never allowed her to meet with her client and did not clarify why Bronx Defenders Client No. 1was not being released. At 1:20p.m., three DOC Officers confirmed with the attorney that her client was transferred to ICE. Ultimately, Bronx Defenders Client No. 1 was detained by ICE for several months before being released.

**Case 6: Bronx Defenders Client No. 2.** Bronx Defenders Client No. 2 entered a DOC jail to serve a sentence after taking a plea for a crime in the list of 170 crimes for which detainers may be honored if other conditions are met. In April 2021, the client was told they would be released, and was called down to wait in a cell. After approximately two hours of waiting with no explanation for the wait time, ICE officers detained this person directly from their cell. After exiting the cell with ICE officials, the client was informed they were being arrested by ICE. The client was transported by ICE out of the DOC facility. No judicial warrant was presented.

**Case 7: Bronx Defenders Client No. 3.** Bronx Defenders Client No. 3 was released on their own recognizance at 9:00 a.m. on March 12, 2021. They did not have a qualifying criminal record and ICE lodged a detainer for their transfer. Bronx Defenders Client No. 3 was not released until March 13, 2021. No reason was provided to justify their extended detention. The client’s attorney communicated with MOIA, and ultimately the client was released prior to ICE transfer.

1. **Conclusion**

Based on the allegations of city law violations, the Committees are concerned that DOC and MOIA have not made every effort to ensure strict adherence to the City’s detainer laws, particularly Local Law 58 of 2014. The Committees are deeply concerned with reports of possible violations of the detainer laws and prolonged detention of New Yorkers beyond what is allowed by law. Additionally, there appears to be evidence of violation of the spirit of the City’s detainer laws as a matter of policy. The Committees expect to hear about the decision-making process that DOC and MOIA used which resulted in the transfer of cited individuals to ICE. Any changes to policy guidance over the course of the implementation of the City’s detainer laws would additionally be crucial to the committees’ oversight. As the City works to build trust with immigrant New Yorkers, the Committees expect to hear how MOIA and DOC have worked to rectify violations and resolve the adverse immigration consequences experienced.

1. **Legislative Analysis**

**Preconsidered Int. No. (creating a private right of action related to civil immigration detainers)**

Preconsidered Int. No. \_\_\_\_\_ (Menchaca) would amend the administrative code of the city of New York, in relation to creating a private right of action related to civil immigration detainers.

Section 1 would amend subdivision e of section 9-131 of the NYC Administrative Code, to create a private right of action for those detained by the DOC in violation of the section. Pursuant to this section, any person who is detained in violation of section 9-131, or their direct relative, may bring an action in any court of competent jurisdiction for a claim of unlawful detention for any damages, including punitive damages, and for declaratory and injunctive relief and such other remedies as may be appropriate. The court may additionally award costs of litigation to the prevailing party whenever the court determines such an award is appropriate. The creation of this private right of action does not limit any other claims that such person may have under common law or by other law or rule.

Section 2 would amend subdivision e of section 14-154 of the NYC Administrative Code, to create a private right of action for those detained by the NYPD in violation of the section. Section 3 would amend subdivision e of section 9-205 of the NYC Administrative Code, to create a private right of action for those detained by the DOP in violation of the section. Both of these rights of action are substantively identical to that related to the DOC as described *supra*.

Section 4 specifies that this local law would take effect 60 days after it becomes law.

**Preconsidered Int. No. (limiting the circumstances in which a person may be detained by the police department on a civil immigration detainer)**

Preconsidered Int. No. \_\_\_\_\_ (Powers) would amend the administrative code of the city of New York, in relation to limiting the circumstances in which a person may be detained by the police department on a civil immigration detainer.

