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February 25, 2014

Councilmembers Curtis Jones, Jr.
Committee on Public Safety
City Council of Philadelphia
494 North Broad Street
Philadelphia, Pennsylvania 19107

Councilmember James F. Kenney
City Council of Philadelphia
494 North Broad Street
Philadelphia, Pennsylvania 19107

**Re: March 3, 2014 Public Hearing to Examine the Relationship Between
the City of Philadelphia's Detainer Policy and Immigration Customs
Enforcement**

Dear Councilmember Jones,
Councilmember Kenney &
Members of the Committee on Public Safety:

Thank you for the opportunity to provide testimony as part of this very important hearing. The undersigned, a group of local attorneys, legal advocates, and social and legal services organizations, write to urge the City to meaningfully engage with the local immigrant community and interested advocacy groups in the crafting of a new policy regarding ending Immigration and Customs Enforcement (ICE) detainer requests. Public participation and transparency in policy-making are critical to a functional democratic process. Detainers burden not only the targeted individual, but also result in the separation of families and splintering of communities. All Philadelphians, regardless of immigration status, should have the opportunity to be included in the creation of policy that directly affects their lives, and the lives of their families and neighbors.

Stakeholders and immigrant community groups have researched other cities' policies and developed a local coalition to influence the creation of a different relationship with ICE. In Philadelphia, City Council has celebrated and encouraged the participation of community

members in the creation of a new detainer policy, as shown by the organizing of this hearing and its willingness to meet with stakeholders who represent immigrant communities and service providers. However, not all Philadelphia officials share this sentiment, which is shown by the City's announcement last week of a new ICE detainer policy, which was formulated without any opportunity for face-to-face discussions with stakeholders. Such discussions would have enabled City officials to receive direct input from those affected by the proposed policy and from advocacy groups with a firsthand understanding of the detainer practice's impact on the rights of non-citizens, their families, and municipal court systems. With this model, not only would the City benefit from this vast pool of knowledge and experience, but community members would also become an integral part of the policy-making process and remain informed as the content of the policy develops.

In contrast, our understanding is that the local coalition and other stakeholders seeking involvement in the creation of the policy have not been permitted to have a role. By not consulting with immigrant communities and their advocates prior to issuing the policy, the City risks leaving those who are directly impacted by the policy voiceless and unable to assert their rights. Since non-citizens do not have the right to vote, the City may further marginalize this already vulnerable sector of Philadelphia if these groups remain peripheral to the policy-making process. This negatively impacts Philadelphia's families and goes against our city's identity as a diverse, and inclusive, policy leader.

International legal principles generally recognize the importance of public participation as a core component of all people's civil and political rights. International human rights documents—such as the International Covenant on Civil and Political Rights (ICCPR) and the U.N. Declaration of Human Rights (UDHR)—include citizen participation in public affairs as a fundamental right that should be protected by each country's laws and policies. The ICCPR's monitoring body states that this right goes beyond the right to vote in elections, and that citizens should be able to recognize their right through *public debate* and *dialogue with their representatives*.¹

Human rights experts agree that non-citizens also share this right to participate in public affairs.² In light of a world increasingly characterized by mass migration and globalization, universal human rights must be truly universal and apply to both citizens and non-citizens. Further support for equal rights of citizens and non-citizens is provided by the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). CERD's

¹ U.N. Committee of the International Convention on Civil and Political Rights, General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), ¶ 8, July 12, 1996, U.N. Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>.

² YASH GHAI, MINORITY RIGHTS GROUP INT'L, PUBLIC PARTICIPATION AND MINORITIES 10 (2003), available at <http://www.minorityrights.org/980/reports/public-participation-and-minorities.html>. See generally David Weissbrodt & Stephen Meili, *Human Rights and Protection of Non-Minorities: Whither Universality and Indivisibility of Rights?*, 28 Refugee Survey Quarterly 34 (2010) (discussing the applicability of universal human rights to non-citizens).

monitoring body has interpreted this treaty to extend protections of civil and political rights—such as the right to public participation³—to non-citizens.

As a signatory to these international treaties, the United States government, and by extension the governments of all 50 states and each local municipality, has vowed to uphold the standards enshrined in the ICCPR and CERD. Philadelphia officials, at the helm of our thriving and influential city, play a key role in ensuring that Philadelphia families—whether composed of citizens, non-citizens, or a combination—enjoy these rights. It is crucial that City officials understand that excluding affected individuals, who have sought a voice in the process, from formulating the ICE detainer policy may be inconsistent with these guiding principles.

Philadelphia can realistically adapt its current policies to allow for greater public participation. South Africa's model of public participation can serve as a useful guide. In South Africa, when there is a proposed policy that will have a disparate impact on a marginalized persons or communities, municipal officials are required to consult with the groups who will be affected. They achieve this through direct communication and collaboration with affected community members and stakeholders in order to form policy decisions agreeable to everyone. The expectation is that the government and affected groups will work in tandem to effect a workable solution. This results in the creation and achievement of shared goals by community members and community leaders. To foster this environment in Philadelphia, coalitions and advocacy groups seeking to influence the detainer policy should have access to the Mayor and other government officials involved in policy-making.

Transparency in policy-making complements and enhances the effectiveness of public participation, and helps to legitimize the democratic process. Cities in other forward-thinking democracies have adopted approaches that Philadelphia can use as an example. For example, cities in Canada and the United Kingdom update official websites with ongoing communications between municipal officials and community stakeholders throughout the policy-making process. Similarly, Switzerland also has a transparent consultation process which publishes all documents related to interactions between the government and interested citizens' groups. Philadelphia can follow these models and feasibly implement similar tools and procedures to enhance public access and awareness during policy formation.

In this instance, City officials could do any of the following to demonstrate their commitment to meaningful engagement towards the immigrant communities' interest in the detainer policy and monitor its implementation to ensure minimal rights violations:


- Host a community forum where City officials respond to questions and hear testimony regarding the detainer policy's creation and implementation;
- Make publically available a list of all governmental and non-governmental organizations—at the local, state and federal levels—consulted in the drafting of the detainer policy;

³ U.N. Committee on the Elimination of Racial Discrimination, General Recommendation 30: Discrimination Against Non-Citizens, ¶ 3, Oct. 2004, U.N. Doc. CERD/C/64/Misc.11/rev.3, *available at* <http://www.unhchr.ch/tbs/doc.nsf/0/e3980a673769e229c1256f8d0057cd3d?Opendocument>

- Maintain, and make publically available on a periodic basis, data tracking the charges and arrest outcomes, as well as demographic information, for individuals for whom an ICE detainer is honored.

We appreciate your time and consideration. We believe that taking these international principles of public participation into consideration will help to make Philadelphia a stronger and more inclusive democracy. Philadelphia's immigrant community is vibrant and thriving and has a unique perspective which can aid City officials in their policy-making on ICE detainees.

Respectfully Submitted,



Sunita Patel, Esq.

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*On behalf of below signatory organizations and individuals:**

Friends of Farmworkers

Philadelphia, Pennsylvania

Women Against Abuse Legal Center

Philadelphia, Pennsylvania

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**This is a preliminary list that will be supplemented at the time of the March 3rd, 2014 hearing.*