



NY State Legislative Priorities (2021-2022)

The **Immigrant Defense Project (IDP)** works to combat criminalization, including protecting the rights of immigrants who have contact with the police and the criminal legal system. Through our efforts on advocacy, we have identified the following pieces of legislation as **high priority** for the State of New York and encourage NYS Legislators to co-sponsor and support these pieces of legislation.

Disentangling ICE Policing from Local Agencies

The New York For All Act [S3076 \(Salazar\)](#) and [A2328 \(Reyes\)](#) - Prohibits and regulates the discovery and disclosure of immigration status. A priority for IDP because ICE continues to lean on local law enforcement and local government agencies to search for, arrest, and deport people, and to separate families.

Curtailing Unregulated Proliferation of Surveillance Technologies

Ban Rogue DNA Bill [S1347 \(Hoylman\)](#) and [A6124 \(Zinerman\)](#) - Preserving a single computerized state DNA identification index and requiring municipalities to expunge any DNA record stored in a municipal DNA identification index. As Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) increase DNA collection, we are particularly concerned about the potential for harm to the DNA dragnet, including expanded data sharing of DNA between local police and immigration police.

Ban Biometric Surveillance Bill [S79 \(Hoylman\)](#) and [A5492 \(Glick\)](#) - Prohibits the use of biometric surveillance technology by law enforcement; establishes the biometric surveillance regulation task force; and provides for the expiration and repeal of certain provisions. Facial recognition technology has not only led to an invasion of privacy but also to a mishandling of the technology which has been used to the misidentification of mostly Black and other people of color by law enforcement agencies, including ICE.

Protecting Procedural Rights

Equal Access to Appellate Rights Bill [S1279 \(Bailey\)](#) and [A5689 \(Cruz\)](#) - Currently, many individuals are denied the opportunity to raise legal claims on appeal. Even though New York State provides an appellate attorney for those who are financially eligible, the cumbersome and difficult application process means many qualified people apply but are ultimately never assigned counsel. Streamlining this process will improve access to available resources for noncitizens who can be targeted by ICE.

Wrongful Convictions Act [S266 \(Myrie\)](#) and [A98 \(Quart\)](#) - The Wrongful Convictions Act provides opportunities for people to clear their records of defective pleas and convictions entered without their full knowledge of the immigration consequences and disproportionate punishments, as is required by law.

Court Notifications Bill [S2903 \(Kavanagh\)](#) and [A1481 \(Rodriguez\)](#) - This bill strengthens the requirement for courts to notify people in criminal proceedings of the possibility of deportation as a result of a plea. Currently, courts are only required to provide notification in certain cases. The bill would also enact standard notification language from the judge that supports an attorney's duty to provide proper immigration advice instead of undermining it.

*In addition to these priorities, IDP is a **founding member and supporter** of the [Justice Roadmap](#), which includes key policy changes that would reduce the number of people in New York's jails, prisons, and detention centers; address inhumane treatment of people behind bars; and ultimately limit the power of the police, prison, and immigration systems to dictate and limit opportunities and lives of people.*

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The ICE Entanglement Problem:

Why We Need to Prevent ICE from Using New York's Resources to Harm Our Communities

Over the past decade, Immigrations and Customs Enforcement (ICE) has increasingly relied on local law enforcement and local government agencies to search for, arrest, and deport New Yorkers.

For years, ICE entanglement with state and local agencies have enabled the cruel separation of family members across New York State. When local agencies conspire with ICE, it multiplies the injustices of the racially biased criminal legal system and discriminatory policing.

All New Yorkers, regardless of immigration status, want to participate in their communities, provide for family, and access health care and public goods without fear and intimidation. [The New York for All Act](#) (S3076/A2328) offers protections that help make this possible, by prohibiting all local law enforcement and state agencies from conspiring with ICE or participating in its cruelty.

As we have seen with ICE courthouse arrests, the potential to be arrested by ICE when accessing a government service has a significant chilling effect. People should feel safe enough to access every resource available to them. However, ICE has taken advantage of people who rely on state agencies, such as the DMV, and those who are fulfilling their civil and legal responsibilities, including those following the requests of local police or probation officers.

Hundreds of thousands of people have been exiled by our past three presidents, regardless of party, and the Biden Administration has already issued policies that lay out who they plan to deport and detain. So long as ICE continues its operations, immigrant New Yorkers remain at risk.

See the other side for stories from across New York of the harms of ICE entanglement with New York agencies.