Section 1 amends subdivision b of section 14-154 of the NYC Administrative Code, eliminating the exception that allows the NYPD to honor a civil immigration detainer by holding a person, without a judicial warrant, for up to forty-eight hours beyond the time when such person would otherwise be released from the department’s custody if a search of local, state, or federal databases indicates that the person has been convicted of a violent or serious crime and has illegally re-entered the country after a previous removal or return, or is identified as a possible match in the terrorist screening database. In 2018, a New York State appellate court held that this type of detention was illegal.[[40]](#footnote-40)

Section 2 specifies that this local law would take effect 60 days after it becomes law.

**Preconsidered Int. No. (limiting communication between the department of correction and federal immigration authorities)**

Preconsidered Int. No. \_\_\_\_\_ (Powers) would amend the administrative code of the city of New York, in relation to limiting communication between the department of correction and federal immigration authorities.

Section 1 amends paragraph 1 of subdivision h of section 9-131 of the NYC Administrative Code to remove the ability of DOC personnel to disclose information relating to a person’s citizenship or immigration status to federal immigration authorities. Section 1 also amends paragraph 1 to specify that DOC shall not disclose information to federal immigration authorities unless the communication is made pursuant to a person for whom a civil immigration detainer is being honored, or the communication is unrelated to the enforcement of civil immigration law. When these laws were most recently amended, there was federal law prohibiting cities from preventing certain forms of communication to ICE,[[41]](#footnote-41) however in 2018 a federal court in New York City found this statute unconstitutional.[[42]](#footnote-42)

Section 2 specifies that this local law would take effect 60 days after it becomes law.

**Res. No. 1648-2021**

Res. No. 1648-2021 (Public Advocate Williams, Menchaca) calls on the New York State Legislature to pass, and the Governor to sign, the New York for All Act (A.2328 / S.3076), which would prohibit and regulate the discovery and disclosure of immigration status by New York state and local government entities. In recent years, New York State has made strides to be more inclusive to its foreign born residents, passing laws that extended driver’s license eligibility to residents, regardless of immigration status,[[43]](#footnote-43) provided tuition assistance for undocumented New Yorkers,[[44]](#footnote-44) and investing in deportation defense programs such as the Liberty Defense Fund,[[45]](#footnote-45) mirroring similar programs in New York City.[[46]](#footnote-46) State and municipal policies throughout New York that require and retain immigration status information can, however, unnecessarily expose immigrant New Yorkers to federal immigration enforcement. Entanglement between federal immigration enforcement and local and state entities erodes trust between immigrant communities and local authorities, which can decrease willingness to report crimes witnessed, cooperate in investigations and access critical government services.[[47]](#footnote-47)

The New York for All Act (A.2328/S.3076), sponsored by New York State Assemblymember Karines Reyes and Senator Julia Salazar, would prohibit the discovery and disclosure of immigration status by state entities, including law enforcement. The Act would additionally: (1) direct New York municipalities to prohibit discover and disclosure of such information, (2) require reporting to the State Attorney General’s office, to be made publicly available, of every communication between federal immigration enforcement and state and local government entities, (3) require ICE to present a judicial warrant in order to access non-public areas of state government property, and (4) require local jails to inform detained individuals of their rights related to ICE, including the right to decline an interview with ICE and to seek counsel.

Preconsidered Int. No.

By Council Member Menchaca

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to creating a private right of action related to civil immigration detainers

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 9-131 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

 e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] Any person detained in violation of this section, or their direct relative, may bring an action in any court of competent jurisdiction for a claim of unlawful detention in violation of this section, for any damages, including punitive damages, and for declaratory and injunctive relief and such other remedies as may be appropriate. The court, in issuing any final order in any section brought pursuant to this section, may award costs of litigation, to the prevailing party whenever the court determines such an award is appropriate. This section does not limit or abrogate any claim or cause of action such person has under common law or by other law or rule.

