



Legislative Affairs
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2023-2024 Legislative Memorandum

Subject: The New York For All Act - A.5686 (Reyes) / S.987 (Gounardes)

Position: SUPPORT

Immigrant New Yorkers make invaluable contributions to our communities, economy, and culture. Yet many of New York’s 4.4 million foreign-born residents live in fear of being arrested, detained, and deported by U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP). Underlying that fear is the fact that ICE has built its notoriously cruel enforcement infrastructure on the backs of state and local authorities, sending the message to immigrants that participating in local government programs or even sending a child to school could be the first step on a path to deportation.

Collaboration between ICE and local authorities has disastrous consequences. When people believe that local law enforcement is working hand-in-hand with immigration authorities, it divides communities, erodes trust in government administration, impedes public health, and makes everyone less safe. Having learned these lessons, several localities in New York have already put limits on how government employees can interact with immigration authorities, and New York state law prohibits law enforcement from holding people past their release date at the request of ICE. Yet across New York State, a loose patchwork of local laws and policies about how officers and other employees can or cannot engage in immigration enforcement – including many jurisdictions with no policies at all – sends confusing signals to local authorities and keeps immigrant New Yorkers in fear.

The New York For All Act follows the lead of other states and cities by drawing sensible limits between local government and immigration enforcement. The bill would prohibit the use of government resources for immigration enforcement, restrict the disclosure of sensitive information to ICE and CBP, prohibit 287(g) agreements, and make clear that ICE cannot access non-public areas of government property without a judicial warrant. Clear reporting requirements and oversight by the New York Attorney General would help ensure that the rules are actually followed.

At a time when New York is welcoming more immigrants and asylum seekers to our state, it is as important as ever that people be able to access critical services and live in their communities without fear. The NYCLU calls on lawmakers to act now to protect its immigrant communities by passing the New York For All Act.

ICE has built its deportation machine on the backs of state and local government.

The anti-immigrant policies of the Trump administration shined a light on how cruel and dehumanizing our immigration system can be. But while President Trump may have supercharged the immigration detention and deportation regime, the machinery he used to do so was in place when he arrived, and remains so today. Legislative and policy changes put in place over several decades – under the leadership of both political parties – have created a civil immigration system that operates more like the criminal legal system, tearing people away from their families and placing them in county jails and private prisons for years while they navigate a byzantine immigration court process. In 1995, fewer than 8,000 people were held in immigration detention in the United States.¹ By 2019, up to 56,000 people were detained on a given day.² The end of the Trump presidency led some to hope that ICE's cruelty might be on the wane. Yet even under a new administration, ICE and CBP continue to push an aggressive and punitive approach to immigration enforcement, funneling more people into immigration detention than in the final months of the Trump administration.³

ICE does not operate this system alone. Rather, it depends on the institutionalized assistance of state and local authorities to share sensitive information, lend resources, and participate directly in detecting and arresting people for federal immigration violations. Through a program known as Secure Communities, biometric information collected from local law enforcement at the time of an arrest – no matter how minor the alleged offense, or whether charges are pursued – is automatically and immediately shared with the federal government and made available to ICE.⁴ ICE acts on these alerts by sending requests to jails and local law enforcement, asking that people be kept in custody beyond their legal release date and that ICE be notified of any pending release so they can be present to take custody.⁵ ICE has issued more than 267,000 detainers in just the past three years.⁶

Secure Communities and detainers represent just the tip of the iceberg for state and local collusion with immigration authorities. The notorious 287(g) program – which came to New York for the first time under Trump with the enrollment of the Rensselaer County Sheriff's Office in 2018 – goes further by deputizing local officers to perform the functions of

¹ ACLU, Human Rights Watch, and the National Immigrant Justice Center, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, p. 14,

https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zones_immigrant_detention.pdf

² *Id.*

³ See TRAC Immigration, *ICE Detainees: Part A. ICE Detainees by Date and Arresting Authority*, https://trac.syr.edu/immigration/detentionstats/pop_agen_table.html (last accessed on May 1, 2023).

⁴ National Immigration Law Center, *Untangling the Immigration Enforcement Web*, p. 4-5, <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

Secure Communities was briefly replaced by the Priority Enforcement Program (PEP) from 2015 to 2017, but automatic sharing of biometric data with immigration authorities remained a central component.

⁵ See U.S. Immigration and Customs Enforcement, *Policy Number 10074.2: Issuance of Immigration Detainers by ICE Immigration Officers*, March 24, 2017, available at <https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf>.

⁶ See U.S. Immigration and Customs Enforcement, *ICE Annual Report: Fiscal Year 2022*, Dec. 30, 2022, <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf>.

immigration officers, under the direct supervision of ICE.⁷ State and local authorities also collaborate with ICE and CBP in less formal ways. Records obtained by the NYCLU through Freedom of Information Act (FOIA) requests illustrate how police in counties near the Canadian border profile drivers and call CBP after pulling over someone they suspect is foreign-born, and call on CBP officers to act as translators.⁸

ICE leans heavily on this type of collusion, and officials in New York have at times pushed back. In 2011, Governor Andrew Cuomo attempted to withdraw from Secure Communities, concluding that it undermined local law enforcement.⁹ However, ICE subsequently made clear that states could not decline to participate in Secure Communities if they shared data with any federal entity.¹⁰ New York City passed laws in 2014 defanging ICE detainer requests unless accompanied by a judicial warrant,¹¹ and in 2017 prohibited use of city resources for immigration enforcement.¹² Westchester County passed into law similar restrictions in 2018,¹³ and other cities in New York have resolutions condemning collaboration with immigration authorities.¹⁴

Courts have also stepped in to curtail some of the more egregious types of collaboration. In 2018, in a lawsuit brought by the NYCLU, the Second Department Appellate Division held that police and peace officers have no authority under state law to make immigration arrests, including by holding people at ICE's request who would otherwise be released.¹⁵ The New York Attorney General's office has made clear that this restriction applies even where a 287(g) agreement is in place.¹⁶ However, the judicial bar on immigration arrests does not prevent police from sharing details about a person's release with ICE and effectively facilitating their transfer to ICE custody. In many parts of the state, law enforcement continue to work with immigration authorities unchecked.

