



NEW YORK
CITY BAR

**COMMITTEE ON
IMMIGRATION & NATIONALITY LAW**

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Mayor Bill de Blasio
City Hall
New York, NY 10007

Re: Expansion of the Criminal Carve Out for Cooperation with U.S. Immigration and Customs Enforcement

Dear Mayor de Blasio:

The New York City Bar Association (“City Bar”) writes to express serious concerns about the proposed expansion of the circumstances under which the City will cooperate with immigration authorities and to re-state its opposition to the existing “Criminal Carve-Out”. The City Bar’s over 24,000 members include attorneys in private practice, government service, non-profit practice, and academia. The Immigration and Nationality Law Committee is comprised of immigration attorneys, current and former judges, immigration law scholars, and attorneys specializing in human and civil rights. This letter is based upon committee members’ expertise and experience counseling clients.

I. EXPANDING THE NEW YORK CITY DETAINER LAW FURTHER UNDERMINES THE CITY’S STATUS AS A SANCTUARY CITY

The New York City Detainer Law (NYC Admin. Code §§ 9-131 and 14-154) requires the City to honor U.S. Immigration and Customs Enforcement (ICE) detainer requests regarding a noncitizen who has been convicted of certain serious crimes. If an individual has a prior conviction for one of 170 enumerated violent or serious crimes during the five years immediately preceding a “current arrest” (§ 9-131(2)(ii)) or an “instant arrest” (§ 14-154(2)(ii)), City prison officials must honor an ICE detainer request and transfer that individual to ICE.¹

¹ An ICE detainer asks that the City hand individuals over to ICE custody from City custody, at the completion of their City criminal matter. If the individual does not have a “current” or “instant” arrest, the Detainer Law is not implicated.

The Detainer Law has already undermined the City’s status as a so-called “sanctuary city,” meaning a local government that does not actively cooperate with federal immigration enforcement activities. By adding additional offenses to the list of 170 offenses for which the City already cooperates with ICE, the City further erodes the trust of its immigrant communities.

II. EXPANDING THE “CRIMINAL CARVE-OUT” FURTHER ENTRENCHES ITS MISGUIDED APPLICATION IN THE CONTEXT OF IMMIGRATION LEGAL SERVICES

As we previously noted in our June 1, 2018 letter,² the City has incorporated the Detainer Law into its immigration legal services funding, prohibiting legal service providers (LSPs) from seeking reimbursement for any services provided to individuals who were convicted of any of the offenses enumerated in the Detainer Law in the five years immediately preceding the date of intake. This is known as the “Criminal Carve-Out” in legal services funding. The “Criminal Carve-Out” substantially affects LSPs’ ability to provide legal services, and particularly undermines the promise of universal representation underpinning the New York Immigrant Family Unity Project (NYIFUP). NYIFUP is the first program in the nation seeking to provide universal representation in immigration court to individuals detained by ICE. Following the last decision by Mayor de Blasio to remove funding for NYIFUP for certain noncitizens based on the nature of their convictions, the City added similar language removing funding for other immigration legal service programs that have nothing to do with criminal defense or removal defense, including but not limited to the Immigrant Opportunities Initiative, the Unaccompanied Minors and Families Initiative, and various domestic violence-related contracts. As a result, some LSPs are not able to even receive funding to assess a noncitizen’s options if the noncitizen was convicted of a crime on the carve-out list.

Expanding the circumstances under which the City will cooperate with ICE by incorporating additional offences into the Carve-Out will further entrench the inappropriate application of this standard in the context of immigration legal services. At the same time, it will have further negative impacts on LSPs’ ability to provide services to what are often among the most vulnerable New Yorkers. We urge you to reconsider this expansion of cooperation with immigration authorities and remain hopeful that the City will reexamine the Carve-Out wholesale.³

² New York City Bar Association, *The Need to Allow Immigration Legal Services Providers to, at a Minimum, Receive Funding for Brief Services for Cases Subject to the Carve-out Based on Certain Convictions*, June 1, 2018, https://s3.amazonaws.com/documents.nycbar.org/files/2017389-CriminalCarveOut_FINAL_6.1.18.pdf. (All websites cited in this letter were last visited on May 30, 2019.)

³ The fundamental purpose of NYIFUP is universal representation for detained immigrants facing removal. The goal is to ensure that every detained immigrant in New York City receive representation when facing a trained federal prosecutor, to at a minimum, ensure that the federal government meets its burden of proof. There is no carve-out for criminal defendants to receive competent counsel based on the nature of their crimes and there should be no carve-out for immigrants facing potentially permanent exile from the United States. See *Mayor Extends List of Crimes for Which City Will Turn Over Immigrants to ICE*, NY1, May 11, 2019, <https://www.ny1.com/nyc/all-boroughs/news/2019/05/11/mayor-extends-list-of-crimes-for-which-city-will-turn-over-immigrants-to-ice>.

III. THE IMPORTANCE OF UNIVERSAL REPRESENTATION

Ensuring continued and unfettered access to representation for low-income immigrants is a matter of fairness and speaks to the City's fundamental commitment to protecting some of its most vulnerable residents. Placing limitations on an individual's ability to access legal representation ultimately runs contrary to the promise of universal representation offered by NYIFUP.

In many cases, vulnerable and low-income defendants plead guilty to charges because they are unable to afford to post bail. Additionally, a significant proportion of those released on bail have their cases dismissed by prosecutors once they are released. Immigration attorneys are also often successful in obtaining post-conviction relief for clients who have failed to receive proper advice or due process in their criminal cases. Denying these individuals access to a lawyer to review the circumstances of their conviction is doubly punitive. In addition, many people involved in removal proceedings have viable claims to U.S. Citizenship that they are unlikely to be able to assert without expert immigration representation due to the inherent complexity of the law in these areas. Even those who appear removable due to one of the offenses listed in the Detainer Law may be eligible for statutory forms of relief from removal, but would likely be unable to avail themselves of those highly complex forms of relief as a pro-se litigant. The Criminal Carve-Out and its proposed expansion impacts those who would often most benefit from accessing legal services and risks further widening an already significant access-to-justice gap.

We urge you to reconsider this expansion of the Detainer Law, or at the least to reconsider the Carve-Out with regard to the provision of desperately-needed immigration legal services. As previously communicated, we particularly urge you to reconsider this funding limitation outside the context of immigration detention, where New York City's Detainer Laws are completely inapplicable and where high-quality representation is so important because even a routine application could trigger detention and deportation.

Thank you for your consideration.

Respectfully submitted,



Victoria Neilson, Chair
Immigration and Nationality Law Committee