

Creating A Policy To Maintain A Safe, Inclusive Government And Ensure The Protection, Order, Conduct, Safety, Health, And Well-Being Of All Persons In Ulster County

Referred to: The Law Enforcement and Public Safety Committee (Chairman Briggs and Legislators Fabiano, Lapp, Maio, and Rodriguez)

Minority Leader Hector Rodriguez, and Legislators Bartels, Berky, Delaune, Donaldson, and Greene offer the following:

WHEREAS, Ulster County commits to maintaining a safe, inclusive, and welcoming community recognizing the inherent equality and human dignity of ALL people; and

WHEREAS, racism, xenophobia, Islamophobia, anti-Semitism, homophobia, and religious persecution of any kind threatens public safety and the peaceful foundations of a civilized society; and

WHEREAS, the establishment of a “registry,” or the detention or deportation of millions of people currently living in this country, for reasons solely related to their citizenship, immigration status, race, ethnicity, national origin, or religion, runs contrary to core American values; and

WHEREAS, the inhumane application of immigration laws that separate loved ones from each other and their communities, especially children from parents and caretakers, undermines the integrity of families and is contrary to the best interest of children; and

WHEREAS, the mere fact of being present in the United States without authorization, by itself, does not constitute a crime; and

WHEREAS, several groups of immigrants, including permanent residents, visa holders, refugees, and people who are undocumented, come to this country with varied skill sets and support from their home countries, and are integral to the current structure and prosperity of our local, state, and national economy; and

WHEREAS, immigrants, refugees, and racial, ethnic, and religious minorities make ongoing contributions to the economic, cultural, and spiritual prosperity of our community at the local, state, and national level, including those who have sacrificed in defense of the United States as members of the Armed Forces; and

WHEREAS, Articles I and II of the U.S. Constitution expressly grant the federal government exclusive power to establish and enforce immigration laws; and

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WHEREAS, the Tenth Amendment to the U.S. Constitution prohibits the federal government from commandeering state or local officials to enforce immigration law, and likewise prohibits state or local officials from acting unilaterally on immigration matters where the federal government has preempted the field; and

WHEREAS, under the Home Rule powers granted by the New York State Constitution, as implemented by the Municipal Home Rule Law, Ulster County has authority to adopt local laws relating to the “government, protection, order, conduct, safety, health, and well-being of persons” that are not inconsistent with the State Constitution or a general state law; and

WHEREAS, on January 19, 2017, the Civil Rights Bureau of the New York State Attorney General’s office issued a “legal roadmap” outlining the extent to which state and local jurisdictions are permitted under law to decline to participate in federal immigration investigation and enforcement; and

WHEREAS, Ulster County supports existing efforts being made by County Departments, officers, personnel and agents, including law enforcement officers, to ensure public safety through relationships built on trust and good-will, especially with individuals who are vulnerable to exploitation and abuse due to their citizenship, immigration status, race, ethnicity, national origin, gender identity, sex, or religion; and

WHEREAS, Ulster County supports criminal investigations and associated actions that are authorized by law, and not solely related to an individual’s citizenship, immigration status, race, ethnicity, national origin, gender identity, sex, or religion; and

WHEREAS, Ulster County Departments, officers, personnel, and agents, have a legal, practical, and moral imperative when carrying out official duties to uphold the U.S. Constitution, including the principles of federalism and separation of powers; now, therefore be it

RESOLVED, that the Ulster County Legislature affirms its support for the practices outlined in this resolution, as they pertain to the County’s aim to maintain a safe, inclusive government and the protection, order, conduct, safety, health, and well-being of all persons in Ulster County, and urges continued adherence to constitutional, federal, and state laws; and, be it further

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RESOLVED, further, that County Departments, officers, personnel, and agents should not engage in certain activities solely for the purpose of enforcing federal immigration law, including:

A. executing a stop, questioning, interrogating, investigating, or arresting an individual based solely on any of the following:

a. Actual or suspected immigration or citizenship status; or

b. A “civil immigration warrant,” administrative warrant, or an immigration detainer in the individual’s name, including those identified in the National Crime Information Center (NCIC) database;