§2. Subdivision e of section 14-154 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] Any person detained in violation of this section, or their direct relative, may bring an action in any court of competent jurisdiction for a claim of unlawful detention in violation of this section, for any damages, including punitive damages, and for declaratory and injunctive relief and such other remedies as may be appropriate. The court, in issuing any final order in any section brought pursuant to this section, may award costs of litigation, to the prevailing party whenever the court determines such an award is appropriate. This section does not limit or abrogate any claim or cause of action such person has under common law or by other law or rule.

§3. Subdivision e of section 9-205 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

e. [No private] Private right of action. [Nothing contained in this section or in the administration or application hereof shall be construed as creating any private right of action on the part of any persons or entity against the city of New York or the department, or any official or employee thereof.] Any person detained in violation of this section, or their direct relative, may bring an action in any court of competent jurisdiction for a claim of unlawful detention in violation of this section, for any damages, including punitive damages, and for declaratory and injunctive relief and such other remedies as may be appropriate. The court, in issuing any final order in any section brought pursuant to this section, may award costs of litigation, to the prevailing party whenever the court determines such an award is appropriate. This section does not limit or abrogate any claim or cause of action such person has under common law or by other law or rule.

§4. This local law takes effect 60 days after it becomes law.

HKA

LS #17517

5/24/21

Preconsidered Int. No.

By Council Member Powers

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to limiting the circumstances in which a person may be detained by the police department on a civil immigration detainer

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 14-154 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

b. Prohibition on honoring a civil immigration detainer.

1. The department may only honor a civil immigration detainer by holding a person beyond the time when such person would otherwise be released from the department's custody, in addition to such reasonable time as is necessary to conduct the search specified in subparagraph (ii) of this paragraph, or by notifying federal immigration authorities of such person's release, if:

i. federal immigration authorities present the department with a judicial warrant for the detention of the person who is the subject of such civil immigration detainer at the time such civil immigration detainer is presented; and

ii. a search, conducted at or about the time when such person would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates, or the department has been informed by a court or any other governmental entity, that such person: A. has been convicted of a violent or serious crime, or B. is identified as a possible match in the terrorist screening database.

[2. Notwithstanding paragraph one of this subdivision, the department may honor a civil immigration detainer by holding an person for up to forty-eight hours, excluding Saturdays, Sundays and holidays, beyond the time when such person would otherwise be released from the department's custody, in addition to such reasonable time as is necessary to conduct the search specified in this paragraph, if a search, conducted at or about the time when such person would otherwise be released from the department's custody, of state and federal databases, or any similar or successor databases, accessed through the New York state division of criminal justice services e-JusticeNY computer application, or any similar or successor computer application maintained by the city of New York or state of New York, indicates, or the department has been informed by a court or any other governmental agency, that such person: A. has been convicted of a violent or serious crime and has illegally re-entered the country after a previous removal or return, or B. is identified as a possible match in the terrorist screening database; provided, however, that if federal immigration authorities fail to present the department with a judicial warrant for such person within the period described above, such person shall be released and the department shall not notify federal immigration authorities of such person's release.]

[3.] 2. Nothing in this section shall affect the obligation of the department to maintain the confidentiality of any information obtained pursuant to paragraph[s] one [or two] of this subdivision.

§2. This local law takes effect 60 days after it becomes law.

HKA

LS #9035

5/20/21

Preconsidered Int. No.

By Council Member Powers

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to limiting communication between the department of correction and federal immigration authorities

Be it enacted by the Council as follows:

Section 1. Paragraph 1 of subdivision h of section 9-131 of the administrative code of the city of New York, as amended by local law number 228 for the year 2017, is amended to read as follows:

1. Department personnel shall not expend time while on duty or department resources of any kind disclosing information that belongs to the department and is available to them only in their official capacity, in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person's incarceration status, release dates, court appearance dates, or any other information related to persons in the department's custody, [other than information related to a person's citizenship or immigration status,] unless such response or communication:

(i) [relates to a person convicted of a violent or serious crime or identified as a possible match in the terrorist screening database] is made pursuant to subdivision b of this section; or

(ii) is unrelated to the enforcement of civil immigration laws[; or

(iii) is otherwise required by law].

