



NEW YORK STATE SENATOR

Patricia Fahy

Sen. Fahy Introduces SAFE AIR Act to Protect Due Process in Deportation Proceedings in New York State

PATRICIA FAHY April 28, 2025

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Legislation would prohibit future contracts, tax benefits for commercial airlines that participate in deportation proceedings without due process

ALBANY, N.Y. – New York State Senator Patricia Fahy (D—Albany) announced she is introducing the State Airport Facilities Enforcing Accountability in Immigration Removals (SAFE AIR) Act (S.XXXX/A.XXXX) today alongside Assemblymember Michaelle C. Solages (D—Valley Stream), aimed at ensuring that New York State does not directly or indirectly aid

in immigration enforcement actions that lack the fundamental due process protections required by the U.S. Constitution.

The SAFE AIR Act leverages the State's proprietary authority over public contracts and tax benefits to uphold Constitutional rights. Specifically, it prohibits New York State agencies, authorities, departments, local governments, and public benefit corporations from prospectively contracting with commercial airlines, like [Avelo Airlines](#), that participate in removals initiated by U.S. Immigration and Customs Enforcement