The Stories:

More reports available on IDP's [ICEwatch Raids Map](#) (Initials used to protect privacy)

DMV

LG was arrested by ICE after he left the DMV's traffic violation bureau in Harlem. He had gotten a traffic ticket in November and was given January 29, 2020 as the day to go to the DMV to pay the ticket. When LG arrived for the hearing on January 29, a DMV officer told him that the hearing was delayed, that he should go to lunch and come back. When he left to get lunch, ICE agents stopped him, asked his name and then arrested LG. January 2020

FW was arrested by ICE agents at the Dutchess County Department of Motor Vehicles (DMV) in Wappinger Falls, NY after the DMV agent told her to return the following day. FW showed up and the ICE agents were waiting there to arrest her. September 2017

New York State Troopers

IU was a passenger in a car that was stopped by a New York State Trooper. The State Trooper asked who in the car was "illegal". He handcuffed everyone in the car and called ICE. He held everyone in the car, handcuffed, until ICE agents came and arrested IU. Erie County, NY, July 2017

Court mandated programs

KJ was arrested by ICE agents when he went to attend a court-mandated program. When he entered the Town Hall where the program was held, a local police officer asked if he had papers. Shortly after KJ said no, ICE agents came to the program and arrested him. Altamont, NY, November 2017

Local Police

After ICE had surveilled his home overnight, two local police sheriffs and four ICE agents arrested FCC at his home at 5:30 am. They waited outside his home and did not come inside. Out of fear for the safety of his partner and young children, FCC voluntarily went outside, where the agents arrested him. Amenia, NY, April 2018

After JS's family paid bail, he was taken from criminal custody in East Hampton and turned over to the East Hampton town police. The town police held him for over two hours as they waited for ICE to arrive and arrest him. East Hampton, NY, May 2018

The New York For All Act will help ensure that interactions with police, going to school, and renewing a driver's license do not carry the risk of deportation. Everyone fares better when state and local dollars stay out of the business of federal immigration deportation and detention.

**Learn more about how to protect your rights
with ICE at immdefense.org/kyr**



**IMMIGRANT
DEFENSE
PROJECT**



**Memorandum of Support
New York For All Act
S3076 (Salazar)/ A2328 (Reyes)**

The Immigrant Defense Project (IDP) supports Senate Bill 3076 and Assembly Bill 2328, also known as the New York For All Act, which stops collaboration between local agencies and ICE in New York State.

Over the past decade, ICE has increasingly relied on local law enforcement and local government agencies to search for, arrest, and deport New Yorkers. For years, ICE entanglement with state and local agencies have enabled the cruel separation of family members across New York State. When local agencies conspire with ICE, it multiplies the injustices of the racially biased criminal legal system and discriminatory policing.

Even with a new Presidential Administration in power, ICE has continued to deport and detain community members. Deportations have continued with cruelty, with approximately 900 people deported to Haiti during the month of February 2021 alone, in a time of extreme political turmoil and nationwide unrest in the country.¹ The Administration's immigration policies released to date have rearticulated justifications for continued deportation and detention that are similar to what we witnessed during the mass deportations of the Trump and Obama Administrations. These enforcement priorities articulate the intention to continue operations, paint community members as threats, and leave loopholes that permit individual line ICE officers to use broad discretion in making arrests.

For years, IDP has monitored ICE raids across the state through our hotline, which receives reports of ICE activity from advocates, attorneys, and community members in New York. Collaboration between ICE and local agencies are common, and there are a number of noticeable trends. For example, ICE agents have arrested people just before or after they have contact with local agencies. In January 2020, an individual was arrested by ICE after he left the Department of Motor Vehicles (DMV) office in Harlem, and another individual was arrested by ICE at the Dutchess County DMV in September 2017. In Rockland County, individuals were arrested at their probation check-ins, even though they were on the road to recovery and in compliance with court-mandated substance treatment. Individuals are also blindsided when a police stop escalates into imminent deportation. For example, in July 2017 in Erie County, a community member was stopped by a New York State Trooper who called ICE to the scene during the stop. As more and more of these stories are shared among community members, the fear of accessing resources or communicating with local law enforcement or government agencies has

¹ Marcela García, *Opinion: The Biden administration is deporting hundreds of Haitians to a country mired in political chaos*, Bos. Globe (Feb. 22, 2021), <https://www.bostonglobe.com/2021/02/22/opinion/biden-administration-is-deporting-hundreds-haitians-country-mired-political-chaos/>.

intensified. In addition, when local officials are given free reign to contact or collude with ICE, it incentivizes racial profiling and increased criminalization of immigrant communities.

The New York for All Act would prohibit the use of state and local government resources for immigration enforcement, restrict the disclosure of sensitive information collected by government agencies to ICE and CBP, prohibit 287(g) agreements, and make it clear that ICE cannot access non-public areas of government property without a judicial warrant. The bill would also require local jails to inform people of their rights when they interact with ICE, including their right to decline an interview and seek the assistance of counsel.

