ACT NO. 2017

AN ACT regarding the policy of
the County of Westchester regarding the
treatment of individuals relating to their
Citizenship or Immigration Status.

BE IT ENACTED by the County Board of the County of Westchester as follows:

**Section 1.** Definitions:

a. *Citizenship or Immigration Status* means an individual's Citizenship of the United States or any other country and an individual's statutory or regulatory right to reside in or otherwise be present in the United States as determined under the federal Immigration and Nationality Act.

b. *Federal Immigration Authorities* means any agency or individual employed by or acting as an agent of the federal government and charged with enforcement of the civil provisions of the Immigration and Nationality Act, including but not limited to, United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services.

c. *County Law Enforcement Agencies (CLEAs)* means the employees, agents and officers of the County Departments of Public Safety, Correction, and Probation.

d. *Civil Immigration Detainer/Hold Request* means a request issued pursuant to 8 CFR § 287.7, or any similar request by Federal Immigration Authorities asking CLEAs to maintain custody of an individual currently in its custody beyond the time the individual would otherwise be eligible for release, in order to facilitate the individual's transfer to Federal Immigration Authorities, its form and content, including but not limited to United States Department of Homeland Security (DHS) Form I-247A.

e. *Notification Request* means a request from Federal Immigration Authorities to CLEAs asking to be informed of the release date, time, and/or location of an individual, its form and content, including but not limited to DHS Form I-247N.

f. *Transfer Request* means a request from Federal Immigration Authorities to CLEAs asking for the transfer of an individual in custody of CLEAs to Federal Immigration Authorities, its form and content, including but not limited to DHS Form I-247X.

g. *Judicial Warrant* means a warrant based on probable cause and issued by a federal judge as established in Article III of the United States Constitution or a federal magistrate judge, which authorizes Federal Immigration Authorities to take the subject of the warrant into custody. This does not include an administrative warrant.

h. *Confidential Information* means any information obtained and/or maintained by CLEAs or other County agencies or employees that has been deemed confidential by federal or state statute, regulation, or case law, and/or relating to an individual's sexual orientation, status as

a victim of domestic violence or sexual assault, status as a victim of a crime, status as a crime witness, or status as a recipient of public assistance.

i. *Non-Public Information* means information not readily accessible by search within the public domain and/or which requires access to government records not generally available for public review, including but not limited to an individual's home address, work address, email address, past or future release dates, or income tax records.

**§ 2.** a. Any service provided by any County agency or employee shall be made available to all eligible individuals, regardless of Citizenship or Immigration Status.

b. When assessing eligibility for or providing services or benefits, CLEAs and other County agencies and employees shall not inquire about or request proof of Citizenship or Immigration Status, unless the receipt of such services or benefits is contingent upon an individual's Citizenship or Immigration Status, or when required by federal or state statute, regulation, or case law. When inquiry or request for proof regarding Citizenship or Immigration Status is permitted under this section, such inquiry or request should be limited to that necessary to evaluate eligibility or comply with relevant law.

(1) Section 2(b) shall not prohibit CLEAs or other County agencies or employees from requesting information regarding or proof of Citizenship or Immigration Status from an individual after obtaining voluntary consent from that individual.

c. County resources shall not be used to create an official registry of Westchester residents for the purposes of targeted immigration profiling based on race, sex, gender identity, sexual orientation, religion, ethnicity, or national origin.

**§ 3.** CLEAs and other County agencies and employees shall not inquire about or investigate the Citizenship or Immigration Status or country of birth of an individual unless:

a) Required by federal or state statute, regulation, or case law;
b) Permissible, as determined in Section 2;
c) Necessary for criminal investigation purposes; or
d) Voluntary consent has been obtained from the individual.

**§ 4.** CLEAs and other County agencies and employees shall not threaten to contact Federal Immigration Authorities or to transmit any information about any individual's Citizenship or Immigration Status to Federal Immigration Authorities.

**§ 5.** CLEAs and other County agencies and employees shall not use County facilities, funds, personnel or other resources for detecting or apprehending individuals based solely on their actual or suspected Citizenship or Immigration Status.