§2. This local law takes effect 60 days after it becomes law.

HKA

LS #17596

5/25/21

Res. No. 1648

Resolution calling on the New York State Legislature to pass, and the Governor to sign, the New York for All Act (A.2328 / S.3076), which would prohibit and regulate the discovery and disclosure of immigration status by New York state and local government entities

By the Public Advocate (Mr. Williams) and Council Member Menchaca

Whereas, Immigrants make up almost a quarter of New York state’s population and account for 37 percent of New York City’s population; and

Whereas, Immigrant New Yorkers are valuable members of our communities, contributing over $61 billion in federal and state taxes in 2019; and

Whereas, Immigrant New Yorkers make up more than 50 percent of all individuals working on COVID-19 frontlines since the very first outbreak in 2020; and

Whereas, In recent years, New York State has made strides to be more inclusive to its foreign born residents, passing laws that extended driver’s license eligibility to residents, regardless of immigration status, provided tuition assistance for undocumented New Yorkers, and investing in deportation defense programs such as the Liberty Defense Fund, mirroring similar programs in New York City; and

Whereas, State and municipal policies throughout New York that require and retain immigration status information can, however, unnecessarily expose immigrant New Yorkers to federal immigration enforcement; and

Whereas, Entanglement between federal immigration enforcement and local and state entities erodes trust between immigrant communities and local authorities, which can decrease willingness to report crimes witnessed, cooperate in investigations and access critical government services; and

Whereas, Research from the Center for American Progress published in 2017 showed that counties that restrict local interactions with ICE had lower crimes rates while experiencing higher median household incomes, lower unemployment and lower poverty rates; and

Whereas, A 2020 comparative study from the Stanford University Department of Political Science found that counties that disentangled local authorities from federal immigration enforcement; experienced decreased deportations without increases in crime and

Whereas, In 2021, New York State Assemblymember Karines Reyes and Senator Julia Salazar introduced the New York for All Act (A.2328 / S.3076), which prohibits the discovery and disclosure of immigration status by state entities, including law enforcement; and

Whereas, The Act additionally directs municipalities throughout the state to prohibit the discovery and disclosure of such information; and

Whereas, The Act requires reporting to the State Attorney General’s office, to be made publicly available, of every communication between federal immigration enforcement and state and local government entities; and

Whereas, The Act would require ICE to present a judicial warrant in order to access non-public areas of government property and require local jails to inform detained individuals of their rights related to ICE, including the right to decline an interview with ICE and to seek counsel; and

Whereas, In 2014 and 2017, New York City Council passed two packages of legislation that restricted the discovery and disclosure of immigration status information and the coordination with federal immigration enforcement, in an effort to end unchecked entanglement between federal immigration enforcement and local law enforcement; and

Whereas, Immigrant New Yorkers necessarily interact with State agencies and state law enforcement as residents of New York City, and deserve to be treated with dignity and respect; and

Whereas, Immigrant New Yorkers should not be held to different standards depending on the city or state agency with which they interact, regardless of immigration status; and

Whereas, Passage of the New York for All Act would distinguish New York State, joining ranks with other such states as California and Washington, in protecting all immigrant residents; now, therefore, be it

Resolved, that the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, the New York for All Act (A.2328 / S.3076), which would prohibit and regulate the discovery and disclosure of immigration status by New York state and local government entities.