In passing this legislation, New York will follow the example of multiple other states and cities that have enacted similar legislation. California and Washington state have passed robust legislation that restricts collaboration with ICE. Illinois and Vermont also have state-level protections, and Oregon has limited the use of local resources for immigration enforcement since 1987. New York City is one of the two most immigrant-rich metro areas in the country, and New York state has one of the largest immigrant populations as well.² Our state has a unique responsibility to catch up with other jurisdictions.

All New Yorkers, regardless of immigration status, want to participate in their communities, provide for their families, and access health care and public goods without fear and intimidation. The chilling effect ICE has created in the state has led many New Yorkers from seeking resources available to them.

As we move away from the cruel anti-immigrant agenda of the Trump administration, New York State has an opportunity to protect immigrant communities and ensure that local and state agencies get out of the business of federal immigration detention and deportation. Passing New York for All sends a clear message to all New Yorkers that New York State stands alongside them.

² Abby Budiman, *Key findings about U.S. immigrants*, Pew Research Center, <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants/>.



Stop the DNA Trap:

Why We Need to Stop Rampant DNA Police Databases and the Genetic Surveillance State

Ban Rogue DNA Bill (S1347/A6124)

DNA has the power to reveal highly personal and sensitive information—yet while in many cases DNA is precise, it can still be prone to human error and several factors can undermine its reliability including contamination, clerical errors, and misinterpretation, especially where the evidence involves mixtures. Nevertheless, DNA evidence is commonly presented and regarded as incontrovertible proof of guilt. Therefore, DNA evidence can be weaponized very easily by police, prosecutors, and immigration officers as there are few avenues for people to challenge DNA evidence. Indeed, DNA databases mirror the discrimination in the criminal justice system—a [recent study](#) found that DNA has been collected from Black individuals at 2.5 times the rate of white people.

In addition to a massive federal DNA database overseen by the FBI, local policing agencies and immigration police have been vastly expanding DNA collection and amassing huge repositories of DNA profiles. For example, the NYPD has been engaging in widespread and often surreptitious or coercive DNA collection in a practice referred to by some as [“knock and spit.”](#) The NYPD database even includes profiles of people who have not been charged with a criminal offense, including [children and teenagers](#). Little is known about how the samples in the growing database are used by NYPD, and [lab errors](#) have been shown to have lead to wrongful arrests.

The Department of Homeland Security (DHS) and its agencies, including Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), have been vastly expanding its collection of DNA. In 2019, CBP started to conduct Rapid DNA tests on [recent border crossers](#)—a context in which people have very few legal protections. In 2020, the federal government started to collect DNA from all [people in ICE detention](#) to be stored in the FBI DNA database. DHS is also currently upgrading its biometric surveillance capacities by building a massive cloud-based platform, HART (Homeland Advanced Recognition Technology System). This system will include DNA, facial recognition, iris scans, voice prints, and other biometrics.

Unchecked DNA Databases:

The massive expansion of collection and retention of the DNA creates a repository of very detailed information that can severely limit rights and violate privacy. In addition to potentially reinforcing the structural racism of the criminal legal system, DNA can become a weapon to fuel division. DNA is a powerful tool as it could reveal extremely personal information such as biological relationships, propensity for disease, and countless other traits. Reliance on genetic analysis to categorize people has had a [checked history](#); as modern science evolved, notions of biological difference have been repeatedly deployed as a “neutral” scientific measure to justify conquest, social control, and exploitation based on “[inherent superiority](#).” Indeed, courts in [Kuwait](#), [Kenya](#), and the U.K. have recently struck down DNA collection to protect privacy rights.

Efforts to curtail reckless and harmful DNA collection include the [Rogue DNA Bill](#) (S1347/A6124) in NYS. This bill would preserve New York State’s singular, computerized DNA identification index; expunge records stored in existing municipal DNA databases; and ban the current and future use and maintenance of municipal DNA databases.

NYPD Rogue DNA database

NYPD aggressively engages in widespread surreptitious and coercive DNA collection. While NYS law says only people convicted of offenses can be kept in an DNA index, the NYPD’s database has made their own rules and contains information on tens of thousands of individuals including [children](#) and people [who have not been convicted](#) of a criminal offense. The NYPD has also been found to offer arrestees cigarettes and water, in order to [surreptitiously collect DNA](#). The NYPD has also conducted DNA dragnets, such as in the case of the Howard Beach jogger, in which a woman was killed in Queens park in 2019. Based on DNA collected from the crime scene, the [NYPD collected DNA from 384 black males](#) in the area, but didn’t find a match.

