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**Comments of the New York Civil Liberties Union  
to  
The New York City Department of Correction  
regarding  
Proposed Rule to Add Seven Additional Crimes  
to the  
List of Violent or Serious Crimes Referenced in  
New York City Administrative Code § 9-205, § 9-131, and § 14-154**

**August 9, 2019**

The New York Civil Liberties Union (NYCLU) respectfully submits these comments in response to the New York City Department of Correction's (DOC) proposal to add seven additional crimes to the list of violent or serious crimes in § 9-205, 9-131, and 14-154 of the New York City Administrative Code, which trigger exceptions to the city's prohibition on honoring civil immigration detainers. At a moment when the federal government is exercising unspeakable cruelty in its enforcement of immigration law, this proposed rule will expand the ways in which city officers and employees can cooperate with immigration authorities – the opposite of the approach the city should be taking. We oppose the proposed rule.

Interest of the NYCLU

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and over 190,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, through an integrated program of litigation, legislative advocacy, public education and community organizing.

The NYCLU has long fought to protect the rights of immigrant New Yorkers. This includes our work to disentangle state and local government from the business of federal immigration enforcement. In 2011 and 2013, the NYCLU advocated for

the New York City Council's passage of local laws to restrict law enforcement from honoring immigration detainer requests,<sup>1</sup> and pressed in 2014 for those laws to be made even stronger.<sup>2</sup> The NYCLU worked closely with the city council in 2017 on a set of bills to place further restrictions on using city resources for immigration enforcement and bolster the city's status as a place that welcomes immigrants.<sup>3</sup> In 2018, we worked alongside other advocates through our Lower Hudson Valley chapter office to secure passage of the Westchester Immigrant Protection Act, the first county-level law in the state to comprehensively limit local assistance in immigration enforcement.<sup>4</sup> And we have advocated for the implementation of policies and practices to limit cooperation with immigration authorities in counties, cities, towns, and villages across New York State.

In November 2018, the NYCLU won a landmark lawsuit against the Suffolk County Sheriff's Department establishing that state and local law enforcement officers have no authority under state law to hold a person in custody for civil immigration purposes, including in response to a detainer request from U.S. Immigration and Customs Enforcement (ICE), beyond the time they would be free to leave, absent a judicial warrant.<sup>5</sup> As a result of the *Francis* decision, law enforcement agencies across the state are now legally bound by the same type of restrictions on immigration detainers that many localities, like New York City, had already adopted as a matter of public policy.

The New York City Council has a long history of exercising its authority to limit local involvement in immigration enforcement.

Over the past decade, as ICE's enforcement tactics have grown more aggressive, New York City has steadily reinforced its commitment to limiting its entanglement with the federal government's cruel immigration enforcement regime. In 2011, the city council first took steps to limit the use of immigration detainers by

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<sup>1</sup> NYCLU, *Testimony Before the New York City Council in Support of Legislation Limiting the Detention and Deportation of Immigrants*, Jan. 25, 2013, <https://www.nyclu.org/en/publications/testimony-new-york-city-council-support-legislation-limiting-detention-and-deportation>.

<sup>2</sup> NYCLU, *Testimony before the New York City Council Immigration Committee Regarding Immigration Detainers*, Oct. 15, 2014, <https://www.nyclu.org/en/publications/testimony-regarding-immigration-detainers>.

<sup>3</sup> NYCLU, *NYCLU Praises City Council's Intent to Protect Immigrants in Proposed New Bill Package*, April 26, 2017, <https://www.nyclu.org/en/press-releases/nyclu-praises-city-councils-intent-protect-immigrants-proposed-new-bill-package>.

<sup>4</sup> Shannon Wong, *Westchester County Won't Aid Trump's War on Immigrants*, March 26, 2018, NYCLU, <https://www.nyclu.org/en/news/westchester-county-wont-aid-trumps-war-immigrants>.

<sup>5</sup> *People ex rel. Wells o.b.o. Francis v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2018).

passing a local law that prohibited the DOC from honoring civil immigration detainees unless a person had been convicted of a crime, was a defendant in a pending criminal case, had an outstanding criminal warrant, or was identified as a gang member or match in a terrorist watch database.<sup>6</sup> In 2013, the city council strengthened that detainer law by limiting the types of criminal convictions and cases that would permit the DOC to honor a detainer,<sup>7</sup> and by extending parallel restrictions to the NYPD.<sup>8</sup>

In 2014, the city council again acted to significantly strengthen New York City's detainer laws. These revisions, which are reflected in the current administrative code, made clear that DOC officers must be presented with a judicial warrant in order to honor a detainer or hold a person beyond their release date,<sup>9</sup> and required the same of NYPD officers in almost all circumstances.<sup>10</sup> In addition to that judicial warrant requirement, the DOC and NYPD may only hold a person for up to 48 hours past her release date if she was also convicted of certain enumerated violent or serious crimes or is identified as a match on a terrorist watch list.<sup>11</sup> The 2014 laws also barred the DOC from sharing information with immigration authorities in most instances, with similar exceptions for criminal convictions or terrorist watch list matches, and effectively barred immigration authorities from maintaining offices at city jails.<sup>12</sup>

Following the inauguration of President Trump, the city council again acted to bolster the city's laws restricting participation in immigration enforcement. The council expanded its prohibitions on detainers by extending equivalent restrictions to the Department of Probation (DOP).<sup>13</sup> The city also restricted access by non-local law enforcement to non-public areas of civil property without a judicial warrant,<sup>14</sup> and broadly prohibited city employees from using city resources to assist with immigration enforcement.<sup>15</sup>

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<sup>6</sup> NYC Local Law No. 62 (2011).

