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The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony regarding the package of bills now before the Committee on Immigration. The NYCLU supports the efforts of the City Council in acting to protect the rights of immigrant residents and safeguard the privacy of all New Yorkers, and looks forward to working with the council to refine and improve on the proposed legislation.

Our written testimony focuses on five of the bills before the Committee: Intro. 1569, Intro. 1558, Intro. 1568, Intro. 1588, and Intro. 1557.

I. Introduction.

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 200,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

We are pleased that the City Council is taking new steps to protect the rights of immigrants in New York City. Immigrant New Yorkers are vital members of our communities. It is critically important at this point in time that the city does all it can to make sure they are safe.

The current presidential administration has left no doubts that it is taking the most aggressive and inflexible approach to enforcing the nation's immigration laws. It is an approach that places thousands of immigrant New Yorkers at increased risk of separation from their families and communities and removal from what is, for many, the only home they have ever known.

In this climate, a city like New York has the opportunity to lead the way in providing robust protections for its immigrant residents. The city must act not only to further disentangle local authorities from federal immigration enforcement, as this legislative package seeks to do, but to end broken-windows policing strategies that can be a pipeline to deportation for immigrant New Yorkers. Broken windows strategies do not make our city safer, but they do create severe collateral consequences for immigrant and native-born New Yorkers who are almost exclusively black and brown. We strongly recommend that the Council pass the Right to Know Act, which

would begin to address the massive power imbalance in police encounters, and ensure people are equipped to protect their own rights.[1]

The city can further protect the rights of immigrants, and all its residents, by limiting the kinds of personal information it collects about New Yorkers, and adopting strong, sensible standards and procedures for how it manages the personal information it does collect.

The introduction of these bills represents an important new step towards advancing these goals, and the NYCLU looks forward to working with the City Council to make appropriate revisions and ensure the passage of a legislative package that safeguards the rights of all New Yorkers.

II. Intro. 1569: Prohibiting disorderly behavior.

The Council's bill establishing a new administrative violation for disorderly behavior is a small but meaningful step towards a more sensible approach to policing and criminal justice. The proposed law would impose less-severe maximum penalties for certain types of conduct – including the option of a civil penalty – than are currently found in the state Penal Law.[2] We offer qualified support for this bill.

Convictions, even for misdemeanors and low-level offenses, can have significant collateral consequences for immigrants. Intro. 1569 would limit those consequences for disorderly behavior violations by creating a maximum criminal penalty of five days' imprisonment, below the threshold of what is classified as a misdemeanor under federal law.[3] It also creates a civil penalty option for police and prosecutors that would further limit the harmful effects of coming into contact with law enforcement.

Though the NYCLU does not endorse the creation of new criminal penalties, we recognize that the violation created by Intro. 1569 may offer some defendants the opportunity, during plea-bargaining, to avail themselves of less severe penalties than are available under the current law. This is in line with a recent announcement by acting Brooklyn District Attorney Eric Gonzalez that his office would be training prosecutors on how to make plea offers and sentencing recommendations that avoid disproportionate collateral consequences for non-citizen defendants.[4] We nonetheless ask that the City Council amend the legislation so that it does not include a "criminal negligence" standard. This would bring the bill in line with the definition of disorderly conduct already in the Penal Code and ensure that the bill is not a step backward from the status quo.

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[1] *See* Intro. 0541-2014; Intro. 0182-2014.
[2] N.Y. Penal Law § 240.20.
[3] 18 U.S.C. § 3359(a)(9).
[4] *See* Kings County District Attorney, "Acting Brooklyn District Attorney Eric Gonzalez Announces New Policy Regarding Handling of Cases Against Non-Citizen Defendants," April 24, 2017, http://www.brooklynda.org/2017/04/24/acting-brooklyn-district-attorney-eric-gonzalez-announces-new-policy-regarding-handling-of-cases-against-non-citizen-defendants/.

The NYCLU also urges the City Council to go a step further by amending the administrative code to add the newly created disorderly behavior offense to the list of low-level offenses laid out in the Criminal Justice Reform Act (CJRA), signed into law last summer.[5] This would ensure that the NYPD is required to draft publicly available guidance on when to use criminal or civil enforcement for disorderly conduct, and make clear that it is the City Council's legislative preference that criminal enforcement of the newly created violation be used only in limited circumstances. In the case of civil penalties, this would also allow the Office of Administrative Trials and Hearings (OATH) to offer community service in lieu of a fine or dismiss the violation when appropriate in the interest of justice.

