



Office of  
Immigrant Affairs  
Nisha Agarwal  
Commissioner

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Testimony of Commissioner Nisha Agarwal,  
NYC Mayor's Office of Immigrant Affairs

Before a hearing of the New York City Council Committee on Immigration  
concerning Int. 0486-2014 and Int. 0487-2014



Thank you to Speaker Mark-Viverito, Chair Menchaca, and the members of the Committee on Immigration for the opportunity to testify today. I also want to thank the Council, and the Speaker in particular, for your leadership on this issue.

My name is Nisha Agarwal, and I am the Commissioner of the New York City Mayor's Office of Immigrant Affairs, a Charter-mandated office that recommends policies and programs to improve the lives of immigrant New Yorkers. On behalf of the administration, I am pleased to announce our support for Intro. 486 and Intro. 487.

These two bills will prevent some two to three thousand New Yorkers per year from being held in City custody beyond the time when the criminal justice system says they should be released, solely for the purpose of helping federal immigration officials take custody of them so they can be placed in detention and deportation proceedings. These are individuals—lawful permanent residents and visa holders as well as undocumented immigrants—who pose no significant threat to public safety. To the contrary, the vast majority of these immigrants have family and community ties to this City and call it home. Intros. 486 and 487 will treat these immigrant New Yorkers equally to all others in our criminal justice system who, when they are released by judge or jury, are allowed to return home to their families and jobs. In addition, these bills will contribute to trust between immigrant communities and the police, encouraging victims of crime and witnesses to come forward to work with law enforcement.

New York City was among the earliest voices on the issue of overbroad civil immigration detainer requests, and Mayor de Blasio pledged as public advocate and as a mayoral candidate to end the City's cooperation with these requests except where it was warranted as a public safety matter. With these bills we can not only continue to improve the way we treat our immigrant residents but we can also reaffirm our leadership in the growing movement among cities, counties, and states to take local action to better serve all of our residents in the absence of viable reform at the federal level.

## **Background**

Local law enforcement agencies' involvement in civil immigration enforcement originated with President Reagan's signing of the Narcotics Traffickers Deportation Act, a part of the broader Anti-Drug Abuse Act of 1986.<sup>1</sup> That law authorized federal officials to issue detainers to request that local police and jails hold an immigrant beyond the time when he or she is due to be released. In 2003, the detainer process was codified in immigration enforcement rules. Detainers proliferated as proponents of harsher enforcement measures—including Kansas Secretary of State Kris Kobach, the man behind the now-largely invalidated Arizona immigration law,

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<sup>1</sup> Pub. L. 99-570 (1986).

SB1070, and Fremont, Nebraska's ban on apartment rentals to undocumented immigrants—pushed a theory that saw local and state governments as “force multipliers,” effectively expanding the capacity of federal immigration authorities far beyond the borders. This model was enthusiastically adopted by the federal government over the last decade, with the extension of the Criminal Alien Program into local jails, including New York City's jails, and the adoption of the 287(g) and Secure Communities programs. These programs rely on local manpower, resources, and information to vastly extend the reach of federal enforcement, primarily through the broad issuance of detainers.

This enforcement model has created a situation in which local police and correctional resources are now used to hold thousands of New Yorkers who pose no safety threat, for longer than is necessary. Through the detainer process, localities including New York City have been helping federal immigration authorities do their job, at considerable cost to New York City families and the public fisc.

### **Local and national expansion of detainer discretion policies**

In response to this trend, in 2011, the City Council adopted one of the first detainer discretion laws in the country, sponsored by then Council Member Mark-Viverito. New York City was a leader in recognizing that civil immigration detainers were merely requests from federal Immigration and Customs Enforcement (ICE), as opposed to mandatory orders.

That 2011 law directed the Department of Correction (DOC) not to hold individuals based on a civil immigration detainer unless the individual had a criminal conviction, still had an open criminal charge or warrant, or had a prior order of removal, among other grounds. The result was that DOC declined to hold individuals subject to detainer requests in 27% of cases.

In 2013, Speaker Mark-Viverito again sponsored legislation on this topic in response to the activation of the controversial federal Secure Communities program in New York State. The 2013 bills further limited the circumstances in which DOC was authorized to extend its detention of individuals due to be released. These bills restricted the range of criminal histories that would justify extended holds, and applied the same standards to the Police Department. The result of these changes was that DOC declined to hold individuals subject to detainer requests in 36% of cases, and NYPD declined to hold individuals in about 48% of cases.

Since New York City first took action on this issue, there has been a growing recognition about the destructive impact of federal immigration detainer requests on local communities. Judges across the country have decided that civil immigrant detainers are non-mandatory requests to local law enforcement agencies, and ICE now concedes that point. Other cities, counties, and states have followed New York City's lead. Now, more than 200 jurisdictions across the U.S.

limit their cooperation with detainer requests, including the states of Connecticut, California, and Rhode Island; cities such as Philadelphia, Chicago, and Washington, DC; and counties and sheriffs' departments all across the country.

### **Benefits of Intros. 486 and 487**

These bills advance several important interests of the City. The first is family unity. The proposed legislation will help bring stability to our communities by keeping families together. Federal data analyzed by the Applied Research Center shows that about 22% of the immigrants detained in New York City are parents of U.S. citizen children, without accounting for the number of parents of non-citizen children, both documented and undocumented.<sup>2</sup> Reducing the disruption of families caused by the federal immigration enforcement system will not only protect children, but will also protect the City's finances and services by preventing the family members of deportees from being deprived of their parents' and spouses' support and income.

Second, these bills advance important City interests in community trust and public safety. Drawing a clear line between local law enforcement and federal civil immigration enforcement will foster trust between the City's immigrant community and local law enforcement agencies. This line-drawing will support community policing practices and promote public safety by eliminating fear for immigrant victims of crime and witnesses to come forward and work with law enforcement. Law enforcement leaders throughout the country have spoken out publicly about how blurring the lines between local policing and immigration enforcement makes the job of local law enforcement more difficult and detracts from public safety. Studies have shown that 70% of undocumented Latino victims of crimes are less likely to contact police if they believe the police are involved in civil immigration enforcement efforts.<sup>3</sup> These bills will ensure that the City only honors detainers for individuals whom we deem to be significant public safety threats as a result of a recent felony history of violence, terrorism, very serious drug and firearms crimes, vehicle-related crimes involving personal injury, exploitation of vulnerable populations like children, or because they are a match on the Terrorist Screening Database. These bills will protect New York City's immigrants and ensure that genuinely dangerous individuals cannot threaten our public safety.

These bills will direct the City's law enforcement agencies to expend their time and resources on protecting public safety, rather than doing federal immigration officials' jobs for them.

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<sup>2</sup> APPLIED RESEARCH CENTER, SHATTERED FAMILIES: THE PERILOUS INTERSECTION OF IMMIGRATION ENFORCEMENT AND THE CHILD WELFARE SYSTEM 11 (2011), *available at* <https://www.raceforward.org/research/reports/shattered-families>.

<sup>3</sup> NIK THEODORE, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT 5 (2013), *available at* [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).



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The legislation will also encourage the full participation of immigrants in the civic and economic life of the City by cementing protections for New Yorkers regardless of their immigration status. These bills are consistent with the City's other efforts to integrate and protect its immigrant population, such as the New York Immigrant Family Unity Project, the recent response to the influx of unaccompanied child migrants, and the Municipal ID card initiative.

### **Conclusion**

Thank you very much for the opportunity to testify on these two bills. We look forward to working with the City Council to finalize this legislation and place New York City, once again, at the forefront of pro-immigrant policy in the country.