DNA databases mirror discriminatory policing practices—studies have found that the [genetic profiles of Black men](#) are disproportionately represented in state and federal DNA databases. In 2020, 86% of people subject to stop-and-frisk NYPD’s arrests were Black and Latinx people, and it is highly likely that their representation in rogue database is similarly skewed.

HART: ICE’s massive biometric database

The Department of Homeland Security (DHS) is planning to build a massive biometric database, the [Homeland Advanced Recognition Technology System \(HART\)](#). HART will be a huge cloud-based repository for a range of biometric and other personal data, hosted by Amazon Web Services, facilitating data sharing between local, state, national, and international agencies. The biometric data available through HART will include: digital fingerprints, iris scans, facial recognition data, voice prints, and DNA.

HART would be a massive step towards the expansion of DHS’s biometric surveillance apparatus. The use of biometric surveillance, such as facial recognition, allows for [tracking of people](#) in real time and monitoring of people’s activity including at protests. DHS is also planning on collecting information to map relationship patterns, which could include religious activities or political affiliations.





MEMORANDUM OF SUPPORT

Ban Rogue DNA Bill Senate Bill 1347 (Hoylman)

The Immigrant Defense Project submits this statement in support of S1347 (Hoylman), which would limit New York State to a singular, computerized DNA database; expunge records stored in existing municipal DNA databases; and ban the current and future use and maintenance of municipal DNA databases.

This bill is specifically needed to clarify New York State Executive Law §995-c that allows for the creation of a computerized DNA database at the state level but fails to eliminate DNA collection and storage at the municipal and local levels.¹ More broadly, this bill is necessary to safeguard New Yorkers' genetic privacy.

Unregulated state and municipal DNA databases are dangerous and pose serious privacy and human rights violations because, "DNA can be used to track individuals or their relatives, so a DNA database could be misused by governments or anyone who can infiltrate the system."² Therefore, S1347 would protect the genetic privacy of all New Yorkers—and especially those targeted by discriminatory policing including Black and brown youth, immigrants, and gender non-conforming people—by limiting governmental access to DNA databases to the state level.

This bill would curtail reckless and harmful DNA collection that is happening across the State, and, most egregiously, in New York City. NYC's "rogue" DNA database, maintained by the New York Police Department (NYPD) and the Office of the Chief Medical Examiner (OCME) currently contains 33,600 DNA samples. In order to collect these samples, NYPD may use deceit or collect a sample without a person's knowledge.³ Additionally, little is known about how the samples in the growing database are used by NYPD and shared with other agencies such as ICE.⁴ In certain cases, the database has even led directly to wrongful arrests.⁵ NYC's rogue DNA database is highly unregulated and threatens the privacy of residents' genetic information.

¹ SB1347, 2021-2022, Reg. Sess., (NYS 2021), <https://legislation.nysenate.gov/pdf/bills/2021/S1347>.

² "DNA Databases and Human Rights," *Forensic Genetics Policy Initiative*, undated, <http://dnapolicyinitiative.org/resources/dna-databases-and-human-rights/>

³ Many reports reveal that NYPD plants vessels during questioning, like water bottles, snacks, and cigarettes, that are later sampled for a suspect's DNA, often without their knowledge; see Edgar Sandoval, "N.Y.P.D. to Remove DNA Profiles of Non-Criminals From Database," *New York Times*, February 20, 2020, <https://www.nytimes.com/2020/02/20/nyregion/dna-nypd-database.html>

⁴ David Bland, "NYC's DNA Database Swells, even as some samples are removed," *Queens Daily Eagle*, January 14, 2021, <https://queenseagle.com/all/nycs-dna-database-swells-even-as-some-samples-are-removed>.

⁵ Aaron Morrison, "NEW YORK CITY AGENCY HAS UNDERREPORTED LAB ERRORS IN DNA DATABASE IT OVERSEES," *The Appeal*, February 24, 2020, <https://theappeal.org/new-york-city-dna-database-lab-errors/>.

As an organization that focuses on the collusion between local law enforcement and Immigration and Customs Enforcement (ICE), we are particularly concerned about the potential for expanded data sharing of DNA between local police and the US Department of Homeland Security (DHS). DHS and its agencies, including ICE and Customs and Border Protection, have been expanding DNA collection from migrants and people in ICE detention. DHS is also currently upgrading its biometric database, HART (Homeland Advanced Recognition Technology), into a massive cloud-based platform hosted by Amazon Web Services to include DNA, facial recognition, iris scans, and other biometrics. This database will be interoperable with biometric databases, which, in turn, enables data sharing between local, state, federal, and foreign agencies.⁶

DNA samples stored in NYC's "rogue" database disproportionately represent black and brown people due to the systemic racism underpinning the criminal legal system and the racist DNA collection methods used by NYPD. For example, NYPD may conduct "knock-and-spit" searches where officers go door to door and ask for DNA samples from residents of a neighborhood as part of an investigation. Oftentimes the places targeted for these dragnet DNA seizures are over-policed Black and brown communities.⁷ Thus, S1347 is an important step towards limiting aggressive, invasive, and racist policing tactics.