III. Intro. 1558: Persons not to be detained by the Department of Probation.

The City Council took important steps in 2014 to limit the entanglement of local law enforcement with federal immigration enforcement, including by prohibiting the Department of Correction (DOC) from honoring civil immigration detainers except in limited circumstances.[6] Intro. 1558 builds on that progress by extending the same requirements to the Department of Probation (DOP). We support this bill.

Detainer requests are requests made by U.S. Immigration and Customs Enforcement (ICE) for local law enforcement agencies to hold a detained person for up to 48 hours after a person would otherwise be released. Detainers may be issued without a judicial determination of probable cause, and it is the position of the NYCLU that prolonged detention based solely on a warrantless ICE detainer request is an unconstitutional seizure under the Fourth Amendment.

Under the administrative code, the DOC is prohibited from honoring an ICE detainer unless it is accompanied by a judicial warrant and the individual has been convicted of a violent or serious crime or is a possible match in a terrorist screening database.[7] Extending that requirement to the DOP would fill an important gap in the current law and further limit the unconstitutional application of civil immigration detainers.

IV. Intro. 1568: Federal immigration enforcement.

The NYCLU firmly believes that it is the job of the federal government, not local law enforcement, to enforce federal immigration laws. Indeed, the Major Cities Chiefs Association,[8] the Presidential Task Force on 21st Century Policing,[9] the New York State Sheriffs'

[5] *See* 2016 N.Y.C. Local Law No. 71, 2016 N.Y.C. Local Law 73.
[6] *See* N.Y.C. Admin. Code § 9-131.
[7] *Id.*
[8] *See* Major Cities Chiefs Association, "Immigration Policy" (2013), available at https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf.
[9] See President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (May 2015) at 18 (Action Item 1.9.1), available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

Association,[10] the New York State Police,[11] and the New York State Attorney General[12] have all adopted positions or policies opposing the entanglement of local law enforcement in federal immigration enforcement on the grounds that it harms public safety.

Intro. 1568 reflects this principle by prohibiting city agencies from subjecting their employees to the supervision and direction of the U.S. Department of Homeland Security or otherwise using city resources to assist in federal immigration enforcement. Making sure that local agencies do not become arms of federal immigration enforcement is a step towards fostering greater trust between local law enforcement and the communities they serve. We support this bill.

V. Intro. 1588 and Intro. 1557: Identifying information bills.

Intro. 1588, together with Intro. 1557, propose ambitious reforms for how New York City collects, retains, and protects individuals' sensitive information. The bills significantly expand on the privacy policies and procedures contained in Executive Order No. 41, signed by former Mayor Michael Bloomberg in 2003.

The NYCLU certainly appreciates the importance of making sure that all New Yorkers are protected from unwarranted intrusions into their personal privacy. We believe, however, that the best way for the city to protect people's privacy is to limit as much as possible the amount of personal information it collects and retains, in addition to providing robust oversight of the handling of such information. We fully support the intent of these bills to limit when city employees may ask about and retain a person's immigration or citizenship status, and to limit the ability of city employees to share personal information other than immigration or citizenship status with federal immigration authorities.

Yet it is also vital that any new legislation in this area preserves the public's right to know how their government operates. As drafted, Intro. 1588 and Intro. 1557 may have unintended effects on legitimate and lawful requests for information.

The proposed bill would create a new level of bureaucracy within the city's Law Department – the Identifying Information Division (IID) – that would be charged with reviewing nearly all information requests that contain identifying information, as defined by the new law. Currently, such disclosure decisions are made by agency employees, who must seek the advice of the agency general counsel in questionable cases. It is not clear that this new structure will better

[10] On file with the NYCLU.
[11] *See* State Police Executive Memo #14-48, issued December 30, 2014. The State Park Police has adopted a substantially equivalent policy.
[12] *See* Office of the Attorney General, "Guidance Concerning Local Authority Participation in Immigration Enforcement And Model Sanctuary Provisions" (Jan. 2017), available at https://ag.ny.gov/sites/default/files/guidance_and_supplement_final3.12.17.pdf.

protect personal privacy, but it has the potential to interfere with legitimate attempts to obtain information that should be accessible to the public.

The NYCLU firmly believes that a protecting New Yorkers' personal privacy does not require sacrificing government transparency. We would welcome the chance to work with city lawmakers to revise these proposed bills so that they appropriately protect New Yorkers' personal information while preserving the public's access to government records and other information.

VI. Conclusion.

The package of legislation before the City Council represents an ambitious effort to protect the city's immigrant communities, and the privacy of all New Yorkers. The NYCLU supports the City Council's goal of strengthening protections for immigrants in New York City during this chapter of our nation's history. We are pleased that the City Council has taken these steps, and we look forward to a continuing dialogue on how to refine and improve these bills going forward.