



**TESTIMONY OF:**

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**Presented before  
The New York City Council  
Committee on Immigration, Committee on Public Safety  
and Committee on Education  
Joint Hearing on Immigration**

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**I. Introduction**

My name is Nyasa Hickey. I am the supervising attorney of the Padilla Unit and Youth and Communities Project at Brooklyn Defender Services (BDS). I thank the City Council for this opportunity to testify about the nine bills under consideration today.

BDS is the largest legal services provider in Brooklyn, representing low-income New Yorkers who are arrested, charged with abuse or neglect of their children or face deportation in nearly 40,000 cases each year. Since 2009, BDS's immigration practice has counseled, advised or represented more than 7,500 immigrant clients. We have been a proud New York Immigrant Family Unity Project (NYIFUP) provider since the program's inception.

New York City, and in particular, the City Council, has been a leader in the protection of non-citizen residents. We strongly support the sentiment behind these bills. They recognize the enormous threat that immigrant communities face in an era of increased surveillance and enforcement. The City can and should do more to ensure that residents are not unnecessarily targeted for detention or deportation because of some action or failure to act by the City. These bills are an important step towards increasing the reach of Sanctuary City policies. We also articulate additional ways that the City can expand the proposed bills to demonstrate its commitment to being a Sanctuary City.

**II. Bills**

*1. Int. 1568 - City Resources Bill, introduced by Council Members Espinal, Johnson and the Speaker*

Brooklyn Defender Services supports this bill. The bill makes clear that city officers and employees shall not accept requests by federal law enforcement agencies to support or assist in operations primarily in furtherance of federal immigration enforcement and that no city resources shall be used for such efforts.

*2. City Property Bill, introduced by Council Members Menchaca, Johnson and the Speaker*

BDS supports this bill. The bill restricts immigration law enforcement's access without a judicial warrant to city property. The bill also requires the Mayor's Office of Immigrant Affairs to create signage to inform the public of their rights with respect to federal immigration enforcement.

*3. Int. 1569 - Disorderly behavior bill, introduced by Council Members Gibson, Lancman, and the Speaker*

BDS supports this bill. This bill creates a new disorderly conduct offense, which would be considered an infraction under federal law, unlike the New York Penal Law 240.20, disorderly conduct, which is sometimes treated as a criminal conviction under federal immigration law.

*4. DOE Undocumented Students Information Bill, introduced by Council Members Dromm, Menchaca, Ferreras-Copeland and the Speaker*

BDS supports this bill. The bill requires the Department of Education (DOE) to provide biannual notices to City students and their families in plain language about their rights to prevent the disclosure of certain information as well as other rights pertaining to public education regardless of immigration status, the right to refuse to speak to federal immigration authorities, and the right to apply for certain immigration benefits. In addition, the notices will state the DOE policy regarding interactions with federal immigration authorities and protocols for detention of a parent by federal immigration authorities.

*5. EO bill on Identifying Information, introduced by Council Members Williams, the Speaker (Council Member Mark-Viverito), Espinal and Ferreras-Copeland*

BDS supports this bill. The bill codifies and strengthens Executive Order 41 and aims to protect the disclosure of personal identifying information that could be used for purposes contrary to the City's interests.

Our main feedback is that the bill it is fairly detailed and may, as written, be difficult for agencies to interpret and follow. Without offering specific suggestions, we recommend editing the bill to be more simple and shorter, if possible, to facilitate compliance.

*6. Identifying Information Division bill, introduced by the Speaker*

BDS supports this bill. The bill creates an identifying information division within the City law department to ensure the city's data retention policies do not place immigrants at risk or hinder immigrants' access to City services. The identifying information division also centralizes the review of all disclosures of info to federal immigration authority, which imposes bureaucratic hurdles to such disclosure and ensures some level of uniform enforcement of rules.

*7. MOIA Expansion Bill, introduced by Council Members Dromm, Rodriguez and the Speaker*

BDS supports this bill, which would expand the powers and authority of the Mayor's Office of Immigrant Affairs.

*8. Int. 1578 - MOIA Task Force Bill, introduced by introduced by Council Members Menchaca, Dromm, Williams and the Speaker*

BDS supports this bill, which would create an interagency task force to review compliance with the new bills, the detainer law, and ongoing developments in state and federal law.

*9. Int. 1558 - Probation and ICE bill, introduced by the Speaker and Council Member Ferreras-Copeland*

BDS supports this bill. The bill applies the DOC detainer law to the Department of Probation, ensuring that the DOP's resources are allocated for appropriate purposes in accordance with the City's interests. However, BDS recommends expanding the scope of the reporting requirements in relation to concerns we will articulate in the subsequent section.

