HOWARD COUNTY HUMAN RIGHTS COMMISSION

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To: Howard County Councilmembers (councilmail@howardcountymd.gov)

Cc: Angela Cabellon, Chief Innovation Officer and Deputy Chief Administrative Officer (acabellon@howardcountymd.gov)

Date: January 17, 2022

Re: Written Testimony in Support of CB2-2022

The Howard County Human Rights Commission (the "Commission") strongly supports and urges the passage of CB2-2022, which adds "citizenship or immigration status" as a new protected class in each of the anti-discrimination sections of the Howard County Human Rights Code (Title 12, Subtitle 2 of the Howard County Code). The Commission proposed adding this protected class as part of its 2020 Report of the Howard County Human Rights Commission on Immigration Issues in Howard County ("HRC 2020 Report"), a copy of which is attached hereto.

As discussed in the HRC 2020 Report, in October 2019, the Commission formed a Committee on Immigration, in part to study the addition of immigration status as a protected class to the Howard County Human Rights Code. In November 2020, the Committee presented its research to the full Commission, which voted to recommend "adding immigration status as a protected class to each cause of action in the Howard County Human Rights Code (Sections 12.200-12.218 of the Howard County Code) to the maximum extent possible without conflicting with other federal, state, and local laws." The Commission believes the addition of "citizenship or immigration status" would send a strong message to the immigrant community and to businesses that discrimination based on immigration status will not be tolerated in Howard County.

In considering this legislation, the Commission urges the County Council and the County Executive to revisit the HRC 2020 Report. This report contains valuable guidance about best practices gathered from other jurisdictions, such as New York City and Prince George's County,

that have enacted similar changes in their anti-discrimination laws. Their experience can serve as a model to Howard County as it seeks to implement this important legislative change. Finally, the Commission asks that the Office of Human Rights and Equity, which will be charged with implementing this bill, be given all needed resources to educate the public and the business community about this change in law.

We believe that adding "citizenship or immigration status" as a protected class to the Howard County Human Rights Code will help foster a more inclusive and equitable community. Therefore, we urge the County Council to pass and the County Executive to sign CB2-2022.

2020 Report of the Howard County Human Rights Commission on Immigration Issues in Howard County

INTRODUCTION

In October of 2019, during a public forum before the Howard County Human Rights Commission (the "Commission"), representatives from The Howard County Coalition for Immigrant Justice (the "Coalition") presented concerns they had – and still have – regarding several issues related to immigrant justice and safety. The Coalition is comprised of various immigrant groups, concerned organizations, and individuals working to support and protect foreign-born friends and neighbors in Howard County. They are working to, among other things, build a broad base of support in Howard County to welcome and respect foreign-born residents, give local immigrants a powerful voice in the community, pass laws to protect immigrants from discrimination, and minimize this County's cooperation with United States Immigration and Customs Enforcement ("ICE"). Additionally, they work to ensure that county agencies keep information about immigrants confidential, support programs to improve quality of life for immigrants, develop partnerships between County agencies – including the Howard County Police Department – and the immigrant community, and support state and national legislation to protect immigrants and educate the community at large on contributions made by immigrant communities to our state and our nation. Current members of the Coalition are:

- American Civil Liberties Union (ACLU);
- Asian Americans Advancing Justice| (AAJC);
- CASA;
- Channing Memorial Church (Unitarian Universalist);
- Chinese-American Network for Diversity and Opportunity (CAN-DO);
- Columbia Jewish Congregation;
- Conexiones;
- Council on American Islamic Relations (CAIR);
- Community Allies of Rainbow Youth (CARY);
- Doctors for Camp Closure;
- Friends of Latin America;
- Friends Committee on Immigration and Refugees;
- Howard County Board of Rabbis;

- Indian Cultural Association of Howard County;
- Indivisible HoCoMD-Immigration Action Team;
- Jews United for Justice;
- Our Revolution Howard County;
- Patapsco Friends Meeting;
- Sunrise Movement Howard County;
- Young Socialist Movement; and
- Unitarian Universalist Congregation of Columbia.

As a result of the presentation by the Coalition, the Commission formed a Committee on Immigration (the "Committee") to study two of the issues raised: (1) termination of the Intergovernmental Service Agreement between the Howard County Department of Corrections and the United States Department of Justice; and (2) addition of immigration status as a protected class to Subtitle 2 of the Howard County Code. It was agreed by the Commission that the Committee would study the two issues and prepare a report to be delivered to the full Commission for discussion and subsequent actions, if deemed appropriate by the Commissioners.

The Committee's efforts included gathering research material related to both issues and identifying/interviewing a variety of sources that were (or represented) stakeholders and/or were otherwise positioned to speak to the two issues before us. The following persons/organizations were interviewed:

Name	Affiliation	Issue
Reverend Louise Green	PATH,[1] Metro-IAF	1
Andrea King-Wessels, Deputy Director	Howard County Department of Corrections	1
Jack Kavanaugh, Director	Howard County Department of Corrections	1
Jennifer Jones, Deputy Chief of Staff	Howard County Executive's Office	1,2
Nick Steiner, Lawyer	ACLU[2] of Maryland	1
Liz Alex	CASA	1,2

[1] People Acting Together in Howard
[2] American Civil Liberties Union

Carolyn Sturgis, Assistant Chief Administrative Officer	Montgomery County Executive's Office	2
Chief Lisa Myers, among others	Howard County Police Department	1
Dana Sussman, Deputy Commissioner, Policy and Intergovernmental Affairs	New York City Commission on Human Rights	2
Bianca Victoria Scott, Policy Council,	New York City Commission on Human Rights	2
Renee Battle-Brooks, Executive Director	Human Relations Commission, Prince George's County	2
Ama Frimpong-Houser, Managing Attorney	CAIR[3]	1
Laurie Lisken, Thais Moreira, Michael David, and Ying Matties, among others	Coalition for Immigrant Justice	1,2
Alanna Dennis, Director of Equal Employment Opportunity and Human Relations Compliance Officer	Office of the Anne Arundel County Executive	2
Deni Taveras, County Council Member Julietta Cuellar,Legislative Aide to Council Member Tavares	Prince Georges County Council	2

In addition, on February 23, 2020, Committee members attended a Town Hall meeting sponsored by the Coalition at the Oakland Mills Meeting Center.

This Report, when first transmitted to the Commission, did not make recommendations or take a position on either issue. Rather, it aimed to provide the Commission with all the information necessary for it to decide – as a body – what, if any, follow-up actions should be taken after reading this Report and engaging in discussion on both issues. During its regularly scheduled meeting on November 19, 2020, the Commission voted in favor of taking the following positions. First, the Commission supports the change to the County's policy known as P & P No. C-205, such that the

[3] Capital Area Immigrant Rights Coalition

Howard County Department of Corrections' acceptance of detainees under the Intergovernmental Service Agreement between the Howard County Department of Corrections and the United States Department of Justice shall be limited to those who have been convicted of crimes of violence identified under Md. Code, Criminal Law, § 14-101 Second, the Commission supports adding immigration status as a protected class to each cause of action in the Howard County Human Rights Code (Sections 12.200-12.218 of the Howard County Code) to the maximum extent possible without conflicting with other federal, state, and local laws. The two issues are addressed in more detail below.

ISSUE NO. 1: TERMINATION OF THE INTERGOVERNMENTAL SERVICE AGREEMENT

As noted above, the Coalition is advocating for the termination of the Intergovernmental Service Agreement (the "Contract") between the Howard County Department of Corrections ("HCDC") and the United States Department of Justice ("DOJ"), a copy of which is attached hereto as Tab 1, and is asking the Commission to support its efforts. To ensure that the Commission is fully apprised before making a decision on what, if any, steps it should take, the Committee conducted interviews of – and requested documents and other materials from – the following:

(1) The Coalition (Laurie Liskin, Thais Moreira, Michael David, and Ying Matties, among others);

(2) The HCDC (Jack Kavanaugh, Director and Andrea King-Wessels, Deputy Director);

(3) The Office of the Howard County Executive (Jennifer Jones, Deputy Chief of Staff);

(4) People Acting Together Howard (PATH)/Metro-Industrial Areas Foundation (IAF) (Reverend Louise Green, Lead Organizer);

(5) American Civil Liberties Union of Maryland (ACLU of Maryland) (Nick Steiner, Staff Attorney));

(6) CASA (Elizabeth Alex, Chief of Organizing and Leadership);

(7) Howard County Police Department (Lisa Myers, Chief); and

(8) Capital Area Immigrants' Rights Coalition (CAIR Coalition) (Amy Frimpong-Houser, Managing Attorney).

The information provided below represents the Committee's efforts to provide the Commission with as many facts as possible so that the Commission can make an informed decision. Factual disputes, however, are inevitable, and the Committee has made note of where such factual disputes exist.

This Section first provides what the Committee deems to be necessary background for the Commission to understand the Coalition's position and the issues to be considered. The Coalition's position is then detailed, followed by a presentation of two primary issues that have been raised through interviews conducted by, and materials provided to, the Committee. In conclusion, this Section also summarizes recent actions taken by the County Council and County Executive's Office.

I. Background

As an initial matter, prior to assessing the Coalition's Position, it is important to have a firm understanding of the players, the laws, and the processes at issue. Indeed, there are many important distinctions that have direct bearing on the issues presented by the Coalition (e.g., federal v. local, civil v. criminal, law v. policy, etc...). The following provides background on the general immigration enforcement framework, the Contract that is at issue, and the process employed by the County to perform its obligations under the Contract.

A. The General Immigration Enforcement Framework[4]

[4] The background provided herein is not meant to be, nor should it be taken as, a comprehensive treatise on immigration law. Indeed, while general rules are included, there are countless exceptions that are not covered. Rather, this background is meant merely to provide context and a general framework so that the Commission can adequately

1. The Law

The Immigration and Nationality Act ("INA"), passed by Congress in 1952, is federal law that authorizes the Department of Homeland Security to detain those who are removable.[5] While various changes have been made to applicable immigration laws since the INA was first enacted, the changes made to the INA by the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") by Congress in 1996 largely provide the current federal framework that governs proceedings and detention. The current framework requires standard and formal removal proceedings, establishes factors that determine whether detention is mandatory or discretionary, and determines when a detained person may be released from custody. For example, under what is oftentimes called the default rule, immigration authorities are permitted (but not required) to detain removable persons pending formal removal proceedings, and such detainees are eligible to be released on bond or conditional parole (INA Section 236(a)).[6] Changes made by the IIRIRA, however, mandate the detention of persons who are deportable or inadmissible for having committed certain specified crimes,[7] generally without the possibility of release from custody (INA Section 236(c)).[8] Changes made by the IIRIRA also mandate the detention of applicants for

assess the issue at hand. This Committee is not comprised of attorneys who are versed in immigration law, and the background provided herein merely provides what the Committee's understanding of the law is.

[5] *See* 8 U.S.C. § 1103(a)(1).

[6] *Id.* at § 1226(a).

