

## Memo

FROM: Immigrant Defense Project

DATE: February 22, 2023

RE: Summary of key documents produced in response to FOIL of DOC records

---

In 2014, NYC City Council restricted the NYC Department of Corrections (DOC) from responding to or honoring detainer requests for civil immigration enforcement from Immigration and Customs Enforcement (ICE) except in limited circumstances.<sup>1</sup> New York City's detainer law is consistent with other city policies that divest the city of involvement in civil immigration enforcement and policing.<sup>2</sup>

The law makes clear that DOC is not authorized to maintain custody of a person beyond the time they otherwise would be released from criminal custody absent a judicial warrant.<sup>3</sup> This is important because ICE detainers are requests to the local jurisdiction to take a voluntary action.<sup>4</sup> Although ICE often serves a document called an I-200 Administrative Warrant in conjunction with an ICE detainer when seeking to arrest an immigrant New Yorker, these administrative warrants are not signed by a judge and are not judicial warrants.<sup>5</sup>

The law also prohibits communication with ICE about most people detained in DOC custody.<sup>6</sup> The sole exception to this communication prohibition is where an individual has been convicted of an offense enumerated under the law.<sup>7</sup> Importantly, the detainer law definition of a person convicted of a qualifying offense mirrors the New York State definition of a judgment, which requires both a conviction and sentence.<sup>8</sup> In addition, the law explicitly prohibits DOC from

---

<sup>1</sup> New York City, N.Y. Administrative Code § 9-131

<sup>2</sup> See, e.g. New York City, N.Y. Administrative Code § 14-154 (restricting the New York Police Department from honoring detainers in certain circumstances), New York City, N.Y. Administrative Code § 9-205 (restricting the New York City Department of Probation from honoring detainers in certain circumstances), New York City, N.Y. Administrative Code § 10-178 (prohibiting the use of city resources for civil immigration enforcement).

<sup>3</sup> New York City, N.Y. Administrative Code § 9-131(b)(1).

<sup>4</sup> See *Galarza v. Szalczyk*, 745 F.3d 634, 641 (3d Cir. 2014) (the Immigration and Nationality Act does not purport to require states to detain a person in response to a detainer and in anycase, doing so would violate the Tenth Amendment to the United States Constitution).

<sup>5</sup> *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 41, 88 N.Y.S.3d 518, 527 (N.Y. 2d Dep't 2018) ("Although administrative arrest warrants are constitutionally valid in the federal immigration law enforcement context, such warrants are civil and administrative, and not judicial, in nature...")(citations omitted).

<sup>6</sup> New York City, N.Y. Administrative Code § 9-131(h)(1) ("Department personnel shall not expend time while on duty or department resources of any kind disclosing information that belongs to the department and is available to them only in their official capacity, in response to federal immigration inquiries or in communicating with federal immigration authorities regarding any person's incarceration status, release dates, court appearance dates, or any other information related to persons in the department's custody, other than information related to a person's citizenship or immigration status...")

<sup>7</sup> New York City, N.Y. Administrative Code § 9-131(h)(1)(i)-(iii)

<sup>8</sup> New York City, N.Y. Administrative Code § 9-131(a)(2) ("Convicted of a violent or serious crime" shall mean a judgment pursuant to section 1.20(15) of the criminal procedure law...); New York Crim. Proc. Law 1.20(15) ("A

communicating with ICE about people who are adjudicated as youthful offenders at the time of sentencing.<sup>9</sup> It is clear from the law that DOC is not permitted to communicate with ICE about individuals unless and until they have been sentenced on a qualifying conviction.

After the law was passed, advocates began to worry that DOC was delaying the releases of individuals in order to facilitate ICE arrests, affirmatively identifying immigrants and asking ICE to lodge detainers, providing additional information to ICE about detained New Yorkers, and communicating with ICE about individual prior to the sentencing on a qualifying offense. As a result, in December 2018 IDP and other organizations filed a FOIL request which resulted in the production of emails between DOC Custody Management, ICE Unit officers and ICE officers related to individuals in DOC custody. The FOIL productions redact identifying information about the detained individuals so IDP could not fully investigate whether the communications and transfers were appropriate in every instance. For example, many communications appear to be about persons without qualifying convictions, but without the person's criminal history we could not confirm. However, we've provided summaries of the ways in which these email communications raise questions about DOC's execution of the law, and the agency's ability to operate within the limits of any law that allows city employees to participate in civil immigration enforcement.

FOIL contains additional information about how **DOC facilitated courthouse arrests** that occurred prior to the passage of POCA and outside of the time when ICE was enjoined from arresting people inside NYS courthouses by a federal court.