Without the additional regulations offered under S1347, youth will continue to remain vulnerable to DNA collections that permanently give them criminal status.⁸ Under current NYS law,⁹ even if a sample of DNA is expunged at the state level, the DNA samples are able to remain in local databases, which happens often in NYC. In one case, NYPD extracted the DNA of a child by enticing him with a soda and kept his DNA in their database. In the case of the 12-year-old child, his DNA was removed, but this case shows how a minor's DNA could remain in NYPD's DNA database permanently,¹⁰ regardless of their criminal record.¹¹ This practice enables the permanent criminalization of people whose DNA is collected by the state, and reveals that NYS prioritizes DNA collection over individual privacy. S1347 is a needed step to ensure a cleared criminal record is synonymous with a clear DNA record.

Ultimately, New York has looser regulations on DNA collection than almost any other state, which greatly compromises the genetic privacy of its residents. In turn, the most populous city in the United States is able to collect DNA from residents with few restrictions and little oversight. The lack of regulations on

⁶ U.S. Department of Homeland Security, "Privacy Impact Assessment for the Homeland Advanced Recognition Technology System (HART) Increment 1 PIA," *DHS/OBIM*, February 24, 2020, https://www.dhs.gov/sites/default/files/publications/privacy-pia-obim004-hartincrement1-february2020_o.pdf

⁷ Alison Lewis, "The NYPD's new DNA dragnet: The department is collecting and storing genetic information, with virtually no rules to curb their use," *Daily News*, February 8, 2019, <https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>

⁸ George Joseph, "How Juveniles Get Caught up in the NYPD's Vast DNA Dragnet," *Gothamist*, January 10, 2019, <https://gothamist.com/news/how-juveniles-get-caught-up-in-the-nypds-vast-dna-dragnet>.

⁹ A03543, Amd. 995-c, 2018-2019, Reg. Session, NYS (2018),

https://nyassembly.gov/leg/?default_fld=&bn=A03543&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y

¹⁰ Jan Ransom and Ashley Southall, "N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He Landed in a DNA Database," *The New York Times*, August 15, 2019, <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>

¹¹ "REPORT ON LEGISLATION BY THE CRIMINAL COURTS COMMITTEE, THE CRIMINAL JUSTICE OPERATIONS COMMITTEE AND THE MASS INCARCERATION TASK FORCE," New York City Bar, February 25, 2020, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/curbing-unregulate-d-local-dna-indexing#_ftn30

DNA collection and storage are exacerbated by the racist methods of DNA collection and the racist foundation of the State's criminal legal system, and thus, S1347 offers a means of eliminating NYC's unethical DNA database, which has, on multiple occasions, been exposed as operating illegally.¹²

The Immigrant Defense Project supports S1347 because it offers a standard of genetic privacy that will shield the most vulnerable people in NYS, like minors and immigrants, from exploitation by local police departments. It also limits the possibility for expanded surveillance powers and harmful discriminatory practices of police and ICE. IDP implores the legislature to take legislative action on this matter immediately.

¹² Rachel Rippetoe, "New York Lawmakers Want Limits on Collection of Kids' DNA," *The Imprint*, December 3, 2020, <https://imprintnews.org/justice/new-york-lawmakers-want-limits-collection-kids-dna/49893>



Ban use of biometric surveillance technology by law enforcement

(S79/A5492)

The Problem

Biometric surveillance technology has been gaining more and more popularity within law enforcement and government agencies. These technologies are often unregulated and present significant threats as a tool of mass surveillance. Biometric surveillance technology includes systems designed to identify or verify people based on their physical or behavioral characteristics, and can include identifying individuals based on their fingerprints, iris, face and palm prints, gait, voice and DNA, among others. Concerns have been raised by community members and advocates for privacy and civil liberties relating to the effectiveness and ethical implications of these technologies—they often not only lead to increased invasion of privacy but also to an amplification of discriminatory policing practices. An increasingly pervasive example is police use of facial recognition technology. Once someone's faceprint is collected and associated with other personally identifiable information, it creates a risk of persistent surveillance, where government and law enforcement are able to identify and track people covertly. This information could be shared between federal, state and local law enforcement, or with foreign governments. Facial recognition technology has also been found to be unreliable, such as [misidentifying Black and Asian faces](#). Technologies such as these can fuel discriminatory policing practices, exacerbating systemic racism.