[7] For example, the Section covers those who are: (a) inadmissible as a result of the commission of crimes involving moral turpitude, controlled substance violations, drug and human trafficking offenses, money laundering, and any two or more criminal offenses resulting in a conviction for which the total term of imprisonment is at least five years; (b) deportable as a result of a conviction of aggravated felonies, two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct; (c) a controlled substance violation, and a firearm offense; and (c) deportable based on the conviction of a crime involving moral turpitude generally committed within five years of admission for which a sentence was imposed of at least one year of imprisonment.

[8] *Id.* at § 1226(c).

admission[9] who appear subject to removal (INA Section 235(b))[10] and the detention of those who are ordered removed after formal proceedings (INA Section 241(a))[11].

Title 8 of the United States Code imposes both civil and criminal penalties for immigration violations. 8 U.S.C. § 1325(a) provides that:

> An alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under Title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under Title 18, or imprisoned not more than 2 years, or both.[12]

8 U.S.C. § 1326(a) and (b) further provide as follows:

> (a) In general
>
> Subject to subsection (b), any alien who--
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> > (1) has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, and thereafter
> >
> > (2) enters, attempts to enter, or is at any time found in, the United States, unless (A) prior to his reembarkation at a place outside the United States or his application for admission from foreign contiguous territory, the Attorney General has expressly consented to such alien's reapplying for admission; or (B) with respect to an alien previously denied admission and removed, unless such alien shall establish that he was not required to obtain such advance consent under this chapter or any prior Act,
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> shall be fined under Title 18, or imprisoned not more than 2 years, or both.
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> (b) Criminal penalties for reentry of certain removed aliens

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[9] Under INA Section 235(b), an "applicant for admission" includes both a person arriving at a designated port of entry and a person present in the United States who has not been admitted. *Id.* at § 1225(a)(1).
[10] *Id.* at § 1225(b)(1), (2).
[11] *Id.* at § 1231(a)(2), (6).
[12] *Id.* at § 1325(a).

> Notwithstanding subsection (a), in the case of any alien described in such subsection--
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> > (1) whose removal was subsequent to a conviction for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony (other than an aggravated felony), such alien shall be fined under Title 18, imprisoned not more than 10 years, or both;
> >
> > (2) whose removal was subsequent to a conviction for commission of an aggravated felony, such alien shall be fined under such title, imprisoned not more than 20 years, or both;
> >
> > (3) who has been excluded from the United States pursuant to section 1225(c) of this title because the alien was excludable under section 1182(a)(3)(B) of this title or who has been removed from the United States pursuant to the provisions of subchapter V, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under Title 18 and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence.[1] or
> >
> > (4) who was removed from the United States pursuant to section 1231(a)(4)(B) of this title who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under Title 18, imprisoned for not more than 10 years, or both.
>
> For the purposes of this subsection, the term "removal" includes any agreement in which an alien stipulates to removal during (or not during) a criminal trial under either Federal or State law.[13]

It is important to note, however, that mere unlawful presence in the United States, without more, is generally a civil immigration offense.[14] To be clear, even if a criminal immigration violation has been committed, such persons are often not charged with any criminal offenses. Rather, they are subjected to civil removal proceedings without any criminal charges and/or penalties being imposed. Put another way, any discretionary or mandatory detention under INA Sections 236(a),

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[13] *Id.* at § 1326(a)-(b).

[14] *Arizona v. United States*, 567 U.S. 387, 407 (2012) (stating that, "[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.")

236(c), 235(b), and 241(a) is not detention being imposed as a criminal sentence or as a result of pending criminal immigration violations; it is generally detention that is permitted under federal law for civil immigration violations.

2. The Process

The process begins when a removable person is taken into custody. Generally, the federal government may arrest and detain a removable person upon the issuance of an administrative warrant, or without a warrant if an officer has reason to believe that a person is unlawfully in the United States and likely to escape before a warrant is issued.[15] The federal government is also authorized to enter into agreements, commonly referred to as Section 287(g) agreements, under which state and/or local law enforcement officers may be deputized and given authority to, among other activities, identify, process, and/or detain any immigration offenders they may encounter.[16]

For those who are already in custody by local or state law enforcement as a result of pending or adjudicated criminal charges, the federal government may take custody of such persons through immigration detainers.[17] Federal regulations provide that:

> Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.[18]

With immigration detainers, local or state law enforcement is also requested to maintain custody "for a period not to exceed 48 hours" beyond the time the detainee would have otherwise been

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[15] 8 U.S.C. §§ 1226(a), 1357(a)(2).
[16] *See id.* at § 1357(g).
[17] *Id.* at § 1357(d).
[18] 8 C.F.R. § 287.7(a).

released to facilitate the transfer of custody.[19] Immigration officers must establish probable cause that a person is removable before the issuance of a detainer, and a detainer must be accompanied by an administrative arrest warrant or warrant of removal.[20] Importantly, courts have construed immigration detainers as mere requests rather than mandatory orders.[21]

Once in custody, the detainee may be released during the pendency of removal proceedings depending upon various factors. For those that are detained under INA Section 236(a), an immigration officer may make an initial determination as to whether the detainee may be released from custody.[22] A detainee may request review of this initial custody determination at a bond hearing before an immigration judge.[23] At that time, an immigration judge may determine that the person should remain detained or decide to release the person under specified conditions (e.g. bond, conditional parole).[24] Under federal regulations, a detainee may be released from custody if s/he does not pose a danger to the community and is likely to appear for any future proceedings.[25] In making such a determination, an immigration judge may consider the following factors, among others:

(1) whether the detainee has a fixed address in the United States;

(2) the detainee's length of residence in the United States;

(3) whether the detainee has family ties in the United States;

(4) the detainee's employment history;

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[19] *Id.* at § 287.7(d).

[20] Policy Number 10074.2, Issuance of Immigration Detainers by ICE Immigration Officers, at ¶ 2.4, U.S. Immigration and Customs Enforcement (March 24, 2017), available at https://www.ice.gov/sites/default/files/documents/Document/2017/10074-2.pdf.

[21] *See, e.g., Galarza v. Szalczyk*, 745 F.3d 634, 640 (3d Cir. 2014) (stating that "no U.S. Court of Appeals has ever described ICE detainers as anything but requests."); *accord Giddings v. Chandler*, 979 F.2d 1104, 1105 (5th Cir. 1992) (describing an immigration detainer as "an informal procedure in which the INS informs prison officials that a person is subject to deportation and requests that officials give the INS notice of the person's death, impending release, or transfer to another institution.")

[22] *See* 8 C.F.R. §§ 236.1(c)(8), (d)(1), (g)(1).

[23] *Id.* at § 1003.19(a)

[24] *Id.* at § 1236.1(d)(1).

[25] *Id.* at §§ 236.1(c)(8), 1236.1(c)(8).

(5) the detainee's record of appearance in court;

(6) the detainee's criminal record, including the extent, recency, and seriousness of the criminal offense(s);

(7) the detainee's history of immigration violations;

(8) any attempts by the detainee to flee prosecution or otherwise escape from authorities; and

(9) the detainee's manner of entry to the United States.[26]

Either side may appeal decisions by the immigration judge to the Board of Immigration Appeals.[27]

A person detained under INA Section 236(c) may only be released for witness protection purposes.[28] Unlike a person detained under INA Section 236(a), a person detained under INA Section 236(c) has no right to a bond hearing before an immigration judge, but any such person may seek a ruling from an immigration judge that s/he was not properly classified as a mandatory detainee under INA Section 236(c).[29]

For those detained under INA Section 235(b), the Department of Homeland Security may parole a detained applicant for admission subject to expedited removal proceedings[30] if required to meet a medical emergency or if it is necessary for a legitimate law enforcement objective.[31] If a person detained under INA Section 235(b) is not subject to expedited removal proceedings, the Department of Homeland Security may parole those who do not present a risk of absconding and who:

(1) have serious medical conditions;

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[26] *See, e.g.*, In re Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006), *abrogated on other grounds*.
[27] 8 C.F.R. §§ 1003.1(d)(1), 1236.1(d)(3)(i).
[28] *See* 8 U.S.C. § 1226(c)(2).
[29] 8 C.F.R. § 1003.19(h)(2)(ii).
[30] Under INA Section 235(b), detainees are subject to expedited removal, generally without a hearing or further review, if they are inadmissible because they lack valid entry documents or have attempted to procure admission by fraud or misrepresentation. 8 U.S.C. § 1225(b)(1)(A)(i). Additionally, a detainee is also subject to expedited removal if the detainee was in the United States without being admitted or paroled for less than two years. *Id.*
[31] *See* 8 C.F.R. § 235.3(b).

(2) are pregnant;

(3) are minors;

(4) will be witnesses in proceedings; or

(5) should not be detained because it is not in the public interest.[32]

Generally speaking, a person must be removed within 90 days after an order of removal becomes final at the conclusion of removal proceedings unless a stay of removal is entered or a person is detained for nonimmigration purposes (e.g., criminal incarceration),[33] and a person must be detained during that 90-day period if s/he has been found inadmissible or deportable on criminal or terrorist-related grounds under INA Section 241(a).[34] Under INA Section 241(a), if a detainee has not been removed within 90 days, the detainee generally will be released and subject to supervision pending removal."[35] The order of supervision is required to include requirements (in addition to any other requirements that may be imposed) that the person (1) periodically report to an immigration officer and provide relevant information under oath; (2) continue efforts to obtain a travel document and help DHS obtain the document; (3) report as directed for a mental or physical examination; (4) obtain advance approval of travel beyond previously specified times and distances; and (5) provide ICE with written notice of any change of address.[36]

A detainee, however, may be detained beyond the 90-day period if the detainee was not removed because s/he "fail[ed] or refus[ed] to make timely application in good faith for travel or other documents necessary to the [detainee]'s departure or conspire[d] or act[ed] to prevent the

[32] *Id.* at § 212.5(b).
[33] *See* 8 U.S.C. § 1231(a)(1).
[34] *Id.* at § 1231(a)(2).
[35] *Id.* at § 1231(a)(3)
[36] 8 C.F.R. § 241.5(a).

