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May 17, 2017

Mayor Bill de Blasio  
City Hall  
New York, N.Y. 10007

**Re: Protecting Immigrant New Yorkers from Deportation**

Dear Mayor de Blasio:

On behalf of the New York City Bar Association, we write to urge you to protect immigrant New Yorkers from the danger of deportation by instructing the New York City Police Department (NYPD) to issue civil citations for nonviolent, low-level violation and misdemeanor offenses instead of making arrests. We applaud the many steps you have already taken to support and protect immigrant New Yorkers, including the creation of the IDNYC program, rolling back the city's cooperation with Immigration and Customs Enforcement (ICE), and funding legal representation for people in immigration detention. You have pledged that "here in New York—the safest big city in America—we will always protect our neighbors, no matter where they came from or when they got here." Instructing the NYPD to issue civil citations, whenever there is no immediate threat to public safety, instead of making arrests for low-level offenses will protect our immigrant neighbors, support the NYPD's efforts to make this city safe, and strengthen the fabric of our city.

As you know, on January 25, 2017 President Trump ordered the Secretary of Homeland Security to prioritize the removal of immigrants who:

- (a) Have been convicted of any criminal offense;

- (b) Have been charged with any criminal offense, where such charge has not been resolved; and
- (c) Have committed acts that constitute a chargeable criminal offense.<sup>1</sup>

In an implementation memorandum dated February 20, 2017, Secretary of Homeland Security John Kelly ordered Department personnel to prioritize the removal of individuals in the above categories, declared that immigrants involved in the criminal justice system are “a priority for removal,” and instructed that “removal proceedings shall be initiated against aliens incarcerated in federal, state and local correctional facilities.”<sup>2</sup> The Administration’s orders, therefore, particularly endanger immigrants who have come in contact with the criminal justice system.

Under your leadership, New York has taken important steps to distance the NYPD from federal immigration enforcement. New York Local Laws 58 and 59 of 2014, for example, limit the Department of Correction’s (DOC) ability to honor an immigration detainer to only those instances in which the request is accompanied by a warrant from a federal judge and the person in question has either been convicted of a “violent or serious” crime during the last five years or was listed on a terrorist database. The laws also prohibit the presence of ICE offices in Rikers and other DOC properties.<sup>3</sup> These policies are critical because, as you know, if local law enforcement becomes entangled with federal immigration enforcement, it damages police and community relations, jeopardizing public safety.

Arresting immigrants in New York for low-level offenses renders immigrant communities vulnerable, drives a wedge between police and communities, and endangers public safety. Even though the city does not honor ICE detainers, each new arrest flags an immigrant for federal immigration enforcement. This is so because the NYPD fingerprints each person they have arrested (in contrast to those persons issued a civil citation, who are not fingerprinted), then shares those fingerprints with the state’s Division of Criminal Justice Statistics, which in turn shares them with the Federal Bureau of Investigation (FBI). The FBI then shares the fingerprints with the Department of Homeland Security, which includes ICE.<sup>4</sup> So even if the NYPD later voids an arrest or a prosecutor declines to press charges, arrests still flag immigrants for federal immigration enforcement and place New Yorkers in danger of deportation.

Lawful permanent residents may be deported for any “crime involving moral turpitude,” a nebulous term that includes such low-level offenses as petit larceny or theft of services,

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<sup>1</sup> Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

<sup>2</sup> Sec’y John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest*, Memorandum, U.S. Dep’t of Homeland Sec. (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>3</sup> Persons Not to be Detained by the Department of Correction, Local Law 58, 59 (2014).

<sup>4</sup> Jarrett Murphy, *Can New York’s Mayor Do More to Protect Immigrants from ICE?*, *The Nation* (Mar. 14, 2017), <https://www.thenation.com/article/can-new-yorks-mayor-protect-immigrants-from-donald-trumps-deportation-machine/>.

including subway fare evasion.<sup>5</sup> Although the NYPD claimed that “nobody is getting deported for jumping a turnstile,”<sup>6</sup> when asked under oath whether an arrest for a theft of services charge, which includes turnstile jumping, could lead to deportation even of lawful permanent residents, Police Commissioner James O’Neill recently acknowledged that it could.<sup>7</sup> And last year approximately 30,000 people were arrested for fare evasion.<sup>8</sup>

The Acting Brooklyn District Attorney, Eric Gonzalez, acknowledged last month that convicting immigrants of minor offenses could result in unfair and severe consequences like deportation, which tears families apart and destabilizes communities.<sup>9</sup> He implemented a new policy to train and advise prosecutors on how to avoid disproportionate immigration consequences for individuals charged with misdemeanor and other low-level offenses—a policy that he says complements his goal “to enhance public safety and fairness in the criminal justice system.”<sup>10</sup> We urge you to support this worthy goal. By instructing the NYPD to issue civil citations instead of making arrests for low-level offenses where there is no immediate threat to public safety, you could at once improve community/police relations and protect immigrant New Yorkers.

The NYPD already has the discretion to issue civil citations or make arrests for a number of low-level offenses. In cases of fare evasion, for example, individuals can receive a civil summons handled by the Transit Adjudication Bureau (TAB) or they can be arrested and charged with a misdemeanor. In addition, last year the Criminal Justice Reform Act (CJRA) authorized the substitution of civil penalties for criminal enforcement for offenses including public drinking, public urination, littering, breaking park rules, and noise violations. Like TAB, the Office of Administrative Trials and Hearings (OATH) can adjudicate these minor offenses as civil citations that do not subject immigrants to possible deportation. The City Council urged the police to use civil citations whenever possible, but the use of these citations remains discretionary even in situations when there is no threat to public safety. Guidelines regarding the use of civil citations are still being developed regarding this subset of non-violent, low-level offenses ahead of a June 2017 deadline.<sup>11</sup> We urge you to take this opportunity to provide the NYPD with additional guidelines regarding the enforcement of non-violent, low-level offenses

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<sup>5</sup> 8 U.S.C. § 1251(a)(2)(A)(i).