Despite major concerns, law enforcement agencies across the country, including in New York, have continued to partner with corporations that have actively marketed facial recognition software. While a few companies have taken a stance against this technology and asked the federal government to regulate this emerging technology, [many companies](#) continue supplying this technology to police departments. The lack of regulation related to these technologies provide law enforcement agencies with the ability to control how it's deployed.

A Solution

The proposed legislation [S79/A5492 \(Hoylman/Glick\)](#) would ban the use of biometric surveillance technology by law enforcement and lead to the establishment of a biometric surveillance regulation task force to determine if the use of this technology should be allowed, and if so, propose a comprehensive set of standards to use it. The growing use of facial recognition software technology by police is particularly troubling, where its use has the potential to have incredibly dangerous and disastrous consequences. Massachusetts, and more recently Virginia, along with cities including Portland (Maine and Oregon), San Francisco and Oakland have banned police use of facial recognition. San Francisco, a center for technological advancement, was the first major city to ban facial recognition technology. The ordinance passed in that city also restricts local police from sharing information with federal agencies, such as ICE.

Why It Matters

**Discriminatory,
inaccurate and fuels
structural racism**

If use of biometric surveillance by police is left unchecked, communities of color, specifically Black and brown communities, including immigrants, are at risk of losing the most. Policing agencies have been rapidly adopting this technology even though studies have found that it is inaccurate and discriminatory. The NYPD has been storing thousands of photos of children and teenagers into a facial recognition database, even though studies have shown young people and people of color are more likely to be misidentified through use of this technology. Immigration and Customs Enforcement (ICE), in recent years, has increasingly relied on tools provided by tech corporations to support the tracking and eventual deportation of immigrants—including a contract with Clearview AI, known for scrapping billions of images off of social media sites. ICE has also run facial recognition searches on DMV photos. Customs and Border Protection (CBP) has also increased its use of biometric surveillance over the past decades.

**Facial recognition
technology puts
communities under
constant surveillance**

Facial recognition technology is a form of biometric mass surveillance that puts communities under constant surveillance. Facial recognition technology scrapes millions of images from social media profiles and driver's licenses without your knowledge or consent. The use of facial recognition by the police on invasive biometrics is often justified by categorizing more and more people as a threat. Local police and immigration police (ICE) may weaponize information gathered through technologies such as facial recognition that they hold out as being neutral, masking the inherent biases and flaws of policing practices.

**Police Use of
facial recognition
threatens the right
to peaceful assembly**

Facial recognition is a tool of mass surveillance that also threatens the right to peaceful assembly and protest. Policing agencies, such as NYPD, have used facial recognition to police protests. For example, in August of 2020, the NYPD used facial recognition to track down a Black Lives Matters activist and tried to arrest him at his home.

New York State recently passed a moratorium on the use of facial recognition technology in our schools. In December 2020, NYS enacted a bill to halt the use of facial recognition in schools until July 2022, recognizing the harms of this faulty and discriminatory technology. New York State has an opportunity to expand this ban to the entire state and lead the nation in protecting privacy and human rights.





Equal Access to Appellate Rights (S1279/A5689):

Impact for Immigrants

The Problem

Given the rights at stake in a criminal case, every New Yorker has the option to have a conviction reviewed for factual and legal errors by a higher court on appeal. But many people who cannot afford a lawyer are not assigned an attorney on appeal and end up trying to represent themselves in this appeal, or forgoing the appeal altogether.

Many people are falling through the cracks in our current appellate counsel assignment process. At the start of a criminal case, a person demonstrates financial eligibility for a public defender. But once the case concludes, a person must file a new cumbersome application with an affidavit to establish eligibility a second time. This is true even though an individual's financial situation rarely improves over the course of the criminal case (and in fact, often becomes more precarious due to separation from family and inability to work while in pretrial detention).

Current C.P.L. §380.55 was intended to simplify the requirements by allowing the trial court to enter an order to continue "poor person" status (i.e. eligibility for assigned counsel) on appeal. Unfortunately, the legislative intent of §380.55 has not been fulfilled, as trial courts have exercised this authority infrequently.

The only remaining option—filing a new application—places a substantial burden on people who cannot afford a lawyer, most of whom do not have legal training, and may be incarcerated, homeless, or living in non-permanent housing. For noncitizens, language access is a substantial obstacle, since the instructions and forms are only provided in English. Applications are often found deficient, which means a person must make repeated applications, or they are functionally deprived of their right to appellate counsel and to meaningfully pursue an appeal. Sometimes, individuals wait months or even years before they are assigned counsel on an appeal.

