



**WRITTEN TESTIMONY OF THE
IMMIGRATION AND NATIONALITY LAW COMMITTEE
NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION
AND COMMITTEE ON CRIMINAL JUSTICE
OVERSIGHT HEARING - NEW YORK CITY'S DETAINER LAWS
FEBRUARY 15, 2023**

Thank you to the Committees on Immigration and on Criminal Justice for holding a public hearing to address the New York City Detainer Laws. My name is Danny Alicea. I am a member of the Immigration and Nationality Law Committee of the New York City Bar Association (“the Immigration Committee”). On behalf of the Committee, I submit the following written testimony in support of Intros. 0184-2022 and 0185-2022 to further limit any communication between New York City agencies, including the Department of Corrections (“DOC”) and the New York Police Department (“NYPD”) and Immigration and Customs Enforcement (“ICE”). At this time, the Immigration Committee takes no position with respect to Intro. 0158-2022.

Founded in 1870, the New York City Bar Association is a 23,000-member organization. The City Bar’s mission is to equip and mobilize a diverse legal profession to practice with excellence, promote law reform, and uphold access to justice. The Immigration Committee addresses diverse issues pertaining to immigration law and policy. Our members include staff of legal services organizations, private immigration attorneys, staff of local prosecutor’s offices, employees of government immigration agencies, academics, and law students. Our testimony in support of Intros. 0184 and 0185 is based on the expertise of our members and the experiences of their clients.

I. INTRODUCTION

For decades, the Immigration Committee has spoken out about the devastating impacts that result from City and State governmental agencies aiding or cooperating with federal immigration enforcement efforts. In 2017, we urged then Mayor de Blasio to protect non-immigrants from ICE

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

by encouraging NYPD to issue civil citations rather than arrests for low-level offenses.¹ Similarly, we have spoken about the need to reform New York’s detainer laws² and to remove any funding restrictions that prohibit legal service providers from using city funding to represent non-citizens convicted of certain crimes.³ Permitting the DOC and NYPD to cooperate with ICE and transfer people into federal custody based on a person’s criminal history is deeply misguided. This approach exacerbates the disproportionate impact of the criminal legal system.

Since 2014, the New York City detainer laws have prohibited the DOC and the NYPD from holding a person on an immigration detainer unless presented with a judicial warrant naming an individual who was convicted of certain enumerated violent or serious crimes.⁴ Local laws also permit the NYPD to hold people for ICE for up to 48 hours after their release date if they have been convicted of one of the enumerated crimes and re-entered the country after deportation.⁵ Importantly, in 2018 the Appellate Division of New York’s Second Department recognized in *Francis v. DeMarco* that law enforcement officers in New York have no authority under existing state law to detain a person for civil immigration purposes without a judicial warrant, effectively prohibiting civil immigration detainers statewide.⁶ The current law, which allows the NYPD to hold people without a judicial warrant appears to be on its face a violation of the Second Department’s decision in *Francis*.⁷

Also in 2014, the Immigration Committee testified at a hearing of the New York City Council commending you for introducing legislation to limit the constitutional violations arising from New York’s detainer laws.⁸ We heralded your efforts as improving the NYPD’s ability to keep all New Yorkers safe by building trust between police and immigrant communities. At the time, we were deeply troubled by the devastating results of local law enforcement cooperation with immigration enforcement efforts. We have since amplified our concerns in a transition memo to Mayor Eric Adams.⁹ The Immigration Committee remains concerned about New York City’s

¹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-mayor-de-blasio-regarding-protecting-immigrant-new-yorkers-from-deportation> (all cites last visited Feb. 16, 2023).

² See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/testimony-before-the-new-york-city-council-in-support-of-legislation-to-further-limit-the-constitutional-violations-arising-from-current-detainer-practices-between-the-us-immigration-and-customs-enforcement-ice-the-department-of-correction-and-the-new-york-police-department>.

³ “We urge you to reconsider the criminal Carve-Out altogether and fully fund desperately needed immigration legal services, whether the potential clients are facing removal or seeking affirmative immigration benefits...” “Ending the funding “Criminal Carve Out” for Immigration Legal Service Providers,” New York City Bar Association, June 1, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ending-the-funding-criminal-carve-out-for-immigration-legal-service-providers>.

⁴ NYC Admin. Code § 9-131(b)(1)(ii); NYC Admin. Code § 14-154(b)(1)(ii).

⁵ NYC Admin. Code § 14-154(b)(2).

⁶ *People ex rel. Wells o.b.o. Francis v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2018).

⁷ See *Francis*, 168 A.D.3d at 53.

⁸ *Supra* n 1.

⁹ See <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/supporting-new-york-citys-non-citizen-residents-policy-recommendations-for-mayor-adams>.

detainer law. NYPD and DOC's continued cooperation with Immigration and Customs Enforcement (ICE) is especially disheartening.