B. performing the functions of a federal immigration officer or otherwise engaging in the enforcement of federal immigration law--whether pursuant to Section 1357(g) of Title 8 of the United States Code or under any other law, regulation, or policy; and, be it further

RESOLVED, that Ulster County officers or agents should honor detainer requests from federal agents only in the following limited, specified circumstances:

A. when a “civil immigration detainer” from federal agents to detain or transfer an individual for immigration enforcement or investigation purposes for up to 48 hours is accompanied by a judicial warrant,

a. except that a person may be detained for up to 48 hours on a “civil immigration detainer,” in the absence of a judicial warrant if there is probable cause to believe that the individual has illegally re-entered the country after a previous removal or return as defined by 8 U.S.C. § 1326,

i. the individual has been convicted at any time of (i) a “violent or serious” crime as defined under section 14-154 (a) (6) of the Administrative Code of the City of New York or (ii) a federal crime or crime under the law of another state that would constitute a predicate felony conviction, as defined under the New York Penal Law, for any of the preceding felonies; or

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ii. there is probable cause to believe that the individual has or is engaged in an activity of terrorism, which is an activity forbidden by law and intended to intimidate or coerce a population, influence government policy, or affect government conduct through violence; and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall not inquire about or collect from individuals, including but not limited to a crime victim, a witness, or a person who calls or approaches the police seeking assistance, information concerning citizenship or immigration status unless necessary to perform official duties and shall prohibit the use or disclosure of such information in any manner that violates, local, state, or federal law; and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents may respond to federal requests for information upon presentation of a judicial warrant, but that absent a judicial warrant, will not disclose certain non-public, sensitive information about an individual, such that:

A. County Departments, officers, personnel, and agents may respond affirmatively to a request by a federal agent for non-public information about an individual-including but not limited to non-public information about an individual's release, home address, or work address - ONLY IF the request is accompanied by a judicial warrant,

a. EXCEPT THAT nothing in this resolution prohibits any local entity or official from:

i. sending to or receiving from any local, state, or federal agency - as per 8 U.S.C. § 1373- (1) information regarding an individual's country of citizenship if known or (2) a statement of the individual's immigration status if known; or

ii. disclosing information about an individual's criminal arrests or convictions, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order; or

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iii. disclosing information about an individual's juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order,

iv. disclosing information about an individual when the County Department, officers, personnel, or agent is acting pursuant to a court ordered investigation on an individual who has been convicted of a misdemeanor or felony, and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall not provide federal agents with access to an individual in their custody or the use of agency facilities or resources to question or interview such individual if the federal agent's sole purpose is enforcement of federal immigration law, and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall protect the due process rights of persons about whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice, and:

A. ensuring that bail and/or release from custody upon posting of bail shall not be delayed solely because of (1) an individual's citizenship or immigration status, (2) a civil immigration warrant, or (3) a federal agency request, for the purposes of immigration enforcement, requests notification about, transfer of, detention of, or an interview or interrogation of that individual;

B. upon receipt of a federal detainer, transfer, notification, interview, or interrogation request, providing a copy of that request to the individual named therein and informing the individual whether the request will be honored before communicating a response to the requesting agency;

C. subjecting individuals in custody to the same booking, processing, release, and transfer procedures, policies, and practices, regardless of actual or suspected citizenship or immigration status, and, be it further

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RESOLVED, that it shall continue to be the practice that local agency resources should not be used to create a federal registry based on citizenship, immigration status, race, ethnicity, national origin, gender identity, sex, or religion; and, be it further

RESOLVED, that no Ulster County Department, officer, personnel, or agent shall use County monies, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of citizenship, immigration status, race, ethnicity, national origin, gender identity, sex, or religion; and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall limit the collection of immigration-related information and ensure non-discriminatory access to benefits and services, such that