LS17,249

EK

5.12.2021

1. Int. No. 656, L.L. 62-2011, codified at N.Y.C. Admin. Code § 9-131. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. N.Y.C. Council Committee on Immigration, Testimony of Lewis Finkelman, First Deputy Commissioner, Department of Correction, Jan. 25, 2013. [↑](#footnote-ref-3)
4. <https://www.nytimes.com/2012/05/12/us/ice-to-expand-secure-communities-program-in-mass-and-ny.html> [↑](#footnote-ref-4)
5. *See* U.S. Immigration and Customs Enforcement, Criminal Alien Program, <https://www.ice.gov/criminal-alien-program> (*last accessed* Feb. 13, 2017). [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. American Immigration Council, *ICE Releases Memo Outlining Justification for Making Secure Communities Mandatory,* Jan. 13, 2012, <http://immigrationimpact.com/2012/01/13/ice-releases-memo-outlining-justification-for-making-secure-communities-mandatory/>. [↑](#footnote-ref-10)
11. N.Y.C. Council, Report of the Committees on Immigration, Public Safety and Education, April 26, 2017, <https://legistar.council.nyc.gov/View.ashx?M=F&ID=5131867&GUID=CD803086-AB10-4E57-94DD-DE629CA95FAE>. [↑](#footnote-ref-11)
12. Int. No. 928, L.L. 2013/021, codified at N.Y.C. Admin. Code § 14-154; Int. No. 989, L.L. 2013/022, codified at N.Y.C. Admin. Code § 9-131. [↑](#footnote-ref-12)
13. N.Y.C. Department of Corrections, *Summary of Discharges of Inmates with Federal Immigration and Customs Enforcement (ICE) Detainers for Discharges October 1, 2012 – September 30, 2013,* <http://www.nyc.gov/html/doc/html/about/ICE_Report_2013.pdf>. [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. N.Y.C. Department of Correction, *Summary of Discharges of Inmates with Federal Immigration and Customs Enforcement (ICE) Detainers for Discharges October 1, 2013 – September 30, 2014*, <https://www1.nyc.gov/assets/doc/downloads/pdf/ICE_report_101414.pdf>; Information provided by N.Y.P.D. [↑](#footnote-ref-15)
16. *Testimony of New York City Comptroller Scott M. Stringer*, before members of the Committee on Immigration of the New York City Council, October 15, 2014, <https://comptroller.nyc.gov/wp-content/uploads/2014/10/Comptroller-Stringer-Testimony-15-October-Council-Immigration-Hearing-_-Detainers.pdf> (According to DOC, the amount of money requested from the federal government through the State Criminal Alien Assistance Program (SCAAP) to pay for the City’s costs of processing detainers between October 2012 and September 2013 was $51,971,827. The amount of SCAAP money actually obtained by the City to pay for cooperation in processing immigrant detainers was $9,535,609, over $42,000,000 less than the requested amount or only 18 percent of the requested funds). [↑](#footnote-ref-16)
17. *See* Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy* (Jan. 2017), *available at* <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>. [↑](#footnote-ref-17)
18. *See* Int. No. 468, L.L. 2014/058, codified at N.Y.C. Admin. Code § 9-131; Int. No. 487, L.L. 2014/059, codified at N.Y.C. Admin. Code § 14-154. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Executive Order: Enhancing Public Safety in the Interior of the United States,* Jan. 25, 2017, available at: <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. *See* Int. No. 1558, L.L 2017/226, codified at N.Y.C. Admin. Code § 9-205; Int. No. 1568, L.L 2017/228, codified at N.Y.C. Admin. Code §§ 10-178, 9-131, 14-154. [↑](#footnote-ref-23)
24. Int. No. 1558, L.L 2017/226, codified at N.Y.C. Admin. Code § 9-205. [↑](#footnote-ref-24)
25. Int. No. 1568, L.L 2017/228, codified at N.Y.C. Admin. Code §§ 10-178, 9-131, 14-154. [↑](#footnote-ref-25)
