



TESTIMONY OF:

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Submitted to

The New York City Department of Correction

**Public Hearing and Opportunity to Comment on Proposed Rule:
Additional Offenses Justifying Honoring of Immigration Detainer Requests**

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Introduction

My name is Nyasa Hickey. I am the Immigration Counsel at Brooklyn Defender Services (BDS). I would like to take this opportunity to comment on the proposed rule to expand the offenses that justify the honoring of immigration detainer requests. I urge the Department of Corrections (DOC) and city officials to stand firm in New York City's commitment to protect immigrant families and communities.

New York City has repeatedly made efforts to reassure our communities that that the City welcomes and protects all New Yorkers, including its immigrant community. With the NY City Council's passage of groundbreaking legislation that removed ICE from Rikers Island and prevented the NY Department of Corrections, NYPD, and Department of Probation from detaining noncitizens without a judicial warrant, we saw a reduction in detention and deportations of noncitizen clients. Expanding the DOC Detainer Discretion Law Exceptions would be sending a contradictory message to New York's immigrant community. New York City would be rolling back the protections of the NY City DOC Detainer Discretion bill and further expanding the list of "violent or serious crimes" and its cooperation with ICE.

Each year, BDS advises hundreds of immigrants about the consequences of a guilty plea and advocates for clients regarding enforcement of the City's detainer law. The City's detainer law protects many of those immigrants from being ripped from their

communities. Expanding the exceptions in the law would threaten to destroy even more New York families and communities.

Immigration and Customs Enforcement (ICE) and its predecessor, the Immigration and Naturalization Service (INS), has long relied upon state and local criminal legal systems to find noncitizens who may be removable in order to detain them and subject them to the civil deportation process. Historically, ICE and the legacy INS would identify undocumented or deportable people in jails and prisons and issue an “immigration detainer” to hold a person for up to 48 hours beyond their mandated release time so that ICE could assume custody of the person and transfer them to an immigration detention facility.

With the NY City Council’s passage of groundbreaking legislation that removed ICE from Rikers Island and prevented the NY Department of Corrections, NYPD, and Department of Probation from unlawfully detaining noncitizens without a judicial warrant, we saw a reduction in detention and deportations. On the national level, we are witnessing the highest rate of immigrants in detention in history at 48,000ⁱ and the highest immigration court backlog at over 1 million cases.ⁱⁱ As we documented in our testimony before the New York City Council in the Oversight Hearing on ICE Out of New York Courts, April 10, 2019, fear and mistrust in the immigrant community has a grave and chilling effect on communities’ willingness to avail themselves of civil and criminal courts and the legal system generally, as well as within the broader New York City community.

New York City should not be in the business of collaborating with a dysfunctional agency such as ICE, neither through the honoring of detainer requests to hold an individual beyond the time they would otherwise be released from DOC custody without a judicial warrant, nor through the notification to ICE about when an individual an individual will be released from DOC custody.

NYC Would be Further Limiting Access to Counsel for Immigrants

The City Council has been instrumental in ensuring that detained immigrants in New York have access to publicly-funded counsel through the New York Immigrant Family Unity Project (NYIFUP), the Immigrant Opportunities Initiative and other city-funding to support immigrants’ access to counsel to protect their rights and family unity. City-funded immigration legal services are essential in order to provide critical immigration services to New York’s immigrant communities who have lacked access to such services for many vulnerable immigrants, access to legal services means the difference between, months or years of detention and deportation versus being united with their families and their New York Community.

NYIFUP and other city-funded access to counsel programs preserve families and keep communities together. NYIFUP is based on the premise of universal representation and increased immigration enforcement at the federal level makes the City’s commitment to inclusive representation more important than ever. Because people convicted of one of the offenses excepted from the detainer law are not eligible City-funded immigration

counsel through NYIFUP, the proposed rule would further restrict access to essential immigration services based on an individual's prior contact with the criminal justice system. This runs counter to our core belief as a public defender office that everyone needs and deserves access to counsel.

Over the law few years, the City has made significant steps towards criminal justice reform, such as bail reform, ban the box legislation limiting criminal history checks by employers, the reduction of stop and frisk, and summons reform. Any steps by DOC to expand the exceptions to the detainer law run counter to that reform.

Conclusion

We call on the Department of Correction, as a city agency, to maintain and strengthen New York City's commitment to value, protect and provide due process for all immigrants. At this critical time of fear and mistrust, a time when New York City is seen as a beacon of light, the City should not expand its cooperation with the federal deportation agenda. New York should continue to reassure the immigrant community that New York stands in unity with them and they should not be afraid to access essential City services, attend New York courts and live in New York with their families.

Thank you for considering my comments. If you have any questions, please feel free to reach out to Nyasa Hickey, Immigration Counsel, at 718-254-0700 ext. 230 or nhickey@bds.org.

ⁱ Patricia Alvarez, Budget talks sticking point: How many people ICE can detain, CNN, February 2019, available at <https://www.cnn.com/2019/02/11/politics/ice-detention-immigration/index.html>.

ⁱⁱ TRAC, Syracuse University, Immigration Court Backlog Surpasses One Million Cases, November 2019, available at <https://trac.syr.edu/immigration/reports/536/>.