The impact on immigrants facing deportation can be even more consequential. When there is a delay in the assignment of appellate counsel, ICE often pressures District Attorneys to move to dismiss the appeal before appellate counsel can be assigned. The dismissal then allows ICE to arrest and deport the individual before they can appeal the judgment. As a result, many immigrants get deported simply because they are unable to complete the difficult application for assignment of appellate counsel. Even if ICE does not immediately move to arrest and deport the person, the threat of deportation due to the underlying conviction continues into perpetuity because there is no statute of limitations on initiating immigration proceedings.

The Solution: Equal Access to Appellate Rights

S1297/A5689 ensures people can present their legal claims on appeal, which is an indispensable step for challenging convictions entered in error or in violation of rights. The bill proposes a simple fix—it improves access to counsel for appeals by allowing attorneys, such as a public defender at the trial level, to certify continuing “poor person” status, so that appellate counsel is promptly assigned and the individual is not left to navigate the cumbersome eligibility verification and counsel assignment process on their own. A single criminal case can hang over a noncitizen for decades. Streamlining the process fosters equal access to the right to counsel and will help prevent deportations based on faulty convictions entered in violation of someone’s rights.

Appeal of conviction enables JR to seek relief from deportation

JR, a lawful permanent resident from the Dominican Republic, has lived in the United States for 40 years, has five U.S. children and a fiancée battling cancer and in desperate need of his support. His successful, caring, and respectful adult children prove him a great father. In 2014 JR was convicted of third-degree controlled substance possession and first-degree bail-jumping. The latter conviction resulted from his failure to return to court, which was due to his fear of deportation and permanent separation from his family. **JR did not have enough money to hire a lawyer and was assigned defense counsel, but due to the complexity of the assignment-of-appellate-counsel process, almost three years passed before he received assigned appellate counsel.**

By the time appellate counsel was finally assigned, JR had been placed in deportation proceedings and charged with mandatory deportation. Appellate counsel found an error in the court records, revealing that JR’s drug conviction should not disqualify him from immigration relief, and successfully moved the trial court to amend the court records. JR was also able to appeal his bail-jumping conviction, leading to successful termination of his deportation case. Due to the cumbersome appeal process, JR almost missed his chance to have his convictions reviewed. Luckily, because he was able to secure appeal counsel, when JR finished his sentence he was reunited with his family, rather than funneled to an immigration detention center and subject to mandatory detention and deportation.

“The appeal became JS’s lifeline...”

JS was brought to the United States by his mother from Jamaica when he was just three years old, and he has not once left the country. JS experienced years of physical, emotional, and sexual abuse as an adolescent by his U.S. citizen stepfather. JS’s mother was ultimately deported, and JS became homeless. Without status, he was unable to find work. In 2009, at a desperate point in his life, JS was arrested for possessing drugs. He had no prior arrests. He pleaded guilty in 2010 to attempted criminal possession of a controlled substance in the third degree in exchange for a sentence of five years’ probation. Unbeknownst to JS, this conviction not only mandated his deportation but eliminated all forms of discretionary deportation relief.

JS’s trial lawyer had filed a notice of appeal of his conviction in 2010, but did not ask the court to assign appellate counsel. JS did not know that he had to file additional paperwork to obtain appellate counsel. **The District Attorney’s Office, at the urging of Immigrant & Customs Enforcement (ICE), successfully moved to dismiss JS’s appeal in 2013, arguing that, by failing to get appellate counsel assigned, he had abandoned it. JS never knew this motion had been filed and had no opportunity to oppose it.** ICE then arrested JS in 2015 at a homeless shelter, and initiating deportation proceedings against him.

It was only through strong advocacy by JS’s immigration attorney that he was able to finally get in touch with an appellate defender office, which in 2016 successfully fought for the reinstatement of JS’s appeal of his conviction. Once reinstated, the appeal became JS’s lifeline. JS was released from immigration detention and, as his deportation case continued, turned his life around. JS’s appellate attorney ultimately procured the vacatur of his conviction, clearing the path to lawful status. If he had been connected to appellate counsel in 2010, JS could have avoided immigration detention and years of deportation hanging over his head.





MEMORANDUM OF SUPPORT

Appellate Rights Bill S1279/A5689 (Bailey/Cruz)

The Immigrant Defense Project submits this statement in support of S1279/A5689 (Bailey/Cruz), which further effectuates the legislative goal of C.P.L. § 380.55 by streamlining assignment of appellate counsel for indigent people appealing their convictions, thereby providing enhanced access to justice for immigrants who face deportation based on those convictions.