26. *Id.* [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. N.Y.C. Council, *Council Speaker Corey Johnson and Committee on Immigration Chair Carlos Menchaca Announce a $16.6 Million Allocation to Fund the New York Immigrant Family Unity Project*, Sept. 10, 2019, <https://council.nyc.gov/press/2019/09/10/1805/>. [↑](#footnote-ref-29)
30. N.Y.C. Council, Committee Report, Preliminary Budget Hearing, Mar. 8, 2021, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4809578&GUID=03A116D3-C46C-4DBF-8EE6-4ED96E249185&Options=&Search=>. [↑](#footnote-ref-30)
31. N.Y.C. Council, *supra* note 29. [↑](#footnote-ref-31)
32. N.Y.C. Council, *supra* note 30. [↑](#footnote-ref-32)
33. Jennifer Stave, et al., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity*, Vera Institute of Justice, Nov. 2017, <https://www.vera.org/downloads/publications/new-york-immigrant-family-unity-project-evaluation.pdf>. [↑](#footnote-ref-33)
34. *Id.* [↑](#footnote-ref-34)
35. As noted, all instances described *infra* are based on information provided to the Council by NYIFUP staff. [↑](#footnote-ref-35)
36. Annie Correal & Ed Shanahan, *He Was Caught Jaywalking. He Was Almost Deported for It*., New York Times, Mar. 11, 2021,<https://www.nytimes.com/2021/03/11/nyregion/daca-ice-nyc-immigration.html>. [↑](#footnote-ref-36)
37. Int. No. 468, L.L. 2014/058, codified at N.Y.C. Admin. Code § 9-131. [↑](#footnote-ref-37)
38. Eric Lach, *A Deportation Nightmare in the Bronx*, The New Yorker, Feb. 28, 2021, <https://www.newyorker.com/news/our-local-correspondents/a-deportation-nightmare-in-the-bronx>. [↑](#footnote-ref-38)
39. Annie Correal & Ed Shanahan, *supra* note 36. [↑](#footnote-ref-39)
40. *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2018). [↑](#footnote-ref-40)
41. 8 U.S.C. § 1373. [↑](#footnote-ref-41)
42. *States of New York v. Dep't of Just.*, 343 F. Supp. 3d 213 (S.D.N.Y. 2018). A federal appellate court partially reversed this decision on separate grounds and declined to directly address the issue of whether the statute is unconstitutional. *State v. Dep't of Just.*, 951 F.3d 84, 114 (2d Cir. 2020), *cert. dismissed*, 141 S. Ct. 1291, 209 L. Ed. 2d 188 (2021), and *cert. dismissed sub nom.* *City of New York v. Dep't of Just.*, 141 S. Ct. 1291, 209 L. Ed. 2d 189 (2021). [↑](#footnote-ref-42)
43. N.Y. State Senate, *Senate Passes Driver's License Access and Privacy Act (Green Light NY)*, Jun. 17, 2019, <https://www.nysenate.gov/newsroom/press-releases/senate-passes-drivers-license-access-and-privacy-act-green-light-ny>. [↑](#footnote-ref-43)
44. Christina Goldbaum, *Dream Act Is Approved in N.Y. to Aid Undocumented Students, in Rebuke to Trump*, New York Times, Jan. 23, 2019, <https://www.nytimes.com/2019/01/23/nyregion/dream-act-bill-passed.html>. [↑](#footnote-ref-44)
45. Anne Marie Mulcahy, *Vera Applauds New York State Assembly and Senate Commitments to Immigrant Legal and Social Services*, Vera Institute for Justice, Mar. 18, 2021, <https://www.vera.org/newsroom/vera-applauds-new-york-state-assembly-and-senate-commitments-to-immigrant-legal-and-social-services>. [↑](#footnote-ref-45)
46. Eliza Loukou, *Every Year, There’s a Struggle to Fund Legal Services for New York State Immigrants*, Documented NY, Apr. 6, 2020, <https://documentedny.com/2020/04/06/every-year-theres-a-struggle-to-fund-legal-services-for-new-york-state-immigrants/>. [↑](#footnote-ref-46)
47. New York Civil Liberties Union, *New York For All Act,* <https://www.nyclu.org/en/campaigns/new-york-all-act>. [↑](#footnote-ref-47)