<sup>7</sup> NYC Local Law No. 22 (2013).

<sup>8</sup> NYC Local Law No. 21 (2013).

<sup>9</sup> NYC Local Law No. 58 (2014); *see* NYC Admin. Code § 9-131(b)(1)(i).

<sup>10</sup> NYC Local Law No. 59 (2014); *See* NYC Admin. Code § 14-154(b)(1)(i). For the NYPD only, the local law provides a narrow exception to the judicial warrant requirement that allows for officers to hold a person for up to 48 hours if she has been convicted of a violent or serious crime and entered the country illegally within the past 10 years, or is a match on a terrorist screening database. This exception is called into question by recent judicial decisions. *Francis*, 168 A.D.3d at 53.

<sup>11</sup> NYC Admin. Code § 9-131(b)(1)(ii); NYC Admin. Code § 14-154(b)(1)(ii).

<sup>12</sup> NYC Admin. Code § 9-131(h).

<sup>13</sup> NYC Local Law No. 226 (2017); NYC Admin. Code § 9-205.

<sup>14</sup> NYC Local Law No. 246; NYC Admin. Code § 4-210.

<sup>15</sup> NYC Local Law No. 228; NYC Admin. Code § 10-178.

These repeated steps to strengthen protections for immigrant New Yorkers reflect a considered judgment by the city's elected officials, representing the will of their constituents, to limit how city law enforcement and other local officials interact and assist federal authorities in enforcing immigration law. City officials frequently hold New York City out has a sanctuary and a welcoming place for its more than three million foreign-born residents.<sup>[LR1]</sup>

The DOC's proposed rule is contrary to the city's longstanding commitment not to participate in the federal government's cruel immigration enforcement regime.

The DOC's proposed rule would represent a troubling step backwards from the progress the city has made in reducing its involvement with immigration enforcement. The existing detainer laws set forth 170 state crimes, in addition to felony hate crimes and certain felony traffic offenses, that trigger the limited situations<sup>[LR2]</sup> in which detainers can be honored or information can be shared.<sup>16</sup> The DOC is now proposing to add through rulemaking seven additional state crimes enacted since 2014, expanding the circumstances under which the DOC, NYPD, and DOP may cooperate with immigration authorities.

This decision is deeply misguided at a time when the federal government is pulling out every stop in its efforts to detain and deport immigrants, and subjecting immigrants in its custody to inhumane conditions without due process. From the end of the Obama administration to the first two years of the Trump administration, New York City has seen a 107% increase in immigration arrests, the third highest increase in the country.<sup>17</sup> Advocates and media outlets have documented the terrible conditions in which immigrant detainees are often held, including at immigrant detention facilities in New York and New Jersey where people arrested by ICE in New York City are commonly held.<sup>18</sup> Mayor De Blasio himself has called for ICE to be abolished and for the immigration enforcement

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<sup>16</sup> See NYC Admin. Code § 9-131(a)(7), § 9-205(a), § 14-154(a)(6).

<sup>17</sup> Guillermo Cantor, Emily Ryo & Reed Humphrey, *Changing Patterns of Interior Immigration Enforcement in the United States, 2016-2018*, p. 26, American Immigration Council, 2019, [http://americanimmigrationcouncil.org/sites/default/files/research/changing\\_patterns\\_of\\_interior\\_immigration\\_enforcement\\_in\\_the\\_united\\_states.pdf](http://americanimmigrationcouncil.org/sites/default/files/research/changing_patterns_of_interior_immigration_enforcement_in_the_united_states.pdf).

<sup>18</sup> See Immigrant Advocates Response Collective, *Behind the Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers*, 2019, pp. 11-18, <https://d1jikt90t87hr.cloudfront.net/323/wp-content/uploads/sites/2/2019/03/State-of-Immigration-Detention-of-NYers-v5.pdf>.

system to be reformed.<sup>19</sup> Yet the DOC's proposed rule threatens to take New York City in the opposite direction.

Nothing in city law mandates that subsequently codified crimes be incorporated into the detainer law, and the DOC can and should consider present circumstances when choosing whether to do so. Even if the number of people impacted by this specific measure is relatively minor, any move towards working more closely with immigration authorities is unnecessary and contrary to the direction New York City has taken in establishing itself as a welcoming city for its foreign-born residents. In the current environment, where immigrants live in constant fear of being taken into custody by ICE, any measures to increase cooperation with ICE are likely to sow distrust among immigrant New Yorkers and negatively impact the efforts of law enforcement and other government officials to work with immigrant communities.

The cruelty of the current immigration enforcement regime demands that the city work to further *limit* its cooperation with ICE and other immigration authorities, not expand its involvement. We oppose the DOC's proposed rule to add additional crimes to the city's detainer law exceptions and ask that it be rescinded.

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<sup>19</sup> Max Greenwood, *De Blasio calls for abolishing ICE*, The Hill, June 29, 2018, <https://thehill.com/homenews/news/394823-de-blasio-calls-for-abolishing-ice>.