[detainee]'s removal subject to an order of removal.[37] A detainee may also be detained beyond the 90-day period under other enumerated circumstances (e.g., failed to comply with conditions of nonimmigrant status, committed specified crimes, declared inadmissible for lack of valid entry documents, etc...).[38] Any such detainee will undergo a custody review prior to the end of the 90-day period to determine whether continued detention is warranted,[39] during which several factors will be considered, including the detainee's disciplinary infractions, criminal convictions, mental health reports, evidence of rehabilitation, ties to the United States, prior immigration violations, risk of flight, and other information probative of whether the detainee will be a danger to the community.[40] If such factors do not warrant release, the detainee will undergo further custody reviews after 180 days, after 18 months, and annually thereafter.[41] Under such circumstances, a detainee may submit a written request for release because there is no significant likelihood of removal in the reasonably foreseeable future, and they will have to be released subject to appropriate conditions if there is no significant likelihood of removal.[42] Notably, the U.S. Supreme Court has found that detention should generally be limited to six months after the entry of a final order of removal.[43]

B. The Contract

The Contract, which was entered into by and between the parties in 1995, "establish[es] a formal binding relationship . . . for the detention of aliens of all nationalities authorized to be detained . . . in accordance with the Code of Federal Regulations, Title 8, Aliens & Nationality

[37] 8 U.S.C. § 1231(a)(1)(C)
[38] *See id.* at §§ 1182(a), 1227(a), 1231(a)(6).
[39] 8 C.F.R. §§ 241.4(c)(1), (h)(1), (k)(1)(i).
[40] *Id.* at §§ 241.4(f), (h)(3).
[41] *Id.* at §§ 241.4(k)(1)(ii), (c)(2), (i)(1), (k)(2)(i), (k)(2)(iii).
[42] *Id.* at §§ 241.13(d), (g), (h).
[43] *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Act and related criminal statutes."[44] To be clear, the Contract is not a Section 287(g) agreement[45] referred to above. The Contract does not provide for the deputization by the federal government of local law enforcement or otherwise give authority to local law enforcement to identify, process, and/or detain removal persons under immigration law. Rather, under the Contract, the HCDC agrees to provide "housing, safekeeping, subsistence and other services for INS detainee(s) within its facility (or facilities) consistent with the types and levels of services and programs routinely afforded its own population."[46] For the services it provides, HCDC is paid at a rate that may be increased on an annual basis.[47] As a result of an amendment to the Contract in 2018, the "bed day rate" that the HDCD receives per detainee is $110.00.[48]

The Contract provides that "[t]he type of detainee will be non-juvenile males and females with prior approval of the Director of Corrections or designee[, and that t]he duration of service to be provided will be overnight holds, daily, and long term, not to exceed 120 days without contacting the contractor for approval."[49] The HCDC may not release any such detainees "from the facility into the custody of other Federal, state or local officials for any reason, except for medical or emergency situations, without the express authorization of INS."[50]

The Contract "remain[s] in effect indefinitely until terminated by either party[,]" and HCDC may also suspend or restrict the use of its facility if unusual conditions arise that make it "impractical or impossible to house detainee(s)."[51] Under the Contract, HCDC is required to give

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[44] Contract, *supra*, at I.1.
[45] Indeed, not only is the County not a party to a 287(g) agreement, the County's police department has a general order that expressly states that 'HCPD officers have no statutory authority to enforce civil violations of federal immigration laws. Criminal investigations or enforcement shall never be initiated solely upon an individual's citizenship or immigration status." General Order OPS-10, Foreign Nationals, attached hereto as Tab 2.
[46] Contract, *supra,* at II.1; *see also id.* at III.1
[47] Id. at VI.1-2.
[48] *See id.* (last page).
[49] *Id.*
[50] *Id.* at IV.2.
[51] *Id.* at V.1.

60-days notice to terminate the agreement and 30-days notice to suspend or restrict use of its facility.[52]

C. The Process Under the Contract

Conduct by the HCDC under the Contract was largely dictated by policy identified as P & P No. C-205, a copy of which is attached hereto as Tab 3 (the "Policy"), which was made effective on June 3, 2019. The Policy states as follows:

> It is the policy of the Howard County Department of Corrections to only accept detainees from ICE who are criminally involved. This includes: 1. Those convicted of crimes, 2. Those charged with jailable offenses, 3. Those who are members of criminal gangs, and 4. Those who are deported criminal felons who have illegally reentered the U.S.[53]

According to the HCDC, the process of accepting ICE detainees begins when ICE sends the Director of the HCDC an e-mail asking if the HCDC would like to accept detainees who are specified in the e-mail.[54] The e-mails purportedly provide information sufficient for the HCDC to determine whether the detainee(s) are one of the four types the HCDC will accept under to the Policy.[55] Currently, the HCDC states that only the Director of the HCDC may decide whether to accept any ICE detainee(s) on a case by case basis.

The Policy largely sets forth other operating procedures regarding, among others: (1) Agency Cooperation;[56] (2) Medical Requirements;[57] (3) The Receipt of ICE Detainees;[58] (4) ICE Classification Levels;[59] (5) Housing, Searches and Security of ICE Detainees;[60] (6) ICE Detainee

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[52] *Id.*
[53] Policy, *supra*, at 1.
[54] The HCDC has provided examples of such e-mails, which are attached hereto as Tab 4 ("Example HCDC Emails").
[55] See Example HCDC Emails, *supra*.
[56] Policy, *supra*, at 1.
[57] *Id.* at 2.
[58] *Id.*
[59] *Id.* at 4.
[60] *Id.*

Property During Admission;[61] (7) Notices of Infraction;[62] (8) Wellness Rounds;[63] (9) ICE Detainee Visits;[64] (10) Physical Recreation;[65] (11) Inmate/Detainee Marriage;[66] (12) Allowable Inmate/Detainee Property;[67] (13) ICE Detainee Transfers;[68] and (14) Authorization, Verification and Release of ICE Detainees Unless Otherwise Authorized in Writing by ICE Staff[69]. Importantly, the policy is not considered law, and the "Director has the authority to revise/change a policy or post order as needed to meet the operational demands of the Department."[70]

II. The Coalition's Position

As noted above, it is the Coalition's position that the HCDC should terminate the Contract with the DOJ.[71] According to the Coalition, the Contract should be terminated because of conduct attributable to both ICE and the HCDC.

As an initial matter, the Coalition maintains that ICE is a corrupt agency. According to the Coalition, "[t]he current immigration policies are heartless and unjust, routinely tearing families apart and deporting people who have lived and worked peacefully in the United States for decades[, and] ICE is the enforcement arm of the policy."[72] As the enforcement arm of the policy, the Coalition specifically points to the dramatic expansion in the scope of removable persons who are detained and removed. According to the Coalition, the prior administration, as a matter of practice, only focused on detaining removable persons who were also violent criminals, and the sudden

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[61] *Id.* at 5.
[62] *Id.* at 6.
[63] *Id.*
[64] *Id.*
[65] *Id.* at 7.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.* at 8.
[71] Among other things, the Coalition provided this Committee with a position paper and written testimony, copies of which are attached hereto as Tab 5 (the "Position Paper and Testimony"). This summary of the Coalition's position is based on the Position Paper and Testimony, as well as the Committee's interview with Coalition representatives.
[72] Position Paper and Testimony, *supra*, at 1.

expansion under the current administration to include those who have not even been charged with or convicted of violent crimes makes ICE even more corrupt and increases the need for localities like Howard County to cease all cooperation. Even if the HCDC has a policy that limits the types of detainees it accepts, all information needed to assess whether a detainee is of the type that HCDC accepts is provided by ICE, and it is sometimes impossible and at other times impractical for the HCDC to verify any such information.

The Coalition also submits that the Contract should be terminated because of issues with the HCDC and/or County. As an initial matter, the Coalition claims that the County is not being transparent with respect to requests for information and documents. In support of its contention, the Coalition points to a Public Information Act request that has not been answered to the satisfaction of the Coalition. The Coalition provided a copy of the request, and filings relating to the dispute that followed, which are attached hereto as Tab 6.

The Coalition also takes issue with the Policy. As an initial matter, the Policy is not law, and any subsequent director of the HCDC may change the Policy to expand the scope of detainees that the HCDC accepts from ICE. Additionally, while the Policy states that the HCDC only accepts detainees that are "criminally involved," the Coalition contends that the HCDC is "holding people who have been charged but not convicted of a crime[,] . . . people charged with minor traffic violations and not guilty of crimes against people and property[, and those] . . . who have already served time for their crimes and then have been moved into the ICE section of the jail."[73] As the Policy itself also states, the HCDC may also accept detainees merely because they are identified as "members of criminal gangs" regardless of whether such persons have been charged or convicted of any crime.

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[73] *Id.*

To be clear, the Coalition's position is that no person should be detained as a part of civil removal proceedings. Rather, detention should be limited to the criminal justice system. For example, if a removable person has been charged with a crime and released on bail, that person should not then be detained as a result of an ICE detainer for a civil immigration violation. If a removable person has been convicted of a crime and has served his/her criminal sentence, that person has already served the penalty for the crime and should not be detained thereafter pending deportation.

III. Issues

As noted above, the Committee has interviewed and requested documents from various organizations that participate in the process described above and/or advocate for those who are affected. The interviews conducted and documents received raised two primary issues, which are as follows.

A. Does The HCDC Only Accept Criminal Detainees?

There is much debate regarding whether the HCDC "only accepts criminal detainees." As an initial matter, it is important to note that, as a general matter, ICE detainees accepted by the HCDC are being detained as a part of removal proceedings that are civil in nature, not criminal. As discussed above, title 8 of the U.S. Code imposes criminal penalties on certain immigration violations. As specified above, illegal entry into the United States is, generally speaking, a crime that may result in imprisonment as a criminal sentence. That being said, even if a criminal immigration violation has been committed, such persons are not usually charged with the criminal offense of illegal entry. Rather, they only are subjected to civil removal proceedings without any criminal charges and/or penalties being imposed.

Put another way, detention by the HCDC for ICE detainees generally is not being imposed as a criminal sentence or as a result of pending criminal immigration violations; it is detention that is permitted under federal law for civil immigration violations. As such, even if a detainee is accepted by HCDC that has been charged with but not yet tried for a non-immigration criminal offense, they are detained by ICE and handed over to the HCDC after being released on bail (or under other conditions). If a detainee is accepted by HCDC that has been convicted of a non-immigration criminal offense, they are detained by ICE and handed over to the HCDC after the person has served his/her criminal sentence.

While the detention at HCDC for ICE detainees is generally not, in of itself, detention for a pending criminal charge or conviction, such a criminal charge or conviction may still serve as a predicate for mandatory detention for a civil immigration violation as described above. It is those detainees that are largely addressed by the Policy. The Policy, as specified above, expressly states that it "is the policy of the Howard County Department of Corrections to only accept detainees from ICE who are criminally involved." The Policy defines "criminally involved" as:

> (1) Those convicted of crimes;
>
> (2) Those charged with jailable offenses;
>
> (3) Those who are members of criminal gangs; and
>
> (4) Those who are deported criminal felons who have illegally reentered the U.S.

While those who were convicted of crimes and/or were deported criminal felons who illegally re-entered the United States are unequivocally "criminals," however, the express wording of the Policy permits the acceptance of those who have merely been charged with jailable offenses and/or who are members of criminal gangs.

Opponents of the Contract have raised concerns for ICE detainees accepted by the HCDC who have merely been charged with, but not convicted of, jailable offenses. As an initial matter, the express wording indicates that such persons have only been charged, but not convicted, of a crime. Charges may have been asserted as a result of uncorroborated witnesses or under false pretenses, and the HCDC has no way of verifying the information that served as the bases for any criminal charges. For example, an assault charge may have been based upon a person falsely claiming that they were assaulted, but the HCDC has no way to assess the veracity of any statements that may have served as the basis for the charge. While the criminal charges may later be dropped, the person has already been detained and is now in custody separately as a part of the civil immigration removal proceedings. Moreover, ICE is only taking custody for civil immigration violations after charged persons have been released from criminal custody on bail or under other conditions. If a judge has found that the circumstances warrant release from custody (on bail or under other conditions) pending trial for the criminal charges, that person should not then be detained on the civil immigration violations pending resolution of the criminal charges.

