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**Testimony of the New York Civil Liberties Union to  
The New York City Council Committee on Immigration regarding  
Immigrant Exclusion from the Government’s COVID-19 Response**

**September 17, 2020**

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony with respect to the New York City Council Committee on Immigration hearing on multiple resolutions concerning immigrant exclusion from the government’s response to the COVID-19 pandemic.

**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 180,000 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. The deplorable manner in which immigrants have been left out of the government’s response to the COVID-19 crisis while simultaneously being targeted for arrest and deportation implicates issues of equal protection under the law, due process, racial justice, and economic justice, and we thank the City Council for its attention to these issues.

The federal government’s response to the COVID-19 public health crisis has demonstrated a failure of leadership in many ways. In particular, the exclusion of immigrants from critical government relief, combined with the Trump administration’s cruel efforts to arrest and detain immigrants during a public health crisis, is an acute moral travesty. Immigrants are overrepresented among so-called “essential workers,” comprising roughly 6 million of the workers in front-line industries.<sup>1</sup> At the same time, immigrant workers have been among the

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<sup>1</sup> Migration Policy Institute, *Immigrant Workers: Vital to the COVID-19 Response, Disproportionately Vulnerable*, March 2020, <https://www.migrationpolicy.org/research/immigrant-workers-covid-19-response#:~:text=March%202020-.Immigrant%20Workers%3A%20Vital%20to%20the,COVID%2D19%20Response%2C%20Disproportionately%20Vulnerable&text=They%20also%20represent%20significant%20shares.grocery%20stores%2C%20and%20producing%20food.>

hardest hit by job losses related to the ongoing pandemic.<sup>2</sup> Meanwhile, the Trump administration has pushed forward with its cruel anti-immigrant agenda, continuing to cram people in U.S. Immigration and Customs Enforcement (ICE) detention centers and transfer people between facilities, despite the risk of spreading the coronavirus.<sup>3</sup> And immigrants are among the most likely to be left out of government relief packages, which have largely been inaccessible to millions of immigrants.<sup>4</sup> In a city of 3.1 million immigrant residents, these effects are especially palpable.

We welcome the City Council in using its influence to urge action on these matters, and to seek greater authority from the state to take action itself. To that end, we support the resolutions under consideration at today's hearing. Yet we also believe that the measures outlined in these resolutions, if enacted, would address only a piece of the enormous need that COVID-19 has created within the immigrant community. The City Council should urge Congress to go farther in expanding aid to immigrant communities and reign in the abuses of the current administration, and for the City Council to use its own resources to fill these gaps.

**II. Resolution 1399-2020: Concerning state legislation to allow state agencies, municipalities, and authorities to provide state or local benefits regardless of immigration status.**

In light of the federal government's failure to lead on the COVID-19 response, it is incumbent on state and local officials to do everything in their power to fill that void. In doing so, local governments must ensure that all their residents' needs are met without exclusions based on immigration status. Though the federal Professional Responsibility and Work Reconciliation Act (PRWORA) restricts the eligibility of some immigrants for certain types of state and local benefits, federal law also expressly permits states and cities to extend such benefits to those who aren't otherwise eligible through the enactment of state law.<sup>5</sup>

State legislation A.10433/S.5167 would remove any such barrier that exists to New York City's ability to meet the needs of immigrant communities by broadly authorizing municipalities to provide public benefits to people who are deemed ineligible under the federal statute.<sup>6</sup> Importantly, PRWORA does not act as a blanket restriction on the provision of any local

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<sup>2</sup> Rakesh Kocchar, *Hispanic women, immigrants, young adults, those with less education hit hardest by COVID-19 job losses*, Pew Research Center (June 9, 2020), <https://www.pewresearch.org/fact-tank/2020/06/09/hispanic-women-immigrants-young-adults-those-with-less-education-hit-hardest-by-covid-19-job-losses/>.

<sup>3</sup> See, e.g., Rafael Bernal, *Report: ICE flew detainees to Virginia so agents could quell DC protests*, The Hill (Sep. 11, 2020), <https://thehill.com/latino/516035-report-ice-flew-detainees-to-virginia-so-agents-could-quell-dc-protests>.