The current system for assignment of appellate counsel is fundamentally flawed. Given that indigent people at the trial level usually remain indigent on appeal, C.P.L. § 380.55 intended to create a streamlined process for assignment of appellate counsel by allowing people to receive an order to continue “poor person” status on appeal from the sentencing court. Unfortunately, the legislative intent has not been fulfilled, as trial courts have exercised this authority infrequently. This leaves only one option—to complete and file a long and cumbersome affidavit to accompany their application to the appellate court for assignment of counsel.

The affidavit places a substantial burden on indigent and typically lawyer-less individuals, who usually do not have legal training, and are often incarcerated, homeless, or living in non-permanent housing. For noncitizens, language access is a substantial obstacle, since the instructions and forms are only provided in English. The issues are compounded for those with mental health issues as well. The resulting application is often deficient, which means the person must make repeated applications, or they are functionally deprived of their right to appellate counsel and to meaningfully pursue an appeal.

The impact on immigrants facing deportation is often even more consequential. When there is a delay in the assignment of appellate counsel, Immigration and Customs Enforcement (ICE) often pressures District Attorneys to move to dismiss the appeal before appellate counsel can be assigned. The dismissal then allows ICE to proceed to arrest and deport them before they can appeal the judgment. As a result, many immigrants get deported simply because they are unable to complete the difficult application for assignment of appellate counsel. In addition, an appeal is the first opportunity to raise certain Sixth Amendment claims, including claims related to a person’s right to receive immigration advice as part of their right to counsel. Too often, meritorious claims related to ineffective assistance of counsel never see a courtroom because of the onerous assignment of appellate counsel process. Wrongful convictions become final, and individuals then face deportation due to those convictions. There is no statute of limitations on initiating immigration proceedings, so the constant worry and threat of deportation due to the conviction will stay with the person for a lifetime.

This amendment would relieve a substantial burden on people who cannot afford a lawyer and immigrants facing deportation. The bill allows an appellate court to assign appellate counsel pursuant to an application for “poor person” relief based on an attorney certification of the client’s ongoing need and eligibility. Rather than leaving people to struggle with a complicated affidavit of indigency, counsel familiar with their client’s financial condition—such as the attorney before the trial court—after filing a notice of appeal, can simply submit a certification to the appellate court that their client continues to be eligible for assignment of counsel.

By passing this legislation, we can ensure that everyone has equal access to their right to appeal. The Immigrant Defense Project calls on the legislature to pass S1297/A5689 immediately.



Wrongful Convictions Act:

Strengthening Noncitizen Rights (S.266/A.98)

The Problem

Everyone in this country has the right to defend themselves in court, regardless of their immigration status. But many obstacles stand in the way of immigrants exercising this right, including language barriers, financial barriers, pressures to plead guilty, and the lack of education and knowledge about criminal-immigration law among defense attorneys and noncitizens. People who are hit with criminal charges are immediately confronted with countless considerations and deprivations—pretrial detention, making bail, potential prison time, loss of a job, separation from loved ones, the list goes on. For noncitizens, the calculus is even more complex because taking a bad plea deal or having an unfair trial can land you in immigration court, immigration detention, and ultimately even in exile.

For immigrants, the stakes of a criminal case are so high that the right to legal advice on immigration consequences is guaranteed by the Constitution. But in the moment, many noncitizens are not informed about these consequences. Attorneys commonly misadvise clients that they won't be deported or have an application for benefits denied, and other attorneys may fail to mention immigration at all. It is not until ICE comes knocking at the door, often years or even decades after a person serves their sentence, that people stitch the story together and are confronted with the reality of being separate from their loved ones and deported.

A Solution to Reverse Wrongful Convictions:

The Wrongful Convictions Act (S.266/A.98) provides an indispensable tool to vindicate the rights of noncitizens in this situation. This bill would provide more opportunities for people to clear their records of defective pleas and convictions entered without their full knowledge of the immigration consequences and disproportionate punishments, as is required by law.

Strengthens and expands the One Day to Protect New Yorkers Act.

The One Day to Protect New Yorkers Act became law in April 2019 to protect New Yorkers from disproportionate collateral consequences like deportation and detention, by reducing criminal sentences by just one day. To ensure that these one-day reductions are honored by immigration, the Wrongful Convictions bill creates stronger post-judgment motions that outline the unfairness of the initial plea or conviction.

Guarantees that everyone gets the opportunity to have their 440 case reviewed on appeal.

This ensures that judgments that may have legal or factual errors are reviewed. This right to appeal is very important for immigrants because the improper conviction is often the sole reason they are facing deportation or cannot become a green card holder or citizen.

Guarantees a right to counsel.

440 motion practice for noncitizens is a specialized area of criminal-immigration law where many attorneys do not have deep experience. Unscrupulous attorneys can take advantage of immigrants who face life-and-death consequences, and other immigrants who cannot afford a lawyer never have the opportunity to bring their legitimate claims to court.