- DOC emails ICE, telling them to pick up a person at Queens Supreme Court “RIGHT NOW” and offers to let “court command know” that ICE is on the way. See pages 196-200.
- DOC emails ICE, indicating that the “criminal matter has been resolved” and directing ICE to Brooklyn Criminal Court. 33 minutes later, ICE says that officers are “in route.” DOC refers them to a DOC captain 1 hour and 49 minutes later. See pages 583-584.
- DOC emails ICE to “PICK UP NOW TODAY!!!!” at Brooklyn Supreme Court. See pages 279, 664.
- DOC notifies ICE to pick a person up. ICE clarifies that the inmate locator system shows the detained person is on Rikers, but DOC clarifies that he is at “Brooklyn Supreme Court. That’s 320 Jay Street.” ICE tells DOC “Paperwork being sent right now, team leaving in 15 minutes” and DOC replies “**Just to be clear. You guys now have staffing**

---

judgment is comprised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence.”)

<sup>9</sup> New York City, N.Y. Administrative Code § 9-131(h)(1)(i) (prohibiting communications with ICE about people unless they have a conviction for a qualifying offense), § 9-131(a)(2)(i) (people adjudicated “youthful offender” under New York Crim. Proc. Law § 720 shall not be considered convicted of a qualifying offense).

**for pick up 7 days a week around the clock???? What about holidays??? Because it's about to go DOWN!!!”** See pages 664-666.

The New York City Law Department has acknowledged that in a clear violation of local law the Department of Correction transferred Javier Castillo to ICE custody in 2019.<sup>10</sup> His initial arrest was for jaywalking. Mr. Castillo was held in ICE custody for 15 months and transferred to ICE detention facilities across the country before winning release from a federal judge.<sup>11</sup> The FOIL results show that **DOC regularly illegally communicates with ICE about people who do not have a conviction for a qualifying offense.**

- ICE sends a list of detained individuals with information taken from the inmate locator system, and DOC schedules pick-ups at 1:00am on the day of their release. However, DOC has to later clarify that one person “will not be transferred to ICE Custody” because “His criminal case was adjudicated as a Youthful Offender.” See pages 291-303. Because the case resulted in a youthful offender adjudication, it is clear that there was never a conviction allowing communication between DOC and ICE.
- ICE sends a list of detained individuals with information taken from the inmate locator system, claiming all “appear to meet the city criteria.” DOC tells ICE that one person appears to be a youthful offender adjudication or dismissal and that there is no detainer, and another two of the persons have not yet been sentenced. ICE asks “The two that are pending sentence, upon conclusion of sentencing, would their detainers be honored?” DOC responds: “Yes. Let’s hope they both go upstate.” See pages 613-619.
- DOC emails ICE that there is a “MISSED PLACED DETAYNER [sic]” after someone was arrested on qualifying charges but does not have qualifying convictions. That is clear because DOC tells ICE that the person “was release [sic] from DOC custody on August 25th after serving his sentenced [sic] on a non-qualifying charge by the Local law.” See pages 735-742. DOC was aware that he did not have a qualifying conviction but still solicited a detainer.
- ICE informs DOC that a detained individual’s attorney reached out to let them know an ICE detainer was preventing their client’s release, despite paying bail. DOC informs ICE that “she doesn’t meet the criteria. So she will be discharged upon payment of bail.” See pages 144-146.
- ICE asks whether DOC will return a person, and DOC asks for a writ. This is for a person who is not subject to the detainer law exceptions, as acknowledged by DOC: “Without the WRIT he does not fit the criteria according to the NEW YORK CITY LOCAL LAW to be returned.” After it is clear no writ is forthcoming, DOC continues to provide ICE with information. DOC tells ICE about a change in bail amount. When ICE asks “Would

---

<sup>10</sup> See, Annie Correal and Ed Shanahan, *He Was Caught Jaywalking. He Was Almost Deported for It.*, N. Y. TIMES, July 16, 2021, <https://www.nytimes.com/2021/03/11/nyregion/daca-ice-nyc-immigration.html>.

<sup>11</sup> *Id.*

you have an address?”, DOC provides a partial address: “Brentwood, NY.” See pages 746-750.

The FOIL results indicate that in some cases **DOC delays release by one day to facilitate ICE arrests.** In these cases, DOC emails show that a person is “ready” for release but that the ICE arrest does not happen until the next day. This indicates that release is illegally delayed by a day to ensure that ICE can arrest a person.

