



Robert P. Astorino
County Executive

August 16, 2017

Westchester County Board of Legislators
148 Martine Avenue
White Plains, NY 10601

Dear Honorable Board:

Pursuant to Section 107.71 of the Westchester County Charter, Act 165-2017 adopted by your Honorable Board on August 7, 2017 and presented to me on August 7, 2017, is hereby returned to the County Board with my disapproval for the reasons set forth herein.

1. There is near unanimous opposition to the Act from local law enforcement leaders. Department of Public Safety Commissioner George Longworth says the Act “will make Westchester families and police officers less safe” and added that “anything that inhibits our ability to work with federal law enforcement partners like the FBI, the Department of Homeland Security and other agencies is a bad and reckless idea.” Sergeant Hector Lopez, President of the Westchester Hispanic Law Enforcement Association, says the Act would “place handcuffs on our Law Enforcement Officers, not on the criminals” and would provide “a safe haven for undocumented immigrants involved in criminal activities who prey on other immigrants.” Sgt. Lopez also warns that the passage of the sanctuary policies in this Act may well lead to the dangerous migration of the ruthless MS-13 gang to Westchester from Suffolk County.
2. The opinion of the County Attorney is that several provisions of Act 165 “specifically limit the discretion of and prohibit County law enforcement agencies and officers from cooperating with federal law enforcement authorities” and, as such, would qualify Westchester as a “Sanctuary County” as defined by the United States Department of Justice and jeopardize almost \$13 million dollars in federal public safety grants and reimbursements.

Office of the County Executive

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White Plains, New York 10601

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3. Federal law (8 USC 1373) generally bars restrictions on communications between state and local agencies and officials at Homeland Security. Yet, Section 7(a) of the Act, while providing very restrictive, and in practice, unattainable exceptions, states county law enforcement officers “shall not communicate with Federal Immigration authorities about an individual relating to civil immigration matters.” Section 7(a) violates the requirement to provide Homeland Security with notice of scheduled release times and other public safety information concerning inmates.
4. Section 9(a) runs afoul of cooperating with Homeland Security by not permitting the interview of an inmate relating to civil immigration matters without a Judicial Warrant, which is highly restrictive, and also creates and guarantees a new right to counsel not afforded to our own citizens.
5. The Legal Aid Society of Westchester finds Sections 7 and 9 “problematic” and is concerned that restricting Homeland Security from the county jail will cause them to “move to other areas to find non-citizens such as courts, houses of worship, schools, etc.”
6. Section 10(b) prohibits the “transfer” of an individual who is in the custody of a County Law Enforcement Agency to Homeland Security absent a judicial warrant, a requirement that exceeds federal, state and local law. If there is no Judicial Warrant and the individual is released, federal authorities would have to search for, locate and apprehend the same individual in the community, unnecessarily putting law enforcement and the public in harm’s way, as opposed to an orderly transfer within a secure detention facility.
7. Several other provisions of the Act expressly limit cooperation with Homeland Security. Sections 5 and 13 limit the use of “County facilities, funds, personnel or other resources;” Section 7(b) limits access by Homeland Security to County law enforcement “non-public databases;” Section 8 prohibits access to County equipment and Section 12 prohibits County law enforcement and other County agencies from accepting requests by Homeland Security to assist in civil immigration enforcement operations, which, on occasion, may be necessary to protect the public.
8. I have made it clear that the Department of Public Safety is not part of any deportation force or arm of the federal government, and that such activity on their part is not required under the 10th Amendment of the United States Constitution. County police officers do not initiate or participate in raids at construction sites, restaurants or schools, and operate under a policy that prohibits questioning or

arresting an individual based solely on their immigration status. However, public safety is greatly enhanced by cooperation amongst law enforcement agencies. In addition, collaboration between law enforcement at all levels is necessary to prevent or investigate crimes and criminals. Yet collaboration and cooperation are specifically prohibited by varying degrees throughout the confusing and contradictory Act. Someone arrested for a relatively minor misdemeanor in Westchester might be a suspect or person of interest for a major felony in another state or country. Put simply, by placing barriers between law enforcement agencies, we are placing our own citizens at risk. It is also unfair to ask county employees to enforce an Act that contains contradictory provisions, that could create legal liabilities for the county.