II. INTROS. 0184 AND 0185 ARE NECESSARY TO REMEDY ONGOING DANGERS OF NEW YORK'S DETAINER LAWS

Proponents of Intros. 0184 and 0185 highlight the specific perils of local law enforcement agencies, like the NYPD and DOC, working with Immigration and Customs Enforcement. In particular, they are concerned with DOC's prolonged holding of non-citizens in custody premised solely off of the person's criminal history. They have similar concerns about NYPD. Intros. 0184 and 0185 would essentially clarify any confusion among local law enforcement agencies vis-à-vis any assistance or cooperation provided to ICE. They do not call for an outright ban of such collaboration; rather, they are seeking basic due process rights for New York's non-citizen population by holding city agencies to the requirement that such collaboration is limited to the instances where ICE acquires a warrant signed by an Article III federal court judge.

Intros. 0184 and 0185 improve the existing detainer law by eliminating the request for notification language, and clearly requiring a judicial warrant be presented in all cases for DOC or NYPD to communicate with ICE. The judicial warrant requirement inserts an important element of due process and accountability, ensuring that ICE is held to the probable cause standard of proof before taking away a person's liberty. Currently ICE only proffers their own internal administrative warrants, which are not signed by a judge and are not subject to any reliable standards or review. The warrant requirement ensures that a judge appointed pursuant to Article III of the United States Constitution or a federal magistrate judge appointed pursuant to 28 U.S.C. § 631 is the one who authorized federal immigration authorities to take a person into custody.

As you no doubt are aware, many devastating immigration policies remain in effect because federal legislators have been unable to agree on comprehensive immigration reform. The Biden Administration has improved some of the immigration landscape by voiding some of the harshest enforcement mechanisms put into place by the prior administration. Nevertheless, immigration enforcement remains in full force. Local jurisdictions must continue the fight to defend and support our immigrant communities. As the historic gateway for immigrant Americans and the as a truly global city, New York, we believe, has a particular responsibility to its non-citizen residents.

Intros. 0184 and 0185 are critical because violations of the existing detainer laws can have devastating impacts on individuals and creates a sense of terror for non-citizens and their loved ones. Furthermore, violations inevitably result in unnecessary detention, arrests, and possible deportation.¹⁰ In reference to a particular instance where a non-citizen was transferred to ICE custody by local law enforcement, former Mayor de Blasio referred to it as an "egregious mistake and a clear violation of local law."¹¹ All violations, both technical and in spirit, demonstrate the serious weaknesses in our existing detainer laws and highlight the urgent need to create

¹⁰ Correal, Annie and Shanahan, Ed, "*He Was Caught Jaywalking. He Was Almost Deported for It*", N.Y. Time (March 11, 2021) <https://www.nytimes.com/2021/03/11/nyregion/daca-ice-nyc-immigration.html>.

¹¹*Id.*

meaningful, responsive mechanisms to protect immigrant New Yorkers from not only ICE’s abuses, but also the abuses perpetrated by DOC and NYPD.

These violations make clear that the detainer law must be strengthened to prevent further violations. The bills currently before City Council can help rectify some of the shortcomings in the City’s existing laws and constitute a step towards true disentanglement from immigration enforcement. Intros. 0184 and 0185 eliminate the loopholes to the current law which ICE uses to justify violations of the detainer law, by ignoring the judicial warrant requirement, as well as violations of the intent and spirit of the laws.

Intertwining local law enforcement with ICE enforcement runs counter to New York’s longstanding history of welcoming, including, and protecting all of its residents regardless of their background. It also contradicts our purported status as a “sanctuary city” that respects, values, and heralds non-citizens for their contributions to the fabric of our great city. This will inevitably make New Yorkers lose confidence that City agencies and their representatives will not communicate and collude with ICE and creates grave mistrust and fear in communities not only of immigration enforcement, but also of accessing City services and engaging with City agencies. A January 2022 report from the Center for Migration Studies found that fear and other barriers often prevent immigrants from accessing public services for which they are eligible.¹² Some immigrants are hesitant to call the police, report crimes or testify in court out of fear of exposing themselves to immigration enforcement. However, when strong local policies are in place that clearly protect against localities communicating and colluding with ICE, domestic violence and other crimes are more likely to be reported.¹³

III. CONCLUSION

Intros. 0184 and 0185 directly address the Immigration Committee’s longstanding concerns about New York’s detainer laws by removing ambiguity about whether and when city agencies will cooperate with ICE. Strengthening the judicial warrant requirement will remove lingering confusion within the local law enforcement offices and aligns with due process and our city’s spirit of inclusion and fairness for non-citizens.

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¹² Alulema, Daniela and Pavilon, Jacquelyn, “Immigrants’ Use of New York City Programs, Services and Benefits: Examining the Impact of Fear and Other Barriers to Access,” (Jan. 31, 2022) <https://cmsny.org/publications/nyc-programs-services-and-benefits-report-013122/>.

¹³ *Id.*