On the other hand, some who support the Policy point out that while criminal charges may later be dropped or a court may eventually find the defendant not guilty, a probable cause determination has nonetheless been made for the arrest, and the charged person has gone through the required preliminary criminal proceedings prior to being released on bail or under other circumstances. They also assert that detainees accepted by the HCDC may have only been charged, but they have all been charged with jailable, and therefore significant, offenses.[74]

[74] Attached hereto as Tab 7 is a list provided by the HCDC of all ICE inmates that were being held at the HCDC on August 28, 2019. This list specifies the criminal charges for ICE detainees who were accepted by the HCDC as a result of pending jailable charges.

Opponents of the Contract also have raised concerns for ICE detainees accepted by the HCDC solely on the basis of purported membership in a criminal gang. Indeed, such designations are not made as a finding of fact by a court, but rather by law enforcement. Opponents contend that the HCDC has no way of assessing whether the bases for any such designation is valid, or rooted in fact rather than mere suspicion.

According to the HCDC, however, it does not accept an ICE detainee solely on the basis of a conclusory designation that the detainee is the member of a criminal gang. ICE is required to submit a Form I-213 for each proposed detainee, and the HCDC reviews the form. According to the HCDC, those that are accepted by the HCDC as a result of gang affiliation are only accepted if there is information in detail sufficient for the HCDC regarding the gang affiliation and/or because of other factors that accompany the designation.[75]

Some have raised concerns that the HCDC accepts detainees who do not fall under one of the four enumerated categories in the Policy or whose detention is otherwise unjust.[76] As examples, CASA has provided videos downloadable at https://www.dropbox.com/sh/rk37p0d1hombdch/AAAD488ptxM0pxd4da7Y_ahka?dl=0, and written examples attached hereto as Tab 10. For those identified, the HCDC has provided its justification for acceptance under the Policy in the e-mails attached hereto as Tab 11. Additionally, the HCDC has provided a more expansive list of the HCDC's intakes of ICE detainees, attached hereto as Tab 12. The Committee has asked the Coalition, CASA, and the ACLU of Maryland whether it could meet with any of the persons identified to verify the information presented rather

[75] Attached hereto as Tab 8 is example of information that the HCDC considers when assessing whether to accept an ICE detainee as a result of gang affiliation.

[76] Others have also contended that the HCDC does not in reality even consider the factors enumerated in the Policy. In response, the HCDC has provided examples of detainees who the HCDC did not accept from ICE. Such examples are attached hereto as Tab 9.

than relying solely upon anecdotal accounts. After communicating with the persons identified, all three organizations have stated that they do not wish to subject the individuals to questioning by the Committee and/or provide additional information in light of privacy concerns.

B. Will Detainees Be Disadvantaged If The HCDC Terminates The Contract?

Supporters of the Contract raise two primary concerns with how termination of the Contract could adversely affect ICE detainees. One concern is that the termination of the Contract would make it harder for those currently in the custody of the HCDC to see their families. The other concern is that it would result in the transfer of detainees to detention centers that provide fewer services, including legal representation, to detainees than the HCDC.

With respect to the first concern, the Coalition states as follows:

> [M]any detainees in Jessup are not from Howard County. Only 8 of the 65 immigrants detained in the Jessup jail on August 28, 2019 lived in Howard County. Almost one in three of the detainees on that day came from out of state. Moreover, family members may be undocumented and thus too afraid to visit the facility even if it is close by. Detainees have access to skype and phone calls to their families but for a fee.[77]

The HCDC, however, refers to the list of intakes for 2019 referred to above and attached hereto as Tab 12, which provides the city and state of the detainee's last known address. Notably, ICE detainees are placed under the care of three facilities in Maryland (in Worcester County, Frederick County, and Howard County), two facilities in Virginia (in Farmville and Bowling Green), and no facilities in the District of Columbia.

Some supporters of the Contract contend that the HCDC provides better services than other detention centers, and raise the concern that the termination of the Contract would result in the transfer of ICE detainees to other detention centers that, for example, do not provide as much access to legal services. For those who are accepted by the HCDC under the Policy – particularly

[77] Position Paper and Testimony, *supra*, at 2.

those with have been charged with or convicted of predicate non-immigration crimes that result in mandatory detention under the INA – the argument is that if the INA mandates detention, it is better for such detainees to be detained at a facility like the HCDC than at other facilities. According to the HCDC,

> [A]ll detainees get orientation from the CAIR Coalition[.] . . . Cair provides detainees legal information and services[.] We also conduct a weekly new intake orientation and review the CAIR services with the detainees. This information is also in their handbook and posted in their housing area and on the unit computer kiosk.[78]

As specified above, the removal process is a complicated and lengthy process. According to the 2017 Center for Popular Democracy's Access to Justice Report, a copy of which is attached hereto as Tab 14 (the "CPD Report"), eight out of ten immigrants detained in Maryland and appearing in removal proceedings before the Baltimore Immigration Court did not have legal representation.[79] Unrepresented detainees in Baltimore were only successful in their cases 7% of the time, and having a lawyer quadrupled a person's chance of obtaining relief in Baltimore.[80]

According to one advocate, "[d]etained individuals have a greater chance of legal representation when in facilities [such as the HCDC] that have access to counsel programs such as LOP, ISLA or Safe City."[81] With respect to the Department of Justice's LOP program, services are only available at 46[82] out of the 137[83] facilities at which ICE detainees are detained and the HCDC is one of them. According to the CAIR Coalition:

> LOP refers individuals to external pro bono partners, as well as our in-house direct representation programs for pro bono representation. Over 95% of individuals represented in-house or by external pro bono attorneys are

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[78] Tab 13, at ¶ 17.
[79] CPD Report, *supra*, at 4.
[80] *Id.*
[81] Tab 14.
[82] Legal Orientation Program, Vera Institute of Justice, available at https://www.vera.org/projects/legal-orientation-program/legal-orientation-program-lop-facilities.
[83] Detention Facility Locator, U.S. Immigration and Customs Enforcement, available at https://www.ice.gov/detention-facilities.

> directly referred by LOP. Throughout the 2 VA facilities we serve and the 3 MD facilities we serve, direct representation programs are able to provide legal services as a result of LOP referrals. LOP is not meant to be the equivalent of or substitution for direct representation. Rather, our LOP and our direct representation programs work hand-in-hand to provide legal services to as many individuals as possible.[84]

While the LOP Program is only available at approximately one-third of ICE detention facilities, the reach of legal service organizations also appears to be limited by the funding they receive. As an initial matter, finding stable, multi-year funding is difficult for any organization. Additionally, however, funding often also comes with limitations. For example, the Prince George's County's ISLA (Immigrant Services and Language Access Program) is funded by that particular county for the purpose of servicing that particular county's residents. Such funding may not be available to service detainees that are in custody at other detention centers.

According to the Coalition, however,

> The Jessup jail may be a better jail than others, but it is still a jail. . . . [While CAIR] personnel visit Jessup regularly to provide information and, sometimes, legal representation[,] . . . only 2 in 10 detainees in Baltimore immigra[tion] court have lawyers. In practical terms, ending the ICE contract will reduce opportunities for legal representation for a very small number of immigrants."[85]

Moreover, many advocacy groups, including the ACLU of Maryland, CASA, and the Coalition, subscribe to the notion that "less beds" mean "less detainees." According to the Coalition, "[w]hen there are fewer prisons for immigrants, fewer immigrants are arrested and detained."[86] In support of its contention, the Coalition states as follows:

> We can see this if we compare Washington, Massachusetts and Georgia. These states have similar size immigrant populations, but Massachusetts has less than half the detention capacity of Washington. According to TRAC, https://trac.syr.edu/phptools/immigration/apprehend/ ICE made about half as many arrests in Massachusetts (3760) as they did in

[84] Tab 14.
[85] Position Paper and Testimony, *supra*, at 1
[86] Tab 15.

> Washington (7139). In contrast, Georgia has a similar size immigrant population but twice as much immigrant detention infrastructure, and 3.5 times as many ICE arrests (25,137). If we dismantle the infrastructure that allows for easy detention of our neighbors and family members, we expect less immigration enforcement in this state.[87]

Under that line of reasoning, if there are fewer detention centers that accept ICE detainees in Maryland, there will be less immigrants from Maryland who are arrested and detained.

According to the Coalition, "[a]s long as Howard County continues to house immigrants, we are all complicit with a corrupt system. Unless communities refuse to collaborate with ICE, detentions will continue."[88] While Howard County is not a party to a 287(g) agreement, it is nonetheless a party to the Contract. The Coalition submits that

> Nationwide, state and local governments are ending their contracts with ICE, most recently, Norfolk, Virginia. Howard County needs to join this humanitarian action and be in the forefront for social justice. . . . We cannot wait for Washington to take action. Change begins community by community. Local political action puts pressure on national leaders to act. In the face of clear human rights violations, we have an obligation to our foreign-born friends and neighbors in Howard County to work against unjust policies and laws. If we want Howard County immigrants to trust local government and police, we cannot continue to take money from ICE.[89]

As such, the Coalition requests that this Commission support its efforts to call for the termination of the Contract.

IV. Subsequent Developments

Both the County Council and County Executive's Office have recently taken action regarding the Contract and the Policy. CB51-2020, introduced by Council Vice Chair Liz Walsh on September 8, 2020, aims to "prohibit[] the Howard County Department of Corrections from accepting into its custody persons detained by federal immigration law enforcement agencies and

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[87] *Id.*
[88] Position Paper and Testimony, *supra*, at 2.
[89] *Id.*

housing those persons as they await disposition of exclusively immigration-related proceedings."[90] A copy of the legislation text and written testimony is attached hereto as Tab 16. According to the text of the legislation, it seeks to amend the Howard County Code by adding a provision to Section 7.501 (Department of Corrections) in Subtitle 5 (Department of Corrections) in Title 7 (Courts) as follows:

[90] Tab 16, at 1.

(D) *Prohibitions*:

> Notwithstanding any provision in this Section to the contrary, the Department of Corrections shall not detain or keep in custody any person detained in federal custody for a federal immigration violation, except to the extent required for an unrelated State law purpose.[91]

The legislation was discussed at the public hearing on September 21, 2020. At the hearing, a vast majority of those who testified voiced support for the legislation without amendments. The legislation was passed by the County Council, and the County Executive vetoed the legislation.