A. No inquiry or request for proof shall be made regarding an individual's citizenship or immigration status when services or benefits are provided, except where the receipt of such services or benefits are contingent upon one's citizenship or immigration status, or where inquiries are otherwise lawfully required by federal, state, or local laws; and

B. Ulster County shall establish a formal Language Assistance Policy for individuals with Limited English Proficiency and provide interpretation or translation services consistent with that policy, consistent with its obligations under Title VI of the Civil Rights Act of 1964, and Department of Health and Human Services Regulations; and, be it further

RESOLVED, that regarding their receipt of, and response to, federal requests for the sole purpose of monitoring compliance with all applicable laws, County Departments, officers, personnel, and agents should collect and report aggregate data containing no personal identifiers; and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall record, solely to create the semi-annual reports described below, the following for each immigration detainer, notification, transfer, interview, or interrogation request received from federal agents:

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A. Date and time that the subject individual was taken into local law enforcement custody, the location where the individual was held, and the arrest charges;

B. Date and time the request was received;

C. The requesting agency;

D. Immigration or criminal history indicated on the request form, if any;

E. Whether the request was accompanied with any documentation regarding immigration status or proceedings, e.g., a judicial warrant;

F. Whether a copy of the request was provided to the individual and, if yes, the date and time of notification;

G. The response to the request, including a decision not to fulfill the request;

H. If applicable, the date and time that federal agents took custody of, or was otherwise given access to, the individual; and the date and time of the individual's release from custody;

I. Whether the individual consented to the request;

J. Whether the individual requested to confer with counsel regarding the request, and, be it further

RESOLVED, that Ulster County Departments, officers, personnel, and agents shall provide annual reports to the County Legislature no later than March 31st of each year regarding the information collected in the prior year according to the previous resolved, in an aggregated form, that is stripped of all personal identifiers in order that compliance with all applicable law may be monitored; and, be it further

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RESOLVED, that all Ulster County Departments, officers, personnel, and agents, including but not limited to law enforcement, education, health and safety departments, and private individuals delegated authority to carry out County functions, are directed to incorporate policies into their standard training and operational procedures outlining these protections and directing compliance with them; and be it further

RESOLVED, that given that inalienable rights should be universally honored and preserved and not restricted by geographic boundaries, Ulster County urges our State Legislature and Governor Andrew Cuomo to enact a measure ensuring the lawful and non-discriminatory treatment of anyone present in the State of New York, regardless of immigration status; and, be it further

RESOLVED, that Ulster County intends that the provisions of this Resolution are severable, and that the invalidity of any part does not affect the validity of any remaining part; and be it further

RESOLVED, that the Clerk of the Ulster County Legislature shall forward copies of this resolution to New York State Senators George A. Amedore, John J. Bonacic, William J. Larkin, Jr. and James Seward, and New York State Assemblymen Kevin A. Cahill, Frank K. Skartados, Brian D. Miller, and Peter Lopez, and Honorable Governor Andrew Cuomo,

and move its adoption.

DEFEATED BY THE FOLLOWING VOTE:

AYES: 8 NOES: 14
(Ayes: Legislators Bartels, Berky, Delaune, Donaldson, Greene, Heppner, Loughran, and Rodriguez)
(Absent: Legislator Allen)

Postponed in Committee: Law Enforcement and Public Safety on April 4, 2017

Defeated in Committee: Law Enforcement and Public Safety on May 2, 2017

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Petition to Discharge successfully executed.

FINANCIAL IMPACT:
NONE

STATE OF NEW YORK

ss:

COUNTY OF ULSTER

I, the undersigned Clerk of the Legislature of the County of Ulster, hereby certify that the foregoing resolution is the original resolution DEFEATED by the Ulster County Legislature on the 20th Day of June in the year Two Thousand and Seventeen, and said resolution shall remain on file in the office of said clerk.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the County of Ulster this 22nd Day of June in the year Two Thousand and Seventeen.

|s| Victoria A. Fabella
Victoria A. Fabella, Clerk
Ulster County Legislature