

Testimony of Cyrus R. Vance Jr.
New York County District Attorney
Before the Committee on Immigration

Monday, October 3, 2011

Int. No. 656

By Council Members Mark-Viverito, the Speaker (Council Member Quinn), Dromm, Foster, Brewer, Chin, Jackson, Koslowitz, Lappin, Mendez, Palma, Rodriguez, Rose, Barron, Gonzalez, Ferreras, Levin, Comrie, Vann, Cabrera, Dickens, Arroyo, James, Van Bramer, Eugene, Reyna, Seabrook, Sanders, Rivera, Crowley, Koppell, Williams, Lander, Garodnick, Wills, Mealy and Koo

New York City is a city of immigrants:

The 2010 census found that 21.3% of reporting households included foreign-born individuals; 28.5% of households spoke a language other than English. When you consider that immigrant-based households are more reluctant to participate in the census than households in general, it is clear that a sizeable portion of our city consists of foreign born individuals and families.

Recognizing this important demographic, my office opened an Immigrant Affairs Unit in 2007. Led by veteran Assistant District Attorney Daysi Mejia, the program investigates and prosecutes frauds, such as impersonating an immigration attorney, real estate fraud, and construction safety cases. The Immigrant Affairs Program has a hotline, accepts referrals, and takes walk-ins; since its inception, they have had more than 2000 intakes.

An essential element of the program is outreach to aid victims and witnesses who fear cooperating with law enforcement because of their immigration status. The program aims to not only prosecute fraud committed against immigrants, but also to educate the public through fraud prevention presentations, so that they can identify a scam when they see one.

The New York County District Attorney's Office will not report a crime victim or witness to immigration authorities for purpose of having deportation proceedings commenced against that individual, because we are here to seek justice, regardless of the victim's immigration status. In some cases, we even work with crime victims to apply for a U-Visa. U visas provide a temporary immigration status to victims of certain qualifying offenses, namely domestic violence and other violent crimes, that can lead to obtaining a green card or permanent resident card. For a victim of domestic violence a U-Visa can allow someone living here illegally who was promised sponsorship by their abuser to make an independent application for permanent resident status.

Much like the general population, immigrants are by and large peaceful, hard-working people who contribute to the diversity and character of our city's fabric. But again, much like in the general population, there are some individuals who break our laws and pose a threat to the public safety. It is that group – those who flout the penal law – who are rightly subject to sanctions.

When it comes to undocumented immigrant offenders, the system relies upon a voluntary relationship between The New York City Department of Corrections (Corrections) and the federal Immigration and Customs Enforcement (ICE) Criminal Alien Program. ICE agents are present at Corrections facilities, ICE and Corrections share information, and Corrections honors ICE detainees.

The system breaks down when detainees are honored for people who are never convicted of a crime.

Imagine this scenario: An individual is arrested for an alleged crime. Upon intake, Corrections asks all inmates for the country of birth; every individual who states a foreign country of birth has their vital statistics sent to the ICE database, regardless of their current immigration status. This impacts a lot of people: Corrections identified 12,710 inmates as foreign born in FY 2009.

Immigration and Customs Enforcement (ICE) then has the authority to issue a detainer, which is a request -- not a command -- that local law enforcement notify ICE prior to releasing an individual from custody so that ICE can arrange to take over custody. Interestingly, an individual does not need to be here illegally in order for ICE to place a detainer on them; there simply needs to be a

determination that they are deportable. In FY2009, ICE placed detainees on 3,506 inmates in New York City Department of Corrections custody.

All of the individuals in question are in NYC DOC custody because of an alleged criminal offense. Approximately 50% of those people have a conviction history – that 50% is fairly evenly split between misdemeanor and felony convictions. That leaves 50% with no conviction history. To put that in real numbers, more than 1,700 people without prior conviction histories were subject to an ICE detainer in 2009.

The group in question here is the percentage of those people with no prior convictions who also aren't convicted of the alleged offense that put them on the ICE radar, but are still discharged to ICE. In other words, at no point do these individuals stand convicted of a crime, but they are still deported. The bill states that approximately half of the people issued ICE detainees had no criminal conviction.

The proposal that is before us today deals strictly with the New York City Department of Corrections and its relationship with ICE. It would prohibit Corrections from using any department resources -- defined as "department facility, space, buildings, land, equipment, personnel or funds" -- to honor a civil immigration detainer by either:

- A) holding an individual beyond the time they would otherwise be released; or
- B) notifying federal immigration authorities about an individual's release.

This **does not apply** to individuals with a conviction history for a felony or misdemeanor, defendants in a pending criminal case, confirmed matches to the terrorist database, or individuals subject to a final order of removal pursuant to federal law.

Secondly the proposal before us today creates a reporting requirement. NYC DOCS would need to post to their web site, annually, the number of individuals held pursuant to civil immigration detainees; transferred to ICE pursuant to a detainer (divided into felony, misdemeanor, and no conviction history); amount of state federal funding requested and received for criminal alien assistance, and the number of individuals for whom detainees were not honored pursuant to this proposed law.

ICE's stated programmatic goal is to "screen inmates and place detainees on criminal aliens to process them for removal before they are released to the general public." The current practice of deporting aliens who do not have a criminal conviction history and are not convicted of the current offense for which they are detained by NYC DOCS directly contradicts that state programmatic goal.

This proposal, by and large, creates a practice that is consistent with the stated goal. It is also consistent with the goals of my office's Immigrant Affairs Program. I therefore fully support the passage of the legislation as proposed.