Additionally, according to the Baltimore Sun, the County Executive's Office separately came to an agreement with CASA on a policy clarification – which presumably refers to a change to the Policy.[92] The article reports the County Executing as stating, "[u]nder the revised policy, only persons convicted of violent crimes would be housed in the detention center."[93] The predicate "violent crimes" would be limited to the crimes identified as "crime[s] of violence" under the Maryland Code,[94] which are as follows:

> (1) abduction;
> (2) arson in the first degree;
> (3) kidnapping;
> (4) manslaughter, except involuntary manslaughter;
> (5) mayhem;
> (6) maiming, as previously proscribed under former Article 27, §§ 385 and 386 of the Code;
> (7) murder;
> (8) rape;
> (9) robbery under § 3-402 or § 3-403 of this article;
> (10) carjacking;
> (11) armed carjacking;
> (12) sexual offense in the first degree;
> (13) sexual offense in the second degree;

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[91] *Id.* at 4.
[92] Ana Faguy, Howard County Clarifies Contract With ICE To Accept Only Detainees Who Are Convicted Of Violent Crimes, Baltimore Sun, Sept. 18, 2020, available at https://www.baltimoresun.com/maryland/howard/cng-ho-ice-contract-policy-20200918-uamymojrzrg7hlg6jlbpgz4oyi-story.html, attached hereto as Tab 17 ("Baltimore Sun Article"), at 2.
[93] *Id.* at 3.
[94] *Id.*

(14) use of a handgun in the commission of a felony or other crime of violence;
(15) an attempt to commit any of the crimes described in items (1) through (14) of this subsection;
(16) assault in the first degree;
(17) assault with intent to murder;
(18) assault with intent to rape;
(19) assault with intent to rob;
(20) assault with intent to commit a sexual offense in the first degree; and
(21) assault with intent to commit a sexual offense in the second degree.[95]

In addition to the foregoing, additional materials were provided to the Commission and/or referenced during discussions following the completion of this Report, but prior to the Commission voting on what action to take: (1) a letter send by the County Executive to the County Council regarding the County Executive's decision to veto CB51-2020, attached hereto as Tab 27; (2) a November 16, 2020 letter to the Commission from the Coalition, attached hereto as Tab 28; and (3) an October 28, 2020 report issued by the Office of Inspector General at the Department of Homeland Security regarding an unannounced inspection of the HCDC in December 2019, attached hereto as Tab 29.

V. Commission's Recommendation

The Commission held its regularly scheduled meeting on November 19, 2020. After discussion at that meeting, the Commission voted in favor of taking the following position:

> The Howard County Human Rights Commission supports the change to the County's policy known as P & P No. C-205, such that the Howard County Department of Corrections' acceptance of detainees under the Intergovernmental Service Agreement between the Howard County Department of Corrections and the United States Department of Justice shall be limited to those who have been convicted of crimes of violence identified under Md. Code, Criminal Law, § 14-101.

[95] Md. Code, Criminal Law, § 14-101.

ISSUE NO. 2: CITIZENSHIP AND/OR IMMIGRATION STATUS AS A PROTECTED CLASS

The Coalition is advocating for the addition of immigration status as a protected class to Subtitle 2 of the Howard County Code and is asking the Commission to support its efforts. In studying this issue, the Committee: (i) reviewed the current Howard County Human Rights Code; (ii) interviewed the Coalition and the County Executive's Office regarding their positions on this issue; (iii) researched the implications of federal law; and (iv) researched other states and localities that have adopted protections similar to those advocated by the Coalition, and, where possible, interviewed officials from these jurisdictions. This Section summarizes the Committee's factual findings to provide the Commission with as much information as possible to enable it to make an informed decision about this issue.

I. Howard County Human Rights Code

Section 12.200 of the Howard County Human Rights Code provides that the "Howard County Government shall foster and encourage the growth and development of Howard County so that all persons shall have an equal opportunity to pursue their lives free of discrimination."[96] To that end, discrimination based on the following protected classes are contrary to the public policy of Howard County:

Race,

Creed,

Religion,

Disability,

Color,

Sex,

[96] Howard County Code § 12.200(I).

National Origin,

Age, Occupation,

Marital Status,

Political Opinion,

Sexual Orientation,

Personal Appearance,

Familial Status,

Source of Income, or

Gender Identity or Expression.[97]

(collectively, the "Protected Classes"). The Howard County Human Rights Code further states that:

> Howard County Government shall direct its efforts and resources toward eliminating discriminatory practices within Howard County in:
>
> (1) Housing
>
> (2) Employment
>
> (3) Law Enforcement
>
> (4) Public Accommodations
>
> (5) Financing
>
> (6) Any other facet of the lives of its citizens where such practices may be found to exist.[98]

Sections 12.207 through 12.211 of the Howard County Human Rights Code prohibit discrimination against persons based on any of the Protected Classes in housing, employment, law enforcement, public accommodations, and financing.[99] Presently, neither citizenship nor

[97] *Id.* § 12.200(II).
[98] *Id.* § 12.200(III).
[99] *Id.* §§ 12.207-12.211.

immigration status are included as a Protected Class under the Howard County Human Rights Code.

II. Interviews with Local Stakeholders

The Committee interviewed several local stakeholders to obtain their opinions on adding citizenship and/or immigration status as a protected class under the Howard County Human Rights Code.

A. Coalition for Immigrant Justice

The Coalition for Immigrant Justice, which originally brought this issue to the Commission's attention, strongly advocates for adding immigration status as a protected class. It believes that adding immigration status as a protected class would send a strong message to the immigrant community and to businesses that discrimination based on immigration status will not be tolerated in Howard County. The Coalition does not have any proposed legislation, but would be willing to work on drafting legislation for consideration.

B. County Executive's Office

The Committee interviewed Jennifer Jones, Chief of Staff to County Executive Calvin Ball. According to Ms. Jones, the County Executive is open to considering the addition of immigration status as a protected class but did not, at the time of the interview, have a position on the scope of protection. His office does not currently have any proposed language but is open to reviewing options from interested citizens and groups. The County Executive's Office is not aware of a high incidence of discrimination against individuals in Howard County based upon immigration status, but suggested checking with the Office of Human Rights and CASA.[100] The County Executive

[100] As suggested by Ms. Jones, the Committee discussed this issue with CASA during its interview regarding Issue No. 1. CASA stated that it had not thought much about this issue. CASA is not aware of incidents of discrimination based on immigration status against individuals in Howard County in employment, housing, financing, or public accommodations. However, CASA is aware of an increase in Howard County residents failing to report crimes or seek public resources and medical or social assistance due to their immigration status. CASA believes that adding

would like to ensure that any proposed legislation would not contravene or otherwise be in conflict with other federal, state, or local laws, and any proposed legislation would need to be reviewed by the County's legal counsel. The County Executive's Office was not aware of any other jurisdiction with similar protections other than Montgomery County, Maryland. If a change is made, the County Executive would prefer that it be done through the legislative process, as opposed to an executive order.

III. Federal Law[101]

Federal law provides an important backdrop to the consideration of whether and how to adopt protections against discrimination based on citizenship and/or immigration status at the state or local level. The federal government "has broad, undoubted power over the subject of immigration and the status of aliens."[102] "The federal power to determine immigration policy is well settled" since it "can affect trade, investment, tourism, and diplomatic relations for the entire Nation."[103] However, the broad reach of federal immigration law, "does not diminish the importance of immigration policy to the States."[104] States and localities may regulate in the area of immigration so long as their laws are not preempted by or in conflict with federal immigration law.[105]

Several notable court cases illustrate the complexity of this issue. In 2011, in *Chamber of Commerce v. Whiting*, the Supreme Court upheld an Arizona law that allowed the state to suspend

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immigration status to the Howard County Human Rights Code would provide an additional layer of protection for the immigrant population.

[101] This section is not intended to be a definitive summary of federal immigration law. Rather, it is intended to illustrate the complex interplay between federal immigration law and state and local regulations.

[102] *Arizona v. United States*, 567 U.S. 387, 394 (2012) (citing U.S. Const., Art I, § 8, cl. 4). Many statutes and court decisions related to federal immigration law refer to immigrants as "aliens" and to immigrants who are undocumented or reside in the country in a manner contrary to federal immigration law as "illegal aliens" or "unauthorized aliens." For purposes of this report, unless quoting a statute or court decision, we use the term "immigrants" and "undocumented immigrants."

[103] *Id.* at 395.

[104] *Id.* at 397.

[105] *Id.* at 398-399.

or revoke the licenses of businesses that knowingly or intentionally hire undocumented immigrants.[106] The Court also upheld a requirement that all employees use the federal E-Verify system to verify the eligibility of employees to work in the United States.[107] However, just one year later, in *Arizona v. United States*, the Supreme Court struck down three provisions of an Arizona law – making any failure by immigrants to comply with federal registration requirements a crime, making it a crime for undocumented immigrants to seek employment, and allowing law enforcement to make warrantless arrests of people suspected of undocumented immigrants – as being preempted by federal immigration law.[108] In the same case, the Court declined to strike down a fourth provision, requiring state police officers to stop and detain people to inquire about their immigration status.[109]

One year later, in applying these two Supreme Court decisions, the Third Circuit Court of Appeals struck down two local ordinances from Hazelton, Pennsylvania as being preempted by federal immigration law.[110] The first made it unlawful "'to knowingly recruit, hire for employment, or continue to employ'" any person who is not authorized to work in the United States.[111] The second made it illegal to knowingly or, with reckless disregard, "'let, lease, or rent a dwelling unit to an illegal alien.'".[112] In a similar case, the Fifth Circuit Court of Appeals struck down an ordinance from Farmers Branch, Texas that prohibited landlords from knowingly renting to individuals who are not citizens or nationals of the United States.[113]

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[106] *Chamber of Commerce of the United States v. Whiting*, 563 U.S. 582, 587 (2011).
[107] *Id.*
[108] *Arizona v. United States*, 567 U.S. at 403, 406-407, and 410.
[109] *Id.* at 415.
[110] *Lozano v. City of Hazelton*, 724 F.3d 297, 300 (2013).
[111] *Id.* at 301 (quoting Illegal Immigration Relief Act Ordinance § 4A).
[112] *Id.* (quoting Illegal Immigration Relief Act Ordinance § 5A).
[113] *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 526 (5th Cir. 2013).

Federal power in the area of immigration law is not unlimited. In 2008, landlord William Jerry Hadden of Lexington, Kentucky was arrested and charged with dozens of federal crimes including "harboring illegal aliens and encouraging illegal entrants to remain in the country" for renting to people who were not in the country legally.[114] This case appeared to be the first time the federal government sought to prosecute landlords for renting to "illegal aliens."[115] Mr. Hadden was facing jail time and the potential forfeiture of his properties if convicted; however, a jury acquitted him.[116]

These cases, and many others like them, illustrate the complicated interplay between federal immigration law and state and local statutes and ordinances. Therefore, federal immigration law should be given careful consideration when drafting legislation to add immigration and/or citizenship status as a protected class under the Howard County Human Rights Code.

IV. State and Local Jurisdictions That Have Adopted Protections for Citizenship and Immigration Status

The Committee studied jurisdictions across the country that have dealt with the issue of protecting people who are at risk of unequal treatment and who feel threatened due to their immigration status. The Committee discovered a wide array of actions including explicitly adding immigration status as a protected class to the state or local anti-discrimination code, issuing executive orders, and enacting "Trust Acts." What follows is a discussion of jurisdictions that were closely examined as examples of these actions.[117]

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[114] "Landlord Faced Criminal Charges for Renting to Illegals," https://www.american-apartment-owners-association.org/property-management/latest-news/landlord-faced-criminal-charges-for-renting-to-illegals/ (last visited Sept. 21, 2020).
[115] *Id.*
[116] *Id.*
[117] To the best of our knowledge, at the time of this report, none of the laws and executive actions discussed in this section have been challenged as being preempted by or in conflict with federal immigration law.