### **III. Recommended Additions to the Proposed Bills**

- 1. Expand Identifying Information Division authority to include the Department of Correction (DOC), the New York Police Department (NYPD), and Department of Probation (DOP).*

As of April 2, 2017, ICE is utilizing a new immigration detainer form, Form I-247A (Immigration Detainer—Notice of Action). The previously used forms I-247D (Immigration Detainer—Request for Voluntary Action) and I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien) and Form I-247X (Request for Voluntary Transfer) are no longer being issued. As a result, detainer requests and requests for notification are now encompassed on one form, whereas previously they were issued on two separate forms. In addition, according to Policy

Memo No. 10074.2 issued on March 24, 2017, the new form I-247A must be accompanied by a civil immigration warrant in the form of I-200 or I-205.

In the past couple of weeks two BDS clients have been arrested by ICE agents at Rikers Island and transferred to immigration custody. BDS believes that in both cases, DOC notified ICE about the individuals pending release pursuant to a request for notification and ICE arrested and detained the individuals directly at Rikers Island. BDS attorneys, appointed by the criminal court to represent these two individuals, were not informed by DOC about the request for notification of the person's release to ICE. Instead, upon our inquiry before each client's anticipated release date from DOC custody, we were informed that the individual was to be released pursuant to the DOC detainer law. Subsequently, BDS was not informed about the release of the individual to ICE custody directly from DOC custody.

In neither instance was BDS provided with a copy of the detainer or request for notification to determine whether or not it was lawful or accurate. Finally, we were not provided sufficient information about who within the Department makes the *ultimate* determination to release our clients to ICE, or notify ICE of pending release of our client and under what authority that determination is based. These two recent arrests appear to reflect a change in the Department's interpretation or implementation of the restrictions under the NYC DOC detainer law or, in the alternative, it reflects an increase in federal immigration enforcement and consequent interaction with DOC.

Accordingly, there is an urgent need for transparency about the DOC's internal detainer and request for notification compliance policy. Defense counsel's job is to hold the government to its constitutional and statutory obligations. We cannot fulfill our duties as defense counsel to help protect New Yorkers if we are not provided with the appropriate information.<sup>1</sup> Defense counsel and affected individuals in the City's custody must be informed in advance about the existence of a detainer or request for notification (the I-247A form), the alleged basis of that detainer and the City's determination about whether or not the detainer or request for notification will be fulfilled.

**To ensure that all New Yorkers in the City's custody receive due process and sufficient legal advice before transfer to immigration custody, we request the City Council legislate the following:**

- Defendants and defense counsel should be notified immediately if there is a detainer or a request for notification from ICE to NYPD, DOC or probation.

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<sup>1</sup> A related problem is that judges and District Attorney's offices are no longer turning over the NCIC to defense attorneys in arraignment along with the defendant's RAP sheet. Until a few weeks ago, the NCIC, which listed any immigration holds or prior deportation orders, were turned over as a matter of course to defense counsel as a part of the RAP sheet. The recent withholding of this information, seemingly at the behest of the feds, severely limits defense counsel's ability to properly advocate for our clients at arraignment on matters of bail and whether or not to accept an immediate disposition in the case. We are working with OCA and other court stakeholders to challenge this new decision, but wanted to raise this to the Council as another very recent change in federal policy that is impacting City actors and harming immigrant New Yorkers and their communities.

- Defendants and their counsel must be provided with a copy of the detainer, request for notification and any accompanying information issued by federal law enforcement.
- The NYC departments of police, correction, and probation shall be subject to the advice, review, and disclosure requirements of the proposed “identifying information division” bill.
- The NYC departments of police, correction, and probation should publish on their website and share with the Council its policy for complying with detainers and requests for information from federal law enforcement. The policy should articulate the chain of command for the decision making process, including a final decision maker and point person for individuals and defense counsel to contact in the law department in the identifying information division.
- The reporting requirements for NYPD, DOC and DOP should include the reporting and notification to affected individuals requirements specified in the “identifying agency” bill. Similarly, the reporting requirements in the proposed probation bill should include reporting of requests for notification and transfer of individuals to ICE custody pursuant to a request for notification.
- Additionally, reporting requirements for DOC, NYPD, and DOP should be expanded to include requests for notification received, requests for notification fulfilled, and transfer to ICE custody from the City’s custody, regardless of whether or not an individual was held beyond the time he would otherwise be held pursuant to a detainer. Specifically, they should be required to report annually:
  - How many times NYPD called ICE or federal immigration enforcement to verify a NCIC hit for an individual in NYPD custody;
  - How many times ICE was called about a person in DOC custody to verify or request information;
  - How many times ICE picked up an individual within DOC custody—how many times an individual in DOC custody was released to ICE custody;
  - How many times NYPD called ICE to notify about an individual who falls within the “violent or serious felony conviction” definition under NYPD detainer law;
  - How many times DOC called ICE to notify about an individual who falls within the “violent or serious felony conviction” definition under DOC detainer law;
  - How many times DOC and NYPD received a I-247A form from federal authorities.