<sup>6</sup> Emma Whitford, *NYPD Claims New Yorkers Won’t Be Deported for Turnstile Jumping*, Gothamist (Feb. 25, 2017), [http://gothamist.com/2017/02/25/nypd\\_turnstile\\_jumping\\_deportation.php](http://gothamist.com/2017/02/25/nypd_turnstile_jumping_deportation.php).

<sup>7</sup> Nick Pinto, *De Blasio’s NYPD Finally Admits Broken Windows Policing Puts New Yorkers In Danger of Deportation*, Village Voice (Mar. 31, 2017), <http://www.villagevoice.com/news/de-blasios-nypd-finally-admits-broken-windows-policing-puts-new-yorkers-in-danger-of-deportation-9837873>.

<sup>8</sup> Erin Durkin, *New York City’s Broken Windows Policing Helps Trump Deport Immigrants, Pol Says*, New York Daily News (Feb. 21, 2017), <http://www.nydailynews.com/news/politics/nyc-broken-windows-policing-helps-trump-deport-immigrants-article-1.2978783>.

<sup>9</sup> Acting Brooklyn District Attorney Eric Gonzalez Announces New Policy Regarding Handling of Cases against Non-Citizen Defendants, (Apr. 24, 2017), <http://www.brooklynnda.org/2017/04/24/acting-brooklyn-district-attorney-eric-gonzalez-announces-new-policy-regarding-handling-of-cases-against-non-citizen-defendants/>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* These offenses are listed in the Criminal Justice Reform Act and cover “specified unlawful acts” under the administrative code. Local Law 71 (2016).

that are both covered and not covered by the CJRA. By instructing the NYPD to use civil citations rather than arrests whenever there is no immediate threat to public safety, the city could protect immigrant New Yorkers from deportation.

Proponents of the “broken windows” theory of policing contend that aggressively pursuing and prosecuting low-level offenses has reduced crime in New York. But that theory is not supported by data. Last year, the Inspector General for the NYPD issued a report concluding that there was no empirical evidence linking low-level arrests to crime reduction.<sup>12</sup> One fact that *is* supported by evidence, however, is that people of color are disproportionately targeted for low-level arrests. NYPD data obtained through a Freedom of Information Law request by the New York Civil Liberties Union shows that, from 2011 to 2015, Black and Latino New Yorkers made up 85 percent of people arrested for public urination, 87 percent of those arrested for failure to comply with a park sign, and 92 percent of arrests for consumption of alcohol in a park.<sup>13</sup> The most recent census data, however, shows that Black and Latino New Yorkers make up a little more than 54 percent of New York’s population.<sup>14</sup> Issuing civil citations in place of arrests is a smarter solution that addresses low-level offenses without endangering immigrant New Yorkers or further driving a wedge between law enforcement and the communities they have sworn to serve and protect.

In addition, issuing civil citations in place of arrests will protect New York City’s reputation as the safest big city in America from the Administration’s apparent attempts to malign it. Secretary Kelly recently ordered the Director of ICE to create reports about any immigrant apprehended by ICE, an explanation of why an ICE detainer for that immigrant had not been honored, and a list of any criminal charges or convictions that took place after ICE’s detainer was not honored.<sup>15</sup> The implication of such reporting is that sanctuary cities, like this one, will be blamed for crimes allegedly committed by immigrants. By continuing to arrest people for nonviolent, low-level offenses, you will only be bolstering the Administration’s efforts to publish reports that stoke fear of immigrants and malign this city’s reputation.

In closing, the President’s Executive Order and the implementation memorandum that followed show the Administration plans to intensify immigration enforcement, target for deportation people convicted, charged, or even suspected of a criminal offense, and regularly publish information about immigrants’ criminal records as a way to increase fear of immigrants, malign cities that seek to protect immigrants, and stoke anti-immigrant sentiment. You have gone a long way toward protecting New York’s immigrant communities, but at this critical time

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<sup>12</sup> Office of the Inspector General for the NYPD, *An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015* (Jun. 22, 2016), <http://www1.nyc.gov/assets/oignypd/downloads/pdf/Quality-of-Life-Report-2010-2015.pdf>.

<sup>13</sup> Taken from data obtained by the NYCLU from the NYPD, June 2016 (on file with the NYCLU).

<sup>14</sup> American Fact Finder, “2010 Demographic Profile Data, New York City, New York,” U.S. Census Bureau, (May 12, 2011), [http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/census2010/t\\_sf1\\_dp\\_nyc.pdf](http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/census2010/t_sf1_dp_nyc.pdf).

<sup>15</sup> Sec’y John Kelly, *Enforcement of the Immigration Laws to Serve the National Interest*, Memorandum, U.S. Dep’t of Homeland Sec. (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

you must go further. We urge you to take the next crucial step by instructing the NYPD, whenever there is no immediate threat to public safety, to issue civil citations in place of arrests for low-level offenses.

Respectfully,

Civil Rights Committee  
Phil Desgranges, Chair  
Lauren Jones, Member

Criminal Courts Committee  
Kerry Ward, Chair

Immigration & Nationality Law Committee  
Farrin R. Anello, Chair

cc: James P. O'Neill, NYPD Commissioner  
Elizabeth Glazer, Director of the Mayor's Office of Criminal Justice