A. Montgomery County, Maryland

Montgomery County, Maryland is one of Howard County's neighboring jurisdictions. According to the latest U.S. Census Bureau Report, Montgomery County is home to around 1,050,688 million people, 32.3% of which are foreign born.[118]

On July 22, 2019, Marc Elrich, Montgomery County Executive, signed the "Promoting Community Trust Executive Order."[119] Among other things, the order prohibits all executive branch departments from using local government resources to assist federal agents in civil immigration investigations.[120] Pursuant to the Executive Order, local government resources may not allow U.S. Immigration and Customs Enforcement officers into non-public spaces in government buildings or give them access to individuals in county government custody unless they are in possession of a court order or criminal warrant.[121]

The Montgomery County Executive Order came on the heels of the federal government's executive branch's anti-immigration statements and policies as well as a vow of widespread crackdowns on residents considered to be illegally in the country.[122] In July 2019, The President

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[118] United States Census Bureau, Quick Facts, Howard County, Maryland; Anne Arundel County, Maryland; Montgomery County, Maryland; Prince George's County, Maryland https://www.census.gov/quickfacts/fact/table/montgomerycountymaryland/PST045219 (last visited Sept. 27, 2020 (Tab 18).

[119] Montgomery County Executive Order No. 135-19, Promoting Community Trust (July 22, 2019) (Tab 19). *See also* "No Cooperation with ICE: Montgomery's new ban is strongest in D.C. region," *The Washington Post*, July 29, 2019 (https://www.washingtonpost.com/local/md-politics/no-cooperation-with-ice-montgomerys-new-ban-is-strongest-in-dc-region/2019/07/22/46b85870-ac7d-11e9-a0c9-6d2d7818f3da_story.html) (last visited Sept. 20, 2020)

[120] Montgomery County Executive Order No.135-19, No. 135-19, Promoting Community Trust (July 22, 2019).

[121] *Id.*

[122] "Trump Administration to expand its power to deport undocumented immigrants," *The Washington Post*, July 22, 2019 (https://www.washingtonpost.com/immigration/trump-administration-to-expand-its-power-to-deport-undocumented-immigrants/2019/07/22/76d09bc4-ac8e-11e9-bc5c-e73b603e7f38_story.html) (last visited Sept. 20, 2020).

of the United States announced that massive ICE raids were imminent.[123] *The Washington Post* reported that the President's announcement sparked fear in the foreign born communities.[124]

The Committee had the opportunity to speak about Montgomery County's Executive Order with Caroline Sturgis, Assistant Chief Administrative Officer for the Montgomery County Executive's Office. Although Montgomery County often described as a "sanctuary county" in the media, Ms. Sturgis explained that Montgomery County is not a sanctuary county and did not endure any federal consequences as a result of the Executive Order. There was no question about what needed to be done to protect the immigrant community in Montgomery County, Maryland. There was a significant outcry from the community regarding the safety and equitable treatment of immigrant communities. The immigrant community was in fear as a result of some of the language and threats being touted from the federal level, including but not limited to, abolishing DACA; building a wall at the U.S. and Mexican border; threats to implement a "public charge" rule; and the detention and separation of families and children.

Additionally, with the threat of "ICE raids," immigrant residents became terrified, which prevented them from seeking needed services. For example, many were hesitant to obtain medical assistance for themselves and their children, report crimes, and perform other basic life functions that documented residents would not have to give a second thought. Ms. Sturgis shared that immigrant families were reluctant to have children vaccinated, to receive assistance for food, or to deal with the police, creating a public health concern.

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[123] *Id.*

[124] No Cooperation with ICE: Montgomery's new ban is strongest in D.C. region," *The Washington Post*, July 29, 2019 (https://www.washingtonpost.com/local/md-politics/no-cooperation-with-ice-montgomerys-new-ban-is-strongest-in-dc-region/2019/07/22/46b85870-ac7d-11e9-a0c9-6d2d7818f3da_story.html) (last visited Sept. 12, 2020).

According to Ms. Sturgis, the Executive Order is designed to protect the immigrant community. She explained that the order prohibits county departments from asking employees or potential hires about immigration status or using immigration status to determine eligibility for benefits. Ms. Sturgis indicated that once the Executive Order was signed, various departments were given ninety days to review their regulations and ensure compliance. According to Ms. Sturgis, the Montgomery County Council also supported the Executive Order and Montgomery County policies that were in place prior to the Executive Order were consistent with the new order. However, it became important that those polices be formalized. The situation for the immigrant community was considered dire and there was no certainty that legislation to protect immigration status would pass swiftly enough to be included in the county code. It was determined that the fastest and most effective way to protect the Montgomery County community and to regain community trust was to issue an Executive Order.[125]

B. Prince George's County, Maryland

Prince George's County, Maryland is another of Howard County's neighboring jurisdictions. According to the latest U.S. Census Bureau Report, Prince George's County has a population of 909,327 people, with 22.4% being foreign born.[126]

On November 19, 2019, the Prince George's County Council voted unanimously to adopt fair housing legislation that amends the County Human Relations Commission Law to include prohibiting discrimination in all housing accommodations based on immigration status, citizenship

[125] Ms. Sturgis also provided the Committee with a summary chart of analogous trust policies in other jurisdictions, a copy of which is attached as Tab 20. Since trust policies are not the focus of the Committee's inquiry, we did not further study these other policies.
[126] *See*, *supra*, note 118 (Tab 18).

status, and source of income.[127] This bill was sponsored by Council Members Deni Taveras and Danielle Glaros and took effect on February 3, 2020.[128]

Among other things, this bill makes it unlawful to perform any one of the following acts in housing and residential real estate:

> Refuse to sell, lease, sublease, rent, assign, or otherwise transfer; or refuse to negotiate for the sale, lease, sublease, rental, assignment or other transfer of the title, leasehold, or other interest in any housing; or represent that housing is not available for inspection, sale, lease, sublease, rental, assignment, or other transfer when in fact it is so available; or otherwise make housing unavailable, deny, or withhold any housing from any person because of race, religion, color, sex, national origin, immigration status, citizenship status, source of income, age, occupation, marital status, political opinion, personal appearance, sexual orientation, physical or mental disability, or familial status;
>
> Discriminate by inquiring about immigration status or citizenship status in connection with the sale, lease, sublease, assignment or other transfer of a housing unit;
>
> Discriminate by requiring documentation, information or other proof of immigration status or citizenship status;
>
> Discriminate in the sale, lease, sublease, assignment, or other transfer of a housing unit by requiring proof of immigration status or citizenship status such as social security number, without providing an alternative that does not reveal immigration status or citizenship status, such as individual taxpayer identification number;
>
> Discriminate by disclosing, reporting or threatening to disclose or report immigration status or citizenship status to anyone including any immigration authority, law enforcement agency or local state or federal agency for the purpose of inducing a person to vacate the housing unit or for the purpose of retaliating against a person for the filing of a claim or complaint; and
>
> Discriminate by evicting a person from a housing unit or otherwise attempting to obtain possession of a housing unit because of the person's immigration status or citizenship status unless the remedy is sought to comply with a federal or state law or a court order.[129]

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[127] Prince George's County, Maryland CB 38-2019 (Tab 21).
[128] *Id.*
[129] *Id.*

The Committee had an opportunity to speak with co-sponsor Council Member Taveras and her legislative aide, Julieta Cuellar, about this bill. Ms. Taveras explained that the driving force behind her introducing this bill was source of income more than immigration status. She had learned from her constituents about patterns of discrimination in rental housing against undocumented immigrants based on a refusal to accept certain types of income verification. Many landlords would not accept proof of income other than a paystub with a social security number, which undocumented immigrants would be unable to produce. She wanted to ensure that they could rent housing by producing alternative type of income verification, such as bank statements and letters from employers.[130] She also added immigration and citizenship status to the bill in order to avoid other types of discrimination in housing. According to Ms. Taveras, this bill largely flew under the radar while it was being debated by the County Council because the Council was considering "sanctuary county" legislation at the same time, which was more controversial.

The bill has not been a law long enough for Ms. Taveras to have any significant data about the number of complaints filed or investigated. The legislation focused on adding citizenship status, immigration status, and source of income as protected classes only to the fair housing portion of the code because that is the area where the immediate need existed, and it would require less debate. Councilperson Taveras stated she would like to see these protections expanded to include employment and public accommodations. One frustration that Ms. Taveras shared is that outreach, education, and enforcement regarding these new protected classes have been spotty because they arguably fall within the jurisdiction of a few different County agencies. According

[130] Prince George's County CB 38-2019 and the Howard County Human Rights Code have similar, expansive definitions of "source of income" that includes things such as income received through a lawful profession or occupation, government assistance, private assistance, gift or inheritance, pensions, annuities, alimony, and child support. *Compare* CB 38-2019 *with* Howard County Code § 12.207(j). However, Prince George's County CB 39-2019 further specifies the type of documentation that can be accepted for proof of lawful employment to include "bank statements, official government issued letters, pay stub or letter from an employer," whereas the Howard County Code is silent on this issue. *Id.*

to Ms. Taveras, no single agency has taken the lead on these issues. She suggested that, if Howard County adds immigration status as a protected class, it should direct enforcement to a single agency and ensure that there is funding in place for adequate outreach about the change in law.

The Committee also had an opportunity to speak with Renee Battle-Brooks, the Executive Director of the Prince George's County Human Relations Commission. Ms. Battle-Brooks along with her staff explained that the County Council in Prince George's County had on their radar to include immigration status as a protected class in the County Code. The Council saw a need, especially in districts with a high Hispanic/Latino population. The Prince George's County Human Relations Commission was not initially part of the conversation surrounding including immigration and citizenship status as a protected class under fair housing, but they inserted themselves and became involved. The Human Relations Commission recognized that terms had to be defined so that expectations were clear. Co-sponsor Council Member Danielle Glaros acknowledged the work and support of the Human Relations Commission, the County's Civil and Human Rights Education and Enforcement Agency, the Housing Initiative Partnership, and CASA for urging the passage of the legislation.[131]

C. Anne Arundel County, Maryland

Anne Arundel County, Maryland is another of Howard County's neighboring jurisdictions. According to the latest U.S. Census Report, Anne Arundel County has a population of 579,234 people, of which 7.7% are foreign born.[132]

Over the last two years Anne Arundel County has had significant changes that affect the immigrant community. On December 27, 2018, Steuart Pittman, the County Executive for Anne

[131] Karen D. Campbell, "County Council Adopts Fair Housing Act to Ban Source of Income, Immigration Status and Citizenship Status in Housing," *The Prince George's Post*, A1 (Dec. 5, 2019 – Dec. 11, 2019) (Tab 22).
[132] *See*, *supra*, note 118 (Tab 18).