**§ 6.** CLEAs shall not stop, question, interrogate, investigate, or arrest an individual based solely upon any of the following:

a. Actual or suspected Citizenship or Immigration Status; or

b. Actual or suspected country of birth; or

c. Existence of an administrative warrant, or Civil Immigration Detainer/Hold Request in the individual's name, including those identified in the National Crime Information Center database; or

d. Any combination of the factors enumerated in the above subsections a, b, or c.

**§ 7.** a. Except for the sharing of information specified in 8 USC § 1373, CLEAs shall not communicate with Federal Immigration Authorities about an individual with respect to civil immigration matters, unless:

1. Required by federal or state statute, regulation, or case law;
2. Necessary for criminal investigation purposes; or
3. There is probable cause to believe that an individual has illegally re-entered the County after a previous removal or return as defined by 8 U.S.C. § 1326 and the individual has been convicted at any time of a felony under New York Penal Law or federal crime or crime under the law of another State that would constitute a predicate felony conviction.

b. CLEAs and other County agencies and employees shall not provide Federal Immigration Authorities direct access to CLEAs or other County agency non-public databases unless:

1. Required by a Judicial Warrant or court order; or
2. Required by federal or state statute, regulation or case law.

**§ 8.** CLEAs and other County agencies and employees shall not provide Federal Immigration Authorities with access to any County equipment not available to the general public.

**§ 9.** a. Department of Correction shall not permit Federal Immigration Authorities to interview an inmate relating to civil immigration matters without a Judicial Warrant, and if any such interview shall take place, the inmate shall be provided with the opportunity to have legal counsel present.

b. Department of Correction shall not permit Federal Immigration Authorities to interview an inmate relating to criminal matters without providing the inmate with the opportunity to have legal counsel present.

c. To properly implement this section, the Department of Correction shall develop written materials to notify inmates that any such interviews with Federal Immigration Authorities are voluntary, and that the inmate may decline to be interviewed or choose to be interviewed only with legal counsel present. Such notice shall be displayed through signage, included in the inmate handbook, and preapproved by the Board of Legislators, and made available in English,

Spanish, Portuguese, French, Haitian Creole, and any other language spoken by at least 5 percent of the County population based on the most recent census.

**§ 10.** a. CLEAs and other County agencies and employees shall not delay an inmate's release from custody because of:

(1) An inmate's actual or suspected Citizenship or Immigration Status, place of birth, or country of birth; or
(2) A Civil Immigration Detainer/Hold Request; or
(3) A request from Federal Immigration Authorities for Notification about, transfer of, detention of, or interview of an inmate.

b. CLEAs and other County agencies and employees shall not Detain or Transfer an individual based upon a Civil Immigration Detainer/Hold or Transfer Request from Federal Immigration Authorities, unless accompanied by a Judicial Warrant.

c. CLEAs and other County agencies and employees shall utilize the same booking, processing, release, and transfer procedures, policies, and practices of that agency for all individuals, regardless of any individual's actual or suspected Citizenship or Immigration Status, place of birth, or country of birth.

**§ 11.** a. Upon receipt of a Civil Immigration Detainer/Hold Request, Notification Request, Transfer Request, or an interview request from Federal Immigration Authorities for an individual in the custody of CLEAs, they shall provide a copy of that request to the individual named therein.

b. If CLEAs or other County agencies or employees provide Federal Immigration Authorities with Confidential Information or Non-Public Information about an individual in their custody, they will simultaneously provide the same information to the individual and the individual's attorney if any.

**§ 12.** CLEAs and other County agencies and employees shall not perform the duties of Federal Immigration Authorities, engage in the enforcement of federal immigration law, or accept requests by Federal Immigration Authorities to assist in civil immigration enforcement operations.

**§ 13.** CLEAs and other County agencies and employees shall not use County facilities, funds, personnel, or other resources for the detention of individuals detained by Federal Immigration Authorities.

**§ 14.** All CLEAs shall provide prompt written notice to the County Board of any changes in policy or practice regarding interactions with Federal Immigration Authorities relating to civil immigration matters. Within 30 days of its submission to the Board of

Legislators, such notice shall be made available to the public on the County's official website and the County Board website.

**§ 15.** Nothing in this Act prohibits any CLEAs or other County agencies or employees from sending to or receiving from any local, state, or federal agency – as per 8 USC § 1373 – information regarding an individual's Citizenship or Immigration Status.

**§ 16.** The provisions of this Act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**§ 17.** This Act shall become effective sixty (60) days after adoption.