

**WRITTEN TESTIMONY OF
THE IMMIGRATION AND NATIONALITY LAW COMMITTEE
OF THE NEW YORK CITY BAR ASSOCIATION**

**NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION HEARING
“OVERSIGHT – THE IMPACT OF NEW IMMIGRATION ENFORCEMENT TACTICS
ON ACCESS TO JUSTICE AND SERVICES”**

March 15, 2017

My name is Rebecca Sosa. I am a member of the Immigration and Nationality Law Committee (the “Committee”) of the New York City Bar Association (“City Bar”), and co-chair of its subcommittee on Asylum and Immigration Courts. Our Committee represents a broad cross-section of the immigration legal community, and we base this testimony on our expertise and experience counseling our clients.

The Committee commends the City Council for holding this hearing today to examine how to protect access to justice and services for *all* New Yorkers. We support statements made by Speaker Mark-Viverito in her 2017 State of the City Address, highlighting the importance of protecting our immigrants, and limiting City cooperation with federal immigration officials in apprehending individuals who pose no threat to public safety.¹ For our City to effectively deliver services, all New Yorkers must have equal access to go court, to call upon law enforcement for protection, and to access education and social services. Our City as a whole becomes less safe when an abuse survivor decides that she cannot call 911 for protection because she fears it may lead to her deportation; when a crime witness decides he cannot testify against a perpetrator; or when a parent decides she cannot risk going to a food pantry or shelter, or bringing her children to school. Maintaining public trust in City government and law enforcement is critical to public safety and prosperity.

First, the Committee supports the City Council’s call for legislation to prohibit local law enforcement from acting as federal immigration officers. Specifically, the Committee supports legislation stating that local law enforcement will not be entering into the kind of agreements to carry out federal immigration enforcement requested in the President’s January 2017 Executive Orders, under section 287(g) of the Immigration and Nationality Act.²

¹ See New York City Council Speaker Mark-Viverito, 2017 State of the City Address, delivered on February 16, 2017 (“Speaker Mark-Viverito 2/16/17 State of the City Address”), available at <http://council.nyc.gov/press/2017/02/16/1370/>.

² See President Trump’s Executive Orders on the Interior and Border Security, dated January 25, 2017, available at <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety->

Legislation of this kind is consistent with the City’s existing laws and policies not to cooperate with federal officials in apprehending individuals who pose no threat to public safety. Mayor de Blasio³ and NYPD Commissioner O’Neill⁴ have made statements consistent with this position. Further, the New York Attorney General’s Office has issued legal guidance to assist local jurisdictions in precisely these efforts, which includes model sanctuary provisions.⁵ This legislation would ensure that local law enforcement could focus on keeping our communities safe and maintaining public trust in law enforcement, rather than enforcing federal immigration law. Such actions will further the City’s goals of promoting access to justice, City services, and public safety.

Second, the Committee applauds the City Council’s proposal for legislation to limit access by immigration enforcement to certain areas of City property when they do not have a judicial warrant. For the same reasons cited above, we encourage the City Council to protect City property from being commandeered for federal immigration enforcement. It is critical that the city institutions such as our courts, schools, and hospitals, and our law enforcement agencies, are not compromised in their ability to effectively serve and protect all New Yorkers. The President’s 2017 executive orders, anti-immigrant rhetoric, and escalation of ICE raids have made our clients afraid to show up for court and afraid to access a vast array of City services. For example, no one in our City benefits when an undocumented adult caretaker is too afraid to come to New York City Family Court to seek guardianship or custody for a minor child in need of protection. As NYPD Commissioner O’Neill stated, “It is critical that everyone who comes into contact with the NYPD, regardless of their immigration status, be able to identify themselves or seek assistance without hesitation, anxiety, or fear.”⁶ The same logic extends to all City property.

In drafting this legislation, we recommend the City Council follow and expand upon the letter and spirit of its Local Laws 58 and 59 on ICE and CBP detainer requests.⁷ The detainer

[interior-united](#) and <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

³ Online Statement from Mayor Bill De Blasio dated February 21, 2017, “We have been clear from the start that we will work with federal immigration authorities to remove individuals who are proven public safety threats in our City. What we will not do is turn our NYPD officers into immigration agents – or our jails into holding pens for deportation policy that will only undermine the inclusiveness that has helped make New York City the safest big city in the nation.” Available at: <http://www1.nyc.gov/office-of-the-mayor/news/107-17/statement-mayor-bill-de-blasio-white-house-changes-immigration-enforcement-practices>.

⁴ NYPD Commissioner O’Neill was quoted stating that the NYPD “does not enforce administrative warrants issued by Immigration and Customs Enforcement” [ICE] ... “solely in connection with immigration violations.” See Taylor Link, *NYPD commissioner to officers: Disregard Trump’s immigrant deportation order*, Salon, Feb. 23, 2017, available at <http://www.salon.com/2017/02/23/nypd-commissioner-to-officers-disregard-trumps-immigrant-deportation-order/>.