- DOC sends an email to ICE indicating that a person is “ready for pick up” and “can be pick[ed] up **today or tomorrow.**” See pages 985-986.
- **DOC emails indicate a person who was scheduled to be released on a Monday was instead detained by DOC for two additional nights because ICE was short staffed and unable to send officers.** On a Monday, DOC is alerted that a person will not be available for his scheduled ICE pick up because he is being sent to court. DOC alerts ICE. ICE responds “We are short staffed today so if he returns today we may not be able to get him until weds morning.” (The Tuesday is a federal holiday.) Later that day, DOC responds: “The above inmate was scheduled to be transferred to your custody today July 3, 2017. However the above subject was in court today on another criminal matter....AMKC Staff has been instructed to transfer custody of the above subject to your authority on July 5, 2017.” See pages 787-789. DOC delayed release by two days because ICE was “short staffed” on the day the person should have been released.
- DOC emails ICE about a detained individual who was ordered released on a Tuesday, scheduling pick up for Wednesday and assuring ICE that “Pick up will be easy.” See pages 704-707.

The FOIL results **indicate that in some cases DOC has slowed down the release process to facilitate ICE arrest.** In these cases, DOC emails show or imply that the release process is contingent on the timing of ICE officers arrival at the DOC facility. In prior conversations, DOC has maintained that the time it takes to process a person for release varies greatly depending on the individual’s circumstance, DOC staffing, and other factors. The process of release from the facility is supposed to happen concurrently with the process of screening whether someone will be turned over to ICE. Although we’ve been told the two processes happen at the same time, DOC emails indicate releases are contingent on the Population Management ICE Unit coordination with ICE.

- DOC informs ICE that a detained individual has paid bail “and thus meets the local law criteria to be transferred into your custody.” DOC informs ICE that it is “waiting on your response” before notifying the facility. ICE indicates they will send a team and DOC says “I will now notify the facility of their [ICE’s] arrival for this evening.” See pages 375-377.

- DOC informs ICE of a detained individual’s eligibility to be transferred, and that person “will remain in intake awaiting your arrival.” DOC asks ICE to “Please confirm pick up.” See pages 490-491.
- DOC notifies ICE two days ahead of an individual’s release date that the person will be transferred. ICE confirms they will come to EMTC to arrest the individual. On the day of the community member’s release, DOC sends an email to ICE at 9:40 am asking “Did your guys leave yet?” ICE responded approximately 15 minutes later that the arresting ICE officers should be at EMTC already. DOC responds that the community member is still at EMTC. Further emails indicate this matter was referred to DOC legal. See pages 939-943.
- **DOC indicates by email that a community member’s release time is dependent on when ICE will arrive to make an arrest.** (“Please advise me what your arrival time will be so I may inform the facility and have the subject waiting for your arrival.”) See page 865.
- ICE reached out to DOC to tell DOC that they will be late to pick a person up because of “some traffic on the FDR.” See pages 526-527.
- DOC informs ICE that a detained individual is “ready to be picked up at EMTC” at 8:09am. See page 547.

In the email communication between ICE and DOC, it is clear that DOC is not playing a passive role of responding to detainer requests. Instead, **DOC officers affirmatively provide ICE with information to facilitate ICE arrests and aid in investigations** and at times affirmatively identifies individuals for ICE arrest. This is done in direct violation of the law when communication is about a person without a qualifying conviction.<sup>12</sup>

- **DOC continues to communicate information about a person in custody to ICE after its own legal department has made an assessment that the communication is barred under NYC law, seemingly with the intent to provide ICE with information it can use to arrest the individual in the community.** ICE provides documents to DOC requesting the person be turned over, despite ICE’s own assessment that NYC law makes it illegal for DOC to facilitate the person’s transfer by communicating with ICE because they do not have a qualifying conviction. After DOC consults with legal, they communicate the person will not be transferred to ICE. In response, ICE indicates its intent to immediately arrest the person in the community (“Thanks for the info, we’ll go out and get him. I already have a team ready to go find him”). DOC responds by providing information on a subject without a qualifying conviction, including the approximate time of release to the community (“He should be discharged sometime tonight or wee hours in [sic] the morning.”), the next court date (“FYI= [sic] next court date 12/5/16”), and apologizing (“SORRY”). See pages 1011-1016.