<sup>4</sup> See Nicole Narea, *For immigrants without legal status, federal coronavirus relief is out of reach*, Vox (May 5, 2020), <https://www.vox.com/2020/5/5/21244630/undocumented-immigrants-coronavirus-relief-cares-act>.

<sup>5</sup> See 8 U.S.C. § 1621. For purposes of the federal restriction on eligibility, "state and local public benefits" include grants, contracts, loans, professional licenses, or commercial licenses, and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided.

<sup>6</sup> A.10433 (Cruz) / S.5167 (Persaud) (2019-2020), available at <https://legislation.nysenate.gov/pdf/bills/2019/S5167>.

government services to immigrants, and authorization to provide certain public benefits need not always be in the form of state legislation.<sup>7</sup> However, A.10433/S.5167 would erase any doubt about the city’s legal authority to provide benefits equally to residents regardless of immigration status. We join the City Council in urging the state legislature to pass the bill forthwith – and we expect that the Council will put its expanded authority to use.

**III. Resolutions 1416-2020, 1417-2020, 1418-2020, and 1419-2020: Concerning actions by the federal government to address the burdens on immigrants impacted by COVID-19.**

While state and local governments must not wait to act on their own, we know such action will not be sufficient without relief at the federal level, and the Trump administration and Congress must not escape accountability for their neglect of immigrant communities. The U.S. Department of Homeland Security (DHS) has compounded the anxiety felt by immigrant communities by continuing to deport people from the United States and ramp up enforcement actions as more public institutions reopen.<sup>8</sup> The combined effect of this inaction by Congress and aggressive targeting by immigration authorities has cruelly left many immigrants with the dual fear of being unable to care for their families and having their families torn apart by arrest and detention. ICE’s enforcement actions also cause fear among immigrant communities and create a chilling effect that prevents many from seeking COVID-related care, compounding public health risks. Moreover, by detaining people in county jails and transferring people across the country, DHS is facilitating the spread of COVID-19.

The actions called for in this package of resolutions would partially address these fears for some. Halting deportations throughout the COVID-19 pandemic would both help stem a public health catastrophe and temporarily ease one source of anxiety for many noncitizens and their families. Halting removal proceedings for employment-based status holders and ensuring that they can retain status tied to their employment would provide meaningful relief to many workers. Similarly, providing immigration relief to those who derive lawful status from frontline workers who have died from COVID-19 would undoubtedly make a huge difference in the lives of many.

While we join the Council in calling for these limited measures, we also recognize how much more the federal government can and should do for immigrant communities in the current moment. While halting deportations would be a critical measure, DHS must also put a stop to immigration enforcement and detention while the pandemic persists and release as many people

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<sup>7</sup> See *In re Vargas*, 131 A.D.3d 4 (N.Y. App. Div. 2015) (holding a judicial order can establish eligibility for undocumented immigrants for law licenses).

<sup>8</sup> Miriam Jordan, *After a Pandemic Pause, ICE Resumes Deportation Arrests*, N.Y. Times (Sep. 12, 2020), <https://www.nytimes.com/2020/09/12/us/ice-immigration-sweeps-deportation.html>.

as possible who are detained currently in order to prevent this virus from continuing to rapidly spread.

Congress must also pass legislation to provide cash rebates to all taxpayers, including those with Individual Taxpayer Identification Numbers, and ensure that COVID-19 testing and treatment are covered by emergency Medicaid so that millions of people are not excluded. This is critical to slowing the spread of this virus, as health experts have repeatedly stated. And Congress must pass legislation automatically extending work authorization for visa holders and DACA and TPS recipients, as numerous government offices are closed during this pandemic, backlogs are increasing, and there are repeated announcement about furloughs at U.S. Citizenship and Immigration Services (USCIS). It is critical that people are able to extend their lawful status and employment authorization during this crisis.

#### **IV. Conclusion.**

The simultaneous actions by the federal government to deny many immigrants access to critical relief and target immigrant communities for enforcement is shameful, and we welcome the City Council's efforts to push back against these failures and expand its own authority to provide immigrant New Yorkers with necessary relief. We look forward to working with the Council on these and other related issues going forward.