⁵ New York State Attorney General Eric T. Schneiderman, “Guidance Concerning Local Authority Participation In Immigration Enforcement And Model Sanctuary Provisions,” at 9, dated January 19, 2017 and March 12, 2017, (“NYS AG Guidance”) available at https://ag.ny.gov/sites/default/files/guidance_and_supplement_final3.12.17.pdf.

⁶ NYPD Commissioner O’Neill quote, *supra* n. 4.

⁷ See Local Laws 58 and 59, available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935437&GUID=0A456911-54A6-41E5-8C5A->

laws specify the limited situations in which ICE detainers will be honored by the Department of Corrections (DOC) and the NYPD, such as when there is a judicial warrant and conviction of specified criminal activity, and which does not include suspicions of civil immigration violations.⁸ These local laws removed federal law enforcement offices from the Department of Corrections (DOC) facility in Rikers.⁹ If federal immigration authorities were to try to use access to City courts to bypass the need for a detainer, or to work around the local detainer laws, it would similarly impede local government operation.

The City is within its authority to limit “impermissible intrusion on state and local power.”¹⁰ Such legislation would strike the appropriate balance in preserving the public’s access to courts and city services by limiting City cooperation with federal immigration officials in apprehending individuals who pose no threat to public safety.¹¹ Such an approach is consistent with the guidance of the New York State Attorney General on conforming local actions within the bounds of constitutional law, federal statutes, state constitutions and state law.¹²

Warrantless entries, searches, seizures, and arrests by federal immigration enforcement violate the Fourth Amendment and the New York Constitution. These firmly entrenched protections extend to all New Yorkers, including undocumented immigrants. National media reports of ICE enforcement tactics have already resulted in the public’s reasonable fear of accessing essential City services¹³ – and Committee members hear these fears from our clients. Failure to require federal law enforcement to conform its actions to the bounds of the law could also expose the City to legal liability. Therefore, the Committee also supports the City Council’s recommendation to post “Know Your Rights” information in multiple languages around publicly accessible areas of City property, and similar initiatives to effectively communicate this information in the community.

Third, the Committee stands with the City Council in advancing common-sense criminal justice reform as a key part of protecting our immigrant communities. Specifically, we support the City Council’s proposal for legislation empowering local law enforcement, prosecutors, and judges with an expanded range of alternative tools to address low-level and non-violent offenses. This is an essential step when considered in the federal immigration enforcement context, where *any* contact with the criminal justice system - no matter how long ago, or how minor - makes that individual a priority for deportation.

1D3B231D56AA and <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935438&GUID=0F5303CD-D849-4451-A082-6C9997FC782D&Options=Advanced&Search=> (respectively).

⁸ *Id.*

⁹ *Id.*

¹⁰ NYS AG Guidance, at 7, *supra* n. 5.

¹¹ See Speaker Mark-Viverito State of the City Address, *supra* n. 1.

¹² See NYS AG Guidance, at 3-9, *supra* n. 5.

¹³ See, e.g., Roque Planas, Elise Foley, *ICE Reportedly Detained a Domestic Violence Victim Who Sought Court Protection*, Huffington Post, Feb. 16, 2017, available at http://www.huffingtonpost.com/entry/el-paso-ice-detains-domestic-violence-victim_us_58a51f68e4b037d17d24cb2d (includes a summary of other recent ICE enforcement tactics).

Fourth, the Committee commends the City Council’s commitment to keep personal information such as immigration status confidential by establishing data privacy standards and protocols. Such protections are critical to assure our immigrant communities that they can still access City agencies, schools, and law enforcement without fear that doing so will put them and their families at an increased risk of deportation.

Pursuant to Executive Orders 34 and 41, New York City already limits the collection and disclosure of immigration-related information by agency employees and law enforcement officers. For example, City officers or employees, aside from law enforcement officers, “shall not inquire about a person’s immigration status unless: (1) Such person’s immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or (2) Such officer or employee is required by law to inquire about such person’s immigration status.”¹⁴ Meanwhile, law enforcement officers may not inquire about the immigration status of those who are survivors or witnesses to crime, and “shall not inquire about a person’s immigration status unless investigating illegal activity other than mere status as an undocumented alien.”¹⁵ The Committee commends the City on these clear policies, and the Speaker’s commitment to expanding these important protections.

The Committee also commends the City Council’s recognition that such guidance must extend to every City employee and contractor. We support protecting confidential information such as sexual orientation, religion, and immigration status. In protecting confidential information about immigration status, it is also critical to protect information about one’s place of birth¹⁶ as confidential, and further limit the collection and disclosure of this kind of information. This is important because in the context of removal proceedings, the federal government bears the legal burden of proving that an individual it is trying to deport is not a U.S. citizen. The NYPD and other City agencies should not be put in to the position of inadvertently assuming the federal government’s burden in recognition that doing so would deter public access to City services and cooperation with law enforcement.