Arundel County, announced the termination of the County's 287(g) program.[133] The 287(g) program was a partnership between Anne Arundel County and ICE. It provided for the screening by local law enforcement of the immigration status of people taken into custody for allegedly committing crimes.[134]

On September 12, 2019, County Executive Steuart Pittman signed Fair Housing Bill 55-19, which provides protections against discrimination on the basis of citizenship, occupation and source of income in the sale or rental of housing.[135] He also signed Bill 57-19, which codified the Anne Arundel County Human Relations Commission and provided it with regulatory authority to resolve fair housing complaints through both enforcement and mediation.[136] County Executive Pittman said, that the new law was passed because it was long overdue and was the right thing to do.[137]

The Committee spoke about the Fair Housing Bill with Alanna Dennis, Director of Equal Employment Opportunity and Human Relations Compliance Officer for the Office of the Anne Arundel County Executive. Ms. Dennis explained that Anne Arundel County did not previously have a fair housing law that would enable the County to handle such complaints locally. Prior to its enactment, complainants could get support and guidance from Anne Arundel County, but no county agency had authority to act. Instead, complainants would need to address grievances about discrimination in housing with the U.S. Department of Housing and Urban Development (HUD) or to the Maryland Commission of Civil Rights. Since the fair housing law was new, it provided

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[133] "Anne Arundel County terminating 287(g) immigration program," wbaltv.com (Dec. 27, 2018) https://www.wbaltv.com/article/anne-arundel-officials-to-release-report-on-287g-immigration-program/25685360# (last visited Sept. 27, 2020).
[134] *Id.* As stated above in the discussion of Issue 1, Howard County does not have a 287(g) agreement with ICE.
[135] CB 55-19
[136] CB 57-19
[137] "Anne Arundel County Passes Fair Housing Law & Codifies the Human Relations Commission," https://acdsinc.org/anne-arundel-county-passes-fair-housing-law (last visited Sept. 13, 2020).

Anne Arundel County with an opportunity to include citizenship status, occupation, and source of income as protected classes at its inception as opposed to having to add these protected classes later. Additional protected classes in the Anne Arundel County fair housing law are similar to that of other jurisdictions and include color, creed, disability, familial status, gender identity or expression, marital status, national origin, race, religion, gender, and sexual orientation as protected classes in fair housing.

Members of the Anne Arundel County Council sponsored the fair housing bill and many stakeholders supported it. The Office of Legislative Policy and the Office of Law were involved in the process as well. Prior to the new law being enacted, there were several hearings held before the County Council giving both proponents and opponents of the idea an opportunity to be heard. The bill had to be voted upon and approved by the County Council. Including citizenship status, occupation, and source of income as protected classes under the fair housing legislation in Anne Arundel County was intended to make Anne Arundel County even better than it already is and to create a more compassionate and inclusive place that gives people fair opportunities to access housing.

At the time of this report, the law was too new for Anne Arundel County to have compiled any significant data on the number of discrimination cases in fair housing since the law was enacted. Educating landlords about the new legislation adopted is important, given that some landlords were resistant to accepting housing vouchers. Additionally, Anne Arundel County has since formed a new Immigrant Affairs Commission. This commission is an advisory body that serves as a means for immigrant voices to be heard and understood.

D. New York City

In 1989, the New York City Human Rights Law ("NYCHRL") was amended to prohibit discrimination based on actual or perceived "alienage or citizenship status" in employment,

housing, public accommodations, biased-based profiling by law enforcement, and discriminatory harassment.[138] "Alienage and citizenship status" is defined by the NYCHRL to mean: "(a) the citizenship of any person, or (b) the immigration status of any person who is not a citizen or national of the United States."[139]

On January 10, 2020, the Committee interviewed Dana Sussman, Deputy Commissioner, Policy and Intergovernmental Affairs, NYC CHR and Bianca Victoria Scott, Policy Counsel, NYC CHR, to discuss their experience with the addition of citizenship and alienage status as a protected category under the NYCHRL. The topics discussed were as follows: (1) history and implementation of adding citizenship and alienage status as a protected category to the NYCHRL; (2) complaints received based on citizenship and alienage status; (3) protecting against discrimination in public accommodations; and (4) recommendations for implementing a similar change in law in Howard County, if desired.. The following is a summary of what the Committee learned during our meeting.

1. History and Implementation of Adding Citizenship and Alienage Status as a Protected Category

"Alienage and citizenship status" was added as a protected category to the NYCHRL largely in response to a study conducted by the New York State Interagency Task Force on Immigration Affairs after the federal government enacted the Immigration Reform and Control Act of 1986 ("IRCA") (which sanctions employers who hire undocumented workers).[140] The Task Force found that "New York employers were engaging in practices that disadvantaged or

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[138] NYC Commission on Human Rights Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin at 1-3 (September 2019) ("2019 Guidance") (Tab 23) (citing N.Y.C. Admin Code §§ 8-102, 8-107(1), 8-107(4), 8-107(5), 8-602, 8-603, and 14-151).

[139] *Id.* at 4 (citing N.Y.C. Admin Code § 8-102(21)). Although the statute refers to "alienage," the NYC Commission on Human Rights ("NYC CHR") prefers to refer to "immigration status" due to negative connotations with the use of the word "alien." *Id.* at 4.

[140] *Id.* at 5-6.

discriminated against noncitizens by refusing to accept legally valid proof of residency, denying employment to those who experienced minor delays in gathering documentation, asking for documents only from individuals who they perceived to be foreign, and refusing to hire individuals not born in the U.S."[141] Based on this report, the City determined that immigrants "are often victims of discrimination and denied rights conferred upon them by the U.S. Constitution and other federal, state, and City law."[142] As a result, the City Council enacted Local Law 52 of 1989, adding "alienage and citizenship status" as a protected category to the NYCHRL.[143]

The statute includes an explicit carve out for compliance with other state and federal laws, such as the documentation requirements under IRCA, so long as they are done in a non-discriminatory manner. Also, employers, landlords, and others can contact NYC CHR for information and advice (not legal advice) regarding compliance with the statute.

When the change was first implemented, enforcement was less strict with an attempt to educate potential violators. Other agencies were cooperative in implementing this change. Since the initial implementation period, businesses and individuals have been largely compliant. In more recent years, there has been more of an emphasis on providing government documents and services in multiple languages and on providing translations when needed and appropriate.

According to Ms. Sussman and Ms. Scott, the addition of citizenship and alienage status as a protected category has been overwhelmingly positive. They believe the addition of this category is an important tool to address how the immigrant population feels and to avoid discrimination based on immigration status, particularly in the current political environment. While in many cases, there may be overlap between citizenship and alienage status

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[141] *Id.* at 5-6 (citing Mayor Koch Testimony). *See also* NYLS' New York City Legislative History 1989, Local Law #52 (Tab 24).
[142] *Id.* at 6.
[143] *Id.*

and other protected classes (e.g., national origin), there are still many instances where citizenship and alienage status is the most appropriate (e.g., a landlord threatening to contact ICE about a tenant in response to a complaint). There have been no significant downsides to the addition of this protected category. The only issue currently on the table is whether to change "alienage status" to "immigration status" in the code. Although they are intended to have the same meaning, the term "alienage" has a more negative connotation.

The Committee asked whether NYC CHR has experienced any federal consequences including withholding of funding as a result of adding "citizenship and alienage status" as a protected category. Until recently, NYC CHR was partially funded by federal government block grants. Now, the agency is entirely funded by local tax revenue. This change was not due to this change in law. Ms. Sussman and Ms. Scott noted that, in early 2020, the 2019 NYC CHR Guidance on implementation of rules related to these protected categories was mentioned at a Presidential rally, bringing it greater national attention.

2. Incidence of Complaints Based on Citizenship and Alienage Status

The NYC CHR provided the Committee with a link to its annual reports, which report statistics related to its investigations of discrimination complaints.[144] According to the 2019 Annual Report, in fiscal year 2019, the NYC CHR received 35 and 40 inquiries, respectively, based on citizenship and alienage status out of a total of 9,804 discrimination inquiries.[145] The vast majority of these inquiries were related to employment and housing, with only two in public accommodations.[146] Ms. Sussman and Ms. Scott noted that there is often an overlap between the

[144] https://www1.nyc.gov/site/cchr/media/reports/annual-reports.page (last visited September 7, 2020).
[145] *NYC Commission on Human Rights 2019 Annual Report* at p. 34. available at https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AnnualReport2019.pdf (last visited September 7, 2020) (Tab 25)
[146] *Id.*

categories of citizenship/alienage and other categories, such as national origin, such that a single inquiry may be counted in multiple categories. NYC CHR has seen a large uptick in complaints under these protected categories since the publication of its 2019 Guidance, which called attention to these rights.

There have been instances of intimidation in various jurisdictions where landlords have threatened to call ICE to report their tenants. For example, the New York Times reported that a Jamaica Queens, New York landlord threatened her tenant through text and email messages after the tenant failed to pay the rent.[147] The landlord's messages threatened to contact ICE if she didn't get the money.[148] The tenant was from South America and had remained in the country on an expired tourist visa.[149] A judge ruled that the landlord had violated the city's human rights law by discriminating on the basis of immigration status.[150]

3. Protecting Against Discrimination Based on Citizenship and Alienage Status in Public Accommodations

The statute protects against discrimination based on citizenship and alienage status in a wide variety of public accommodations. However, foreign language requirements do not apply to these establishments. The NYC CHR receives very few complaints of discrimination based on public accommodations. The NYC CHR attributes the low number to great deal of education and outreach to local businesses to inform them about the law and its requirements.

4. Recommendations for Implementing a Similar Change in Law

According to Ms. Sussman and Ms. Scott, outreach and education of the public are key to implementing a law like this. The NYC CHR had a team of 30 people working on outreach and

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[147] Goldbaum, Christina, "Threat to Report Tenant to ICE May Cost Landlord $17,000," *The New York Times* (Sept. 23, 2019), https://www.nytimes.com/2019/09/23/nyregion/immigrants-tenants-rights.html (last visited Sept. 21, 2020).
[148] *Id.*
[149] *Id.*
[150] *Id.*

education around the time this change was first enacted. Even now, it conducts regular training and information sessions for individuals and businesses. It is also important to receive public input and to adjust enforcement as needed.

Ms. Sussman and Ms. Scott told the Committee that representatives of the State of New Jersey have reached out for assistance in adding citizenship and/or immigration status as a protected class to its human rights code. They also said that Seattle, Washington State, and/or Massachusetts have been considering such a change to their laws and that California law is similar to New York City law.

If politically possible, they recommend that the change in law be made by legislation rather than executive order so that it cannot be easily rescinded by the next administration. In addition, an Executive Order would likely be limited to discriminatory acts by government entities, while a code change applies to everyone. However, an Executive Order can be a good way to "dip your toes in the water" to determine the appetite for this change to the law. Also, they told the Committee that it is important to distinguish between citizenship status and immigration status, as they have different legal meanings.

Finally, when the 2019 Guidance was published, the NYC CHR received a lot of hate mail and calls and had to change its phone numbers and increase security. Ms. Sussman and Ms. Scott advised that it is important to listen and get input from the public before implementing any change.

E. Illinois

The State of Illinois provides anti-discrimination protection for immigration and citizenship status only in the areas of employment and financing. Under Illinois law, it is unlawful for any employer "to refuse to hire, to segregate, to engage in harassment … or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of

unlawful discrimination or citizenship status."[151] It is also unlawful for an employer, when inquiring about an employee's documents for purposes of compliance with federal employment laws, to request "more or different documents than are required" by federal law or to refuse to honor documents that appear to be genuine.[152] The Committee reached out to the Illinois Department of Human Rights for an interview but did not receive a reply.