Staying out of immigration enforcement benefits all New Yorkers.

The harms of state and local collusion with ICE – and the benefits of ending it – are many. Law enforcement collusion with ICE compounds the harms that over-policing has had on

⁷ Am. Immigration Council, *The 287(g) Program: An Overview*, July 2, 2020, <https://www.americanimmigrationcouncil.org/research/287g-program-immigration>.

⁸ New York Civil Liberties Union, *Crossing the Line: Border Patrol and Local Law Enforcement Practices in New York*, https://www.nyclu.org/sites/default/files/field_documents/20190402_borderpatrol_final.pdf.

⁹ N.Y.S. Governor, *Governor Cuomo Suspends Participation in Federal Secure Communities Program*, June 1, 2011, <https://www.governor.ny.gov/news/governor-cuomo-suspends-participation-federal-secure-communities-program>.

¹⁰ Julia Preston, *Resistance Widens to Obama Initiative on Criminal Immigrants*, N.Y. Times (Aug. 13, 2011), <https://www.nytimes.com/2011/08/13/us/politics/13secure.html>.

¹¹ See NYC Admin. Code §§ 9-131, 14-154.

¹² NYC Admin. Code § 10-178.

¹³ Westchester Immigrant Protection Act, Westchester County Board of Legislators Act 19-2018 (Revised Feb. 22, 2018), available at <https://humanrights.westchestergov.com/images/stories/pdfs/2018immigrationAct.pdf>.

¹⁴ See, e.g., Rochester City Council Resolution 2017-5, *Resolution affirming that Rochester is a Sanctuary City committed to equal rights for all*, available at <https://www.cityofrochester.gov/councilproceedings/>.

¹⁵ *People ex rel. Wells o.b.o. Francis v. DeMarco*, 168 A.D.3d 31 (N.Y. App. Div. 2018).

¹⁶ N.Y.S. Office of the Attorney General, *Letter from Attorney General Letitia James*, April 8, 2020, available at <https://ag.ny.gov/sites/default/files/francis-sj-dearcolleague-letter.pdf>.

Black and Brown communities, and knowing that local government can share information or work directly with ICE dissuades people who lack proof of lawful immigration status or have undocumented immigrants in their family from engaging with government services. All levels of government rely on public trust and credibility to function effectively. State and local agencies of all kinds depend on the willingness of residents to provide necessary information, come forward with issues and concerns, and communicate openly with public servants performing their duties. When large segments of the population feel unsafe interacting with their government, the core missions of those agencies are undermined, negatively affecting the entire community.

The chilling effect imposed by local collusion with ICE impacts everything from schools to public safety to health care. Statewide prohibitions on working with ICE can help mitigate these harms. They will also make New York more prosperous, without compromising public safety. Statistical analyses show that counties that restrict interaction with ICE have lower crime rates while also enjoying higher median household incomes, lower unemployment, and lower poverty.¹⁷ One comparative study that looked at counties before and after implementing such policies found that they decreased deportations spurred by local arrests while prompting no increase in crime.¹⁸ Keeping state and local authorities out of immigration enforcement doesn't just benefit immigrants – it benefits everyone.

By passing this legislation, New York would join the growing number of states that have recognized the need to protect immigrants from harm. In the past several years, California and Washington State have passed comprehensive legislation to restrict authorities within those states from collaborating with ICE, and other states like Illinois, Colorado, and Vermont have enacted limitations of their own; Oregon first enacted a prohibition on using public resources for immigration enforcement in 1987.¹⁹ The New York For All Act would bring the state in line with these other states, and apply the same policies consistently across the state. While these measures cannot eliminate the harms ICE has wrought on New York communities, they will ensure that New York does not abet them.

Conclusion.

New York has in many ways been at the forefront of a movement by states to do their part to welcome and protect immigrants, but there is still much more to do. New York must follow the lead of other U.S. states and cities by passing the New York For All Act and making certain that it won't entangle itself in the business of immigration enforcement.

¹⁷ Tom K. Wong, Center for American Progress, *The Effects of Sanctuary Policies on Crime and the Economy*, Jan. 26, 2017,

<https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

¹⁸ See David K. Hausman, Bill Lane Center for the American West, Stanford University Department of Political Science, *Sanctuary policies reduce deportations without increasing crime*, Sep. 11, 2020, available at <https://www.pnas.org/content/117/44/27262#sec-6>.

¹⁹ Cal. Gov't Code § 7284-7284.12; Wash. Rev. Code Ann. § 10.93.160; 5 Ill. Comp. Stat. Ann. 805/15; Colo. Rev. Stat. Ann. § 24-76.6-102; Vt. Stat. Ann. tit. 20, § 4651-4652; Or. Rev. Stat. Ann. § 181A.820.