9. For decades, upon request from Immigration and Customs Enforcement (ICE) the Westchester County Department of Correction has provided ICE with a daily roster of foreign-born inmates and their release dates. If ICE chooses not to interrogate or apprehend the individual, then he or she is released as scheduled. For the period January 1, 2017 to June 30, 2017, there were 84 undocumented inmates in the county jail with detainer requests, 30 of whom were transferred to ICE. Some, convicted or charged with serious crimes such as Manslaughter and Rape, were sent to state prison. And some, who were charged or convicted with crimes such as Grand Larceny, Assault, Burglary, Menacing, Criminal Possession of a Controlled Substance and Driving While Intoxicated, were not taken into custody by ICE and thus released back into the community. Homeland Security prioritizes who they request detainers for and ultimately who they take into custody based on information that perhaps they alone are privy to.

In my State of the County Address in April, I spoke directly to our immigrant population: “You are welcome here. Your contributions are valued here. I support both immigration reform and secure borders but I also support basic human decency, fairness and respect and I think I’ve proven that you’ll always receive it from me... as I have from you.” Everyone in Westchester – no matter what your immigration status is – should feel safe to report crimes or seek medical attention. However, Westchester cannot and must not become a “Sanctuary County” that provides a safe haven to criminals. We’ve witnessed throughout the country some truly horrific crimes committed by those previously arrested for what was deemed “minor” crimes, shielded from ICE and released, only to commit more serious, and sometimes violent or deadly crimes.

If the Board wishes to reinforce my welcoming message to our immigrant community, it should consider issuing a resolution, which is a non-binding statement, and not an act that unnecessarily endangers public safety (including among the immigrant community), violates federal law, infringes upon long established principles of law enforcement cooperation, and jeopardizes millions in federal public safety grants

In 1993, President Bill Clinton said “We are a nation of immigrants, but we are also a nation of laws.” Westchester is a county of immigrants, but we too must also follow the law. For these reasons, Act 165-2017 is returned herewith as vetoed with my objections.

Sincerely,

A handwritten signature in cursive script that reads "Robert P. Astorino".

Robert P. Astorino
County Executive

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee recommends passage of “An Act regarding the policy of the County of Westchester regarding the treatment of individuals relating to their Citizenship or Immigration Status.”

Your Committee is aware that many immigrants are frightened to cooperate with law enforcement when they need assistance in their home community. In a study by the University of Illinois, 45% of Latinos stated that they are less likely to voluntarily offer information about crimes and are less likely to report a crime because they are afraid the police will ask them or people they know about their immigration status. Meanwhile, 70% of undocumented immigrants report that they are less likely to contact law enforcement authorities if they are a victim of a crime. This undermines the safety of all Westchester residents.

Your Committee finds that although all Westchester County departments and agencies and particularly the County Departments of Public Safety, Correction and Probation are required to follow all federal immigration laws, this proposed Act will ensure that people are not stereotyped or discriminated against by prohibiting the creation of a registry based on race, sex, gender identity, sexual orientation, religion, ethnicity or national origin. This proposed Act will also allow people being interviewed by federal immigration authorities the opportunity to have counsel present. This Act fully complies with all federal immigration legislation, regulations and state law.

Your Committee is aware that the 4th Amendment to the United States Constitution protects us from unlawful search and seizure and reinforces the provision contained in this proposed Act which prohibits detainment or imprisonment against any person's will for a suspected civil offense in the absence of a judicial warrant.

Your Committee is aware that Westchester County has a history of protecting the rights of its residents. We have human rights laws that safeguard people from discrimination in employment, public accommodations and housing. In 2001, the County enacted Act 130-2001 to prohibit racial profiling in traffic stops. Former Westchester County Executive Andrew J. Spano issued Executive Order No. 4 of 2006 to provide protections and improve access for immigrants to all county programs and services. This proposed Act will strengthen that mandate.