---

<sup>12</sup> New York City, N.Y. Administrative Code § 9-131(h)(1)

- DOC communicates with ICE about bail amounts and payments affirmatively. See pages 405, 628, 746, and 1011.
- DOC alerts ICE that an detained individual’s attorney “just called” and advises them to “act fast” in securing a warrant for the detained person. See pages 708-711.
- DOC affirmatively alerts ICE that a detained individual is going to be released from Brooklyn House but that DOC still needs a warrant for arrest or warrant of removal. See pages 151-153. DOC solicits paperwork allowing communication.
- DOC affirmatively solicits a new detainer from ICE, providing multiple alien numbers because the first one may be wrong. See pages 483-485.
- DOC affirmatively solicits a warrant of removal or warrant of arrest from ICE “before [the detained individual] decides to bail out.” ICE tells DOC “Thank you for letting us know that the I-200 was missing.” See pages 641-643.
- DOC has repeatedly communicated with ICE about incapacitated persons referred to the Office of Mental Health. For example, DOC has asked ICE to lift its warrants so detained individuals could enter treatment. See pages 492-496, 774-775. In one case, the final conviction was a misdemeanor clearly not within the exception allowing ICE communication. See pages 686-695. In another case, DOC provided ICE with a detained individual's current basis for being in the hospital, a “Psychical [sic] Exam.” See pages 794-795.

The emails produced in the FOIL are only a partial picture of the extent of DOC collusion with ICE, as several email reference communications by phone and text. The lack of standards establishing how long the release process should take, combined with **the extent of unrecorded communication between DOC and ICE make it impossible for advocates to truly understand the nature and scope of collusion** between DOC and ICE.

- DOC requests that ICE place a judicial warrant on a person in DOC custody (“Please conduct an investigation to see if you guys want to place an [sic] judicial warrant on the above subject.”). In response, ICE twice asks whether DOC will honor detainers, at which point DOC responds “Call me. thanks [sic].” See pages 1009-1010.
- ICE emails DOC with a question about the location of a person based on a discrepancy between the NYS Unified Court System website (which indicates the person has been released) and the NYCDOCS website which indicates she is currently in DOC custody. In response, DOC asks ICE to call them. See pages 856-857.
- DOC emails and calls ICE after the attorney of a detained person, who had been ordered released, calls DOC. ICE requests that DOC hold the person over the weekend and DOC responds requesting a phone call. See pages 708-711.
- In email communications about a pick up, DOC writes “Side Bar We need to talk. Heads Up on somethings. Call you tomorrow.” See pages 704-707.
- DOC asks ICE for “SPO Delgado or Rodriguez please call me.” See page 293.



The emails show a **culture of collusion with ICE agents. DOC officers make statements showing a clear willingness and desire to facilitate the deportation of immigrant New Yorkers and show little regard for the rights of the people they detain.**

- ICE sends an email to DOC advocating that a person who seemingly does not meet the criteria necessary for DOC to communicate with ICE is nevertheless turned over. ICE uses unproven allegations of criminal conduct in another country to argue that the person is “a significant threat to public safety and is not someone that should be released to the street.” In response, DOC Custody Management seems to agree and urges ICE to contact DOC legal (“Let him [Mr. William Horan at DOC legal] know the significant threat he is if DOC lets him go.”). See pages 980-981.
- In addition to requesting that a local law enforcement agency subject a community member to additional detention or communicate with ICE about the specifics of a community member’s release to facilitate an ICE arrest, the ICE detainer also requests that local law enforcement serve a copy of the detainer on the community member. This is ostensibly to ensure that the community member has notice of the detainer and its basis and could provide a defense attorney with necessary information to advocate for a detainer to be lifted if it is lodged incorrectly. However, when ICE asks DOC whether DOC actually serves community members with a copy, DOC replies that they are “Not sure if they serve or not.” ICE observes that they have “never seen a signed/served copy” of the detainer. See pages 851-853.
- DOC signs an email to ICE asking them to pick up someone with “#teamsendthemback” and tells ICE “SORRY” they had to release someone to the community because bail conditions were met and there was no judicial warrant. ICE comforts DOC by telling them “it is what it is! Can’t fight city hall, literally!” See pages 1011-1022.
- DOC solicits a detainer from ICE, asking “POSSIBLE MISSING DETAINER” and that “If there is any documentations [sic] please f forward to this office.” See pages 116-118.
- DOC solicits a detainer from ICE with the subject line “URGENT MISSING DETAINER.” DOC claims that “The Court is awaiting for these documents!!!!!!!!!!!!!!!!!!!!” but ultimately the detainer is located. DOC informs ICE that “You are my BOO FOR REAL!!!!!!!!!!!!!!” See pages 536-540.
- ICE inquires about the location of a detained individual whom they cannot find in the inmate locator system. DOC informs ICE that “It’s possible he is still in the hospital for evaluation still.” See pages 189-190.
- ICE reaches out to DOC with the subject line “Not good...” and worried that a recent decision from the Second Appellate Division may interfere with DOC’s ability to detain people, *Francis v. DeMarco*. DOC not only assures ICE that it should not affect anything, DOC also asks for “a favor” because a detainer request is missing a warrant of removal or warrant for arrest. See pages 253-256.