Fifth, the Committee stands behind the City Council’s decision to require the Department of Education to refuse ICE access to school property without a warrant, and similar measures to block access to students and their records. Such measures are necessary to protect all children’s rights to access a public education.

Sixth, and in closing, the Committee congratulates the City Council’s groundbreaking leadership in funding immigrant representation. City Council funded programs, such as the New York Immigrant Family Unity Project (NYIFUP), have been a game-changer in providing for the first public defender program in the country for detained immigrants facing deportation. Access to quality immigration attorneys works: “Studies have found that

¹⁴ Executive Order 34 § 3(a), as amended by Executive Order 41, *available at* <http://www1.nyc.gov/assets/immigrants/downloads/pdf/eo-41.pdf>.

¹⁵ Executive Order 34 § 4(a), as amended by Executive Order 41, *supra*.

¹⁶ *See also* NYS AG Guidance, at 11-12, providing model language regarding limitations on the collection and disclosure of information regarding one’s place of birth and national origin, *supra* n 5.

97% of detained immigrants without counsel are unsuccessful in challenging their deportation, and also revealed that access to counsel can improve the chance of winning a deportation case by as much as 1000%.”¹⁷ Funding immigrant representation may be the most cost-effective and meaningful way to promote justice, fairness, judicial efficiency, due process, and the rule of law.¹⁸ Funding immigrant representation also reduces numerous economic burdens on the City, such as the high costs of paying for immigration detention, and the emotional and financial aftermath of providing additional support to children whose parents have been detained or deported, ranging from health care to even foster care.¹⁹

In order to ensure the positive impact of access to counsel in immigration proceeding, the Council must also help prevent the unauthorized practice of immigration law. Immigrant New Yorkers are more vulnerable than at any time in recent history to the consequences of erroneous legal advice. An “immigration assistance services provider” who improperly instructs a client to file an application for a benefit for which the client is not eligible may cause far worse consequences to the client than the cost of the services provided and the application fee. Filing a non-meritorious or error-filled immigration application places an undocumented New Yorker at serious risk of deportation by bringing him or her to the attention of the Department of Homeland Security without the benefit of having properly vetted his or her immigration status and options. To that end, the Committee supports Int. 0746-2015, which will give real teeth to enforcement agencies combating fraud against immigrants and urges the Council to provide adequate funding to the Department of Consumer Affairs so its agents can focus on “immigration assistance services providers” and issue fines against those who do not comply with the law.²⁰

New York City also has been a national leader in ensuring that unaccompanied minors have free legal representation to fight their immigration cases through the New York City Council’s historic Unaccompanied Minors Initiative.²¹ As essential as this initiative is, we still have more work to do to continue to address the unmet needs of our youngest New Yorkers. The data through 2017 collected from TRAC shows that of the current children’s cases pending in New York City immigration court, more than 30% of children are still unrepresented and facing

¹⁷ Description of the New York Immigrant Family Unity Project (NYIFUP) on the website of one of the program participants, Bronx Defenders, *available at* <http://www.bronxdefenders.org/programs/new-york-immigrant-family-unity-project/>.

¹⁸ The cost of implementing immigration representation programs may even be wholly offset by savings in the costs of detention, foster, care, and transportation. *See, e.g.*, NERA Economic Consulting, “Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings”, May 28, 2014, *available at* http://www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf. *See also*, “The New York Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers,” *available at* https://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf.

¹⁹ *Id.*

²⁰ *See* Testimony Calling for Adequate Resources to Prevent the Unauthorized Practice of Immigration Law, New York City Bar Association Immigration & Nationality Law Committee, March 6, 2017, *at* http://s3.amazonaws.com/documents.nycbar.org/files/201786-DCAbudgetUnauthImmigrationPractice_FINAL_3.6.17.pdf.

²¹ New York City Council, Speaker’s 2014-2015 Midterm Progress Report, Protecting Immigrants, *available at* <http://council.nyc.gov/reports/speakers-2014-2015-midterm-progress-report/protecting-immigrants/>.

removal proceedings alone, without an attorney.²² In other words, 7,000 children appearing in New York Immigration Court still need an immigration attorney if they are going to be able to assert their rights for protection under current law.²³ We thank the City Council for its leadership on this issue, and reaffirm our support for expanded immigrant representation programs.

²² TracImmigration, *Juveniles – Immigration Court Deportation Proceedings*, Court Data through January 2017. Organize the data by: (1) Immigration Court: New York [note: this is the non-detained docket at 26 Federal Plaza], (2) Represented, and the data shows that of all 22,570 Juvenile Cases pending in the State of New York, 15,509 are Represented, and 7,061 are Not Represented. Available at: <http://trac.syr.edu/phptools/immigration/juvenile/>.

²³ *Id.*