Your Committee is advised that this proposed Act will prohibit communication with federal immigration authorities regarding an individual concerning civil immigration matters unless pursuant to applicable state or federal law requirements or necessary for ongoing criminal investigation purposes. In the event confidential or non-public information is shared with federal immigration authorities, then notification will be provided to the individual and the individual's attorney, if any. Notwithstanding the foregoing, in compliance with federal law (8 USC§ 1373), nothing in this proposed Act prohibits the County from sending or receiving information from any local, state or federal agency regarding an individual's citizenship or immigration status under the provisions of State or Federal law. This proposed Act sets forth constitutionally permissible Westchester County procedures that will help assure just and fair treatment for all county residents.

Your Committee notes that it is important for the County to educate the public of this proposed Act and its adoption, to ensure that people are aware of the rights and protections offered to them. This proposed Act will require the County to disseminate such information in writing and on the County Website, as well as conduct educational programs for law enforcement and social service throughout the county.

Your Committee believes that the proposed Act will ensure that all county residents are treated fairly in any part of the justice system and that immigrants will be more confident in working with law enforcement. This proposed Act includes provisions to encourage cooperation and foster positive relations between county residents and law enforcement. No person should ever be afraid to report crimes to the police. Ultimately this Act will improve public safety for all of Westchester's residents.

An affirmative vote of a majority of the voting strength of your Honorable Board is required for approval of this Act. The effective date for the proposed Act is sixty days after adoption, in order to allow time for County departments to prepare for implementation of the Act's provisions.

Finally, as you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Planning Department has reviewed the applicable SEQRA regulations (6 NYCRR Part 617), and has determined that since the proposed action does not "change the use, appearance or condition

of any natural resource or structure," or otherwise affect the environment, with respect to SEQRA, this proposed Act does not constitute an action as defined in 6 N.Y.C.R.R. §617.2(b), and as such, no further environmental review is required.

In light of the aforementioned, your Committee, after careful consideration, recommends the adoption of this proposed Act.

Dated: August 7, 2017
White Plains, New York

David Lubiano (wop)
Mary Jane Minich
Benjamin Boylston
Sandra A. Roman (wop)
T. T. (wop)
20 B.M.
Richard Williams

Richard Williams
20 B.M.
Stella Marcotte (wop)
WOP

John Messing
Mary Jane Minich
Benjamin Boylston
Julia S. Lee w.o.p.
Sandra A. Roman (wop)

Calvin B.
20 B.M.
Stella Marcotte (wop)
W. T. C. (w.o.p.)
Benjamin Boylston
Julia S. Lee w.o.p.
T. T. (wop)
Dellin Parker
Budget & Appropriat.

Committee on
Public Safety &
Social Services

Legislation

FISCAL IMPACT STATEMENT

SUBJECT: Immigrant Protection Act NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 166,666

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: Department of Correction Personal Service

Potential Related Operating Budget Expenses: Annual Amount \$ 400,000

Describe: This reflects the annual cost of two additional officers who would be required in order to maintain compliance with the Act. The \$166,666 current year expense reflects this cost over a five month period.

Potential Related Operating Budget Revenues: Annual Amount \$ (12,941,277)

Describe: The legislation may put the County's US Department of Justice (DOJ) and Homeland Security (DHS) revenues in jeopardy. The County receives approximately \$12.9 million in DOJ and DHS revenues annually, inclusive of \$140,000 in passthrough funds to three municipalities.