These amendments would go a long way to ensuring transparency and accountability for these agencies that deal with New Yorkers accused or convicted of crimes, a group highly vulnerable to immigration enforcement.

*2. Implement training and compliance enforcement mechanisms for the proposed and existing bills, including Local Law Administrative Code § 9-131 and § 14-154.*

To ensure that all City agencies and employees, including NYPD, DOC and probation, understand their obligations and requirements under existing and proposed legislation, we request that the City mandate training and create compliance mechanisms.

For example, in some instances it appears that NYPD is communicating information about defendants' whereabouts to immigration enforcement authorities when they call for verification of National Crime Information Center (NCIC) information. While some have attributed these instances to rogue NYPD officers, the resulting courthouse arrests strongly suggest that NYPD requires additional training on how to comply with the detainer law. Similarly, based on our conversations with various DOC staff, there is definite confusion among department staff about whether an ICE detainer (or warrant) will be honored, as well as confusion about the difference between an ICE administrative warrant, an ICE detainer, an ICE hold, and a federal judicial warrant. This confusion has resulted in difficulty in posting bail and other delays in our client's release from DOC custody.

In short, the need for training of the people who will be called on to implement these laws is acute. Experience shows that a lack of training can lead to ICE arrests, deportations and greater fear and uncertainty among immigrant communities: exactly the opposite result of what the proposed legislation seeks to achieve. The need for regular and consistent training is greatest for NYPD, DOC and DOP employees who regularly interface with federal authorities as a component of their day-to-day responsibilities. The City can achieve the stated goals of these bills, help to ameliorate harm to immigrant communities, and provide City employees who are dedicated to serving New York residents with the tools they need to carry out the letter and the spirit of the law, but only if we ensure proper training of employees on the frontline.

#### **IV. Further actions towards ending Broken Windows policing**

BDS wants to applaud the City for long-standing efforts to roll back broken windows policing and to lower arrest numbers. This policy shift likely saved countless people from unnecessary immigration enforcement and other devastating collateral consequences like criminal convictions, mass incarceration, homelessness, child welfare involvement and diminished employment opportunities.

As the Council already knows, NYPD's policy is to fingerprint anyone who is arrested, even if only for a low-level offense like fare evasion. Some police armed with tablets are even fingerprinting people in their neighborhoods, without even making an arrest that leads to a trip to the precinct and processing at Central Booking.<sup>2</sup> Fingerprints collected by the NYPD are transmitted to the FBI, who in turn can share them with the Department of Homeland Security, potentially leading to an arrest by ICE and deportation. Even if a district attorney declines to press charges, an immigrant is put at immediate risk of being found by ICE. Broken windows policing, or the criminalization

<sup>2</sup> Tatiana Schlossberg, *New York City Police to Be Equipped with Smartphones and Tablets*, N.Y. TIMES, Oct. 24, 2014, available at <https://www.nytimes.com/2014/10/24/nyregion/new-york-city-police-to-be-equipped-with-smartphones-and-tablets.html>.

of the most minor offenses, even without a resulting conviction, thus directly sends thousands of immigrants and their fingerprints to the federal government every year.

Over the past three years, the BDS immigration practice has represented dozens of detained clients in deportation proceedings for underlying “crimes” like possession of small amounts of marijuana, turnstile jumping, and possession of “gravity knives” (really work tools carried by laborers, often required by their union contracts, and purchased legally at major retailers like Home Depot). Many of these clients are legal permanent residents who had been living in the U.S. for dozens of years with these minor convictions on their record before they were swept up by ICE.

New York is safer than it has ever been, in part because of the City’s step away from the mass criminalization of communities of color in an effort to build trust between neighborhoods, residents and the city agencies that serve them. However, the Council must remain committed to continuing to roll back Broken Windows policing. We can further limit the flow of the arrest-to-deportation pipeline by continuing efforts to eliminate arrests for low-level behavior in the first instance so that a person’s fingerprints are never uploaded to the FBI database.

We call upon the Council to continue working with the Mayor’s office and the NYPD, with the goal of functionally eliminating arrests for quality of life crimes. We can improve the quality of our communities without fingerprinting people and stigmatizing them with a criminal record if they cannot afford to pay their subway fare or if they ride their bicycle on a sidewalk. An end to Broken Windows makes all of New York’s communities stronger, including immigrant communities.

## **V. Conclusion**

The bills before the Council today are important steps to ensuring that New York City is a sanctuary for all of its residents, including non-citizens. We call on the Council to remain committed to protecting the rights of New Yorkers is by ending Broken Windows policing, removing ICE from our courthouses, shelters and other city buildings, and providing immigrant communities with education, increased funding for legal counsel and support.

If you have any questions about my testimony, please feel free to contact me at [nhickey@bds.org](mailto:nhickey@bds.org) or 718-254-0700 ext. 230.