F. California

California has expansive anti-discrimination laws in housing and public accommodations based on immigration and citizenship status. In 2015, California enacted SB 600 to add immigration status, primary language, and citizenship as protected classed under the Unruh Civil Rights Act.[153] Under that Act, all persons in California "are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."[154] The Unruh Civil Rights Act applies to discrimination in housing and public accommodations.[155]

California employment law does not prohibit discrimination by employers based on immigration or citizenship status.[156] However, California has a patchwork of more narrowly tailored employment laws that prohibit discrimination based on immigration status. California AB 263 (2013) prohibits employers from using threats related to immigration status to retaliate against

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[151] 775 ILCS 5/2-102(A),
[152] 775 ILCS 5/2-102(G).
[153] Jeffrey M. Tannenbaum, "California extends protections against discrimination for immigration status, language and citizenship," https://www.nixonpeabody.com/en/ideas/articles/2015/09/18/california-extends-protections-against-discrimination-for-immigration-status-language-a (last visited September 7, 2020).
[154] Calif. Civ. Code § 51(b).
[155] *Id.* §§ 51 to 51.3.
[156] California Department of Fair Employment and Housing, "What is Protected," https://www.dfeh.ca.gov/employment/#whoBody (last visited September 27, 2020) (Tab 26).

employees who have exercised their labor rights.[157] California AB 2571 (2014) specifies that it is an "unfair immigration-related practice" to file or threaten to file "a false report or complaint with any state or federal agency," and not just a police report.[158] California AB 524 (2013) expands the definition of "criminal extortion" to include threats made by an employer related to an employee's immigration status.[159] California SB 1001 (2016) and AB 622 (2015) prohibit employers from using the federal employment authorization process in a way that is not required by federal law.[160] California AB 450 (2017) prohibits employers from providing Immigration and Customs Enforcement (ICE) with access to nonpublic areas of the workplace and employment records if ICE has not obtained a warrant or subpoena, requires employers to notify workers when ICE plans to conduct an audit, and prohibits employers from requiring their existing employees to reverify their work authorization at a time not required by federal immigration law.[161]

V. Conclusion and Commission's Recommendation

The Howard County Human Rights Code currently prohibits discrimination in the areas of housing, employment, public accommodations, policing, and lending for a wide array of Protected Classes, but not citizenship and/or immigration status. This report provides several examples, most notably Prince George's County Maryland and New York City, that could be used as models in crafting such legislation. Any such legislation would need to be carefully reviewed by the Howard County Office of Law to avoid conflict with or preemption by federal immigration law.

The Commission held its regularly scheduled meeting on November 19, 2020. After discussion at that meeting, the Commission voted in favor of taking the following position:

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[157] Daniel Costa, "California leads the way: A look at California laws that help protect labor standards for unauthorized immigrant workers," *Economic Policy Institute*, March 28, 2018, https://files.epi.org/pdf/143988.pdf (last visited Sept. 27, 2020).
[158] *Id.*
[159] *Id.*
[160] *Id.*
[161] *Id.*

The Howard County Human Rights Commission supports adding immigration status as a protected class to each cause of action in the Howard County Human Rights Code (Sections 12.200-12.218 of the Howard County Code) to the maximum extent possible without conflicting with other federal, state, and local laws.

HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
TO TESTIFY ON BEHALF OF AN ORGANIZATION

I, Scott B. Markow, have been duly authorized by
(name of individual)

Howard County Human Rights Commission to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CB2-2022 to express the organization's
(bill or resolution number)

support for ~~/ opposition to / request to amend~~ this legislation.
(Please circle one.)

Printed Name: Scott B. Markow

Signature: Scott B. Markow Digitally signed by Scott B. Markow Date: 2022.01.13 09:45:01 -05'00'

Date: January 13, 2022

Organization: Howard County Human Rights Commission

Organization Address: 9820 Patuxent Woods Dr #237, Columbia, MD 21046

9820 Patuxent Woods Dr #237, Columbia, MD 21046

Number of Members: 12

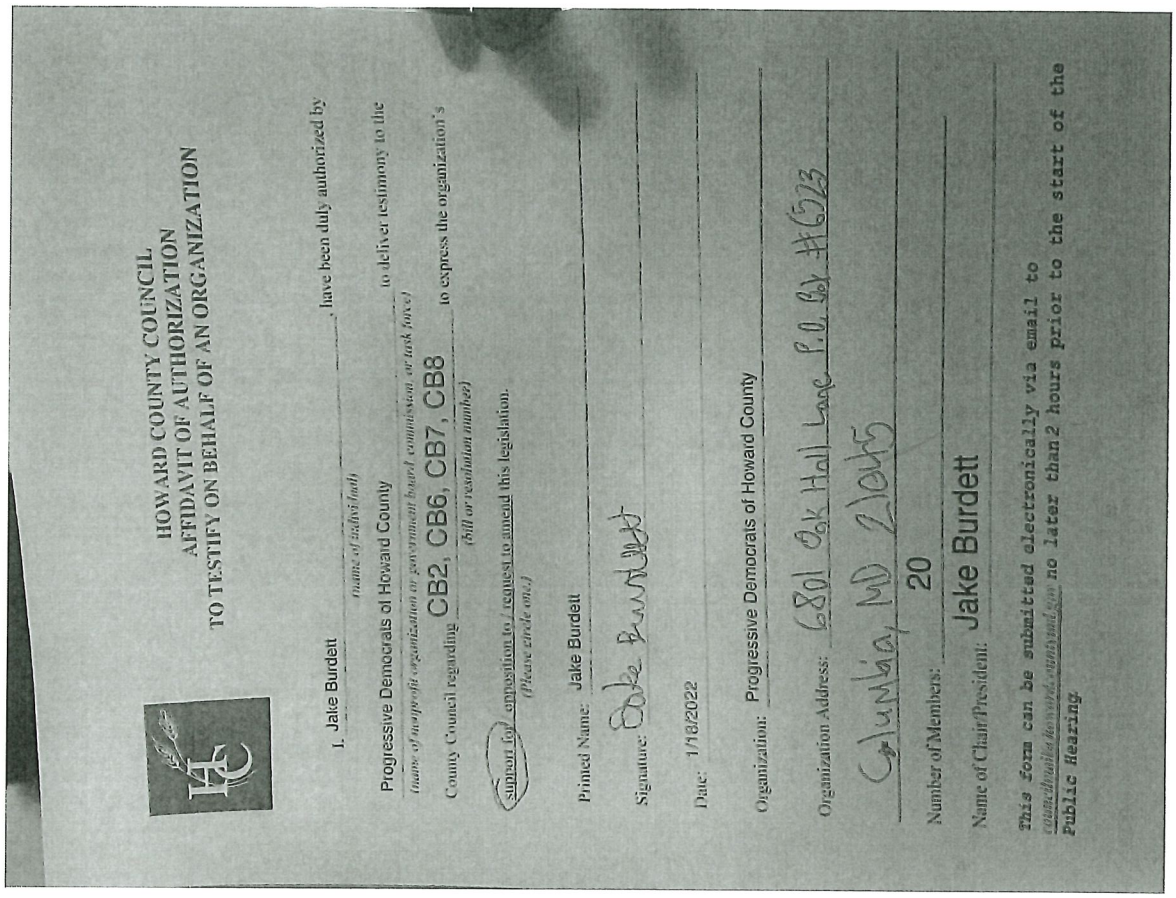
Name of Chair/President: Scott B. Markow

This form can be submitted electronically via email to councilmail@howardcountymd.gov no later than 2 hours prior to the start of the Public Hearing.

CB2-2022

From: Jake Burdett
To: Sayers, Margery; CouncilMail
Subject: Re: Affidavit to Speak
Date: Tuesday, January 18, 2022 3:50:44 AM

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]



HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
TO TESTIFY ON BEHALF OF AN ORGANIZATION

I, Jake Burdett (name of individual), have been duly authorized by Progressive Democrats of Howard County (name of non-profit organization or government board commission, or task force) to deliver testimony to the County Council regarding CB2, CB6, CB7, CB8 (bill or resolution number) to express the organization's support (opposition to / request to amend this legislation. (Please circle one.)

Printed Name: Jake Burdett
Signature: Jake Burdett
Date: 1/18/2022
Organization: Progressive Democrats of Howard County
Organization Address: 6801 Oak Hall Lane P.O. Box #6023 Columbia, MD 21045
Number of Members: 20
Name of Chair/President: Jake Burdett

This form can be submitted electronically via email to (councilmail@howardcountymd.gov) no later than 2 hours prior to the start of the Public Hearing

On Mon, Jan 17, 2022 at 11:19 AM Sayers, Margery <msayers@howardcountymd.gov> wrote:

> Good Morning
>
> You have signed up to testify on behalf of an organization tomorrow evening. If you have already sent it to us, thank you and please ignore this email.
>
> If you have not, please sign the attached affidavit and return it to us asap. We will need the affidavit in order for you to testify on behalf of the organization.
>
> Thank you,

Hiruy Hadgu
Testimony on CB2-2022
1/18/2022

I support this legislation and I hope the county council supports it. No one should be discriminated against based on citizenship and immigration status or lack thereof.

Which is why I find it hollow and cynically performative given that the county executive, who sponsored this legislation, declined to take specific measures to prevent discriminatory treatment of immigrants when he refused to end the ICE contract and veto measures that would end it. Instead a fearmongering tactic due to immigration status of those detained by ICE was used as a cover to prevent action.

Given this backdrop, I find this measure simply as an election-year stunt.

Instead of delivering on common sense human rights measures, the sponsor of this legislation has used them as political props.

Lets take for example, the body worn camera program where it was treated like a political football as the county executive played legislative chicken with elected officials to gain a political upper hand by playing budget games or the manner by which the proposal to create a police accountability board is proceeding, where community groups have been left out of the deliberative process.

Or we could look at several other instances that have demonstrated that, mostly rhetorical and campaign-year actions such as this measure, do not match actions.

Actions speak louder than words. The proclamations made by this bill not backed by actions are not a commitment of anything. It is time that county leaders stop using hot-button issues to rile people up and instead take meaningful action today.

Stop distracting us from the terrible land-use and zoning decisions that continue to subsidize corporate profits while our resources to meet the increasing demands of schools and other critical public facilities continue to dwindle.

So while I support this measure, I think it would be more meaningful and sincere if matched by actions.

Hiruy Hadgu.

Sayers, Margery

From: Katie W <kxw116@gmail.com>
Sent: Friday, January 7, 2022 8:16 PM
To: CouncilMail
Subject: support CB2-2022

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Dear Howard County Council,

I'm writing to urge you to support CB2-2022 to prohibit discrimination based on citizenship or immigration status. How to manage immigration into the United States is a complicated debate. How to treat people once they're here in Howard County shouldn't be. Everyone deserves equal rights and protection under the law. Please pass CB2-2022 to make sure we live up to that ideal.

Best,
Katie Wilkins
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