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Ryan Moore

Title: Sr Budget Analyst

Department: Budget

Date: July 31, 2017

Reviewed By: 

Budget Director


Date: 7/31/17

Fiscal Impact Table.xlsx
 Operating Budget

PLEASE ENTER IMPACTS WITH POSITIVE NUMBERS AS "FAVORABLE" AND NEGATIVE NUMBERS AS "UNFAVORABLE"

DEPT	DEPT NAME	ITEM	GRANTOR	ANNUAL REVENUE IMPACT
11	OFW	Elder Abuse Pass-Thru	DOJ Direct	(133,333)
11	OFW	Family Justice Center	DOJ Direct	(300,000)
20	DES	Urban Area Security	DHS thru NYS DHS	(1,329,578)
20	DES	State Homeland Security	DHS thru NYS DHS	(710,000)
20	DES	Hazardous Materials	DHS thru NYS DHS	(132,000)
20	DES	Emergency Preparedness	DHS thru NYS DHS	(360,526)
31	Labs	DNA Backlog Reduction	DOJ Direct	(205,741)
31	Labs	Coverdell Pass-Thru Forensic	DOJ thru DCJS	(24,112)
31	Labs	Coverdell Pass-Thru Tox	DOJ thru DCJS	(24,112)
35	DOC	loss of SCAAP aid from Department of Justice	DOJ Direct	(1,100,000)
35	DOC	loss of US Marshal reimbursement for housing federal inmates	DOJ Direct	(5,840,000)
37	DA	Stop Violence Against Women	DOJ thru DCJS	(66,750)
37	DA	Sexual Assault	DOJ thru DCJS	(66,750)
37	DA	Crime Victims Grant	DOJ thru DCJS	(125,308)
38	Public Safety	State Homeland Security	DHS thru NYS DHS	(710,000)
38	Public Safety	National Forensic Science Improvement	DOJ thru DCJS	(21,542)
38	Public Safety	Bomb Squad	DHS thru NYS DHS	(290,284)
38	Public Safety	Canine Explosive Detection	DHS thru NYS DHS	(30,000)
38	Public Safety	Urban Area Security	DHS thru NYS DHS	(1,323,887)
39	Probation	Edward Byrne Memorial Justice Assistance Grant (JAG) -- County portion	DOJ Direct	(7,368)
39	Probation	Edward Byrne Memorial Justice Assistance Grant (JAG) -- Yonkers portion	DOJ Direct	(82,378)
39	Probation	Edward Byrne Memorial Justice Assistance Grant (JAG) -- Mount Vernon portion	DOJ Direct	(43,494)
39	Probation	Edward Byrne Memorial Justice Assistance Grant (JAG) -- New Rochelle portion	DOJ Direct	(14,114)
Total Impact				(12,941,277)

TO: Robert Meehan
County Attorney

FROM: Eileen Mildenberger 
Acting Commissioner

DATE: July 28, 2017

SUBJECT: **SEQR DOCUMENTATION FOR AN ACT INSTITUTING A POLICY
CONCERNING THE TREATMENT OF INDIVIDUALS RELATING TO
THEIR CITIZENSHIP OR IMMIGRATION STATUS**

Pursuant to your request for an environmental review of the above referenced action, the Planning Department has determined that no environmental review is necessary.

The action involves an Act of the Board of Legislators instituting a policy of the County of Westchester regarding the treatment of individuals relating to their Citizenship or Immigration Status.

Since the action does not “change the use, appearance or condition of any natural resource or structure,” or otherwise affect the environment, with respect to the State Environmental Quality Review (SEQR) Act, the proposed Act does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required.

Please contact my office if you need any additional information on this matter.

EMM/dsk

cc: Robert Alberty, Deputy Chief of Staff
Paula Friedman, Assistant to the County Executive
David Kvinge, Director of Environmental Planning

ACT NO. 165 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.

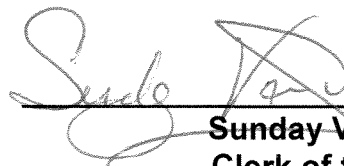
§ 15. Nothing in this Act prohibits any CLEAs or other County agencies or employees from sending to or receiving from any local, state, or federal agency – as per 8 USC § 1373 – information regarding an individual's Citizenship or Immigration Status.

§ 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.

ACT 165- 2017

**Passed by the Board of Legislators of the County of Westchester,
New York by 10 votes for and 5 votes against on the 7th day of August,
2017.**



**Sunday Vanderberg
Clerk of the County
Board of Legislators
Westchester County, New York**

Approved this day
of , 2017

**Robert P. Astorino
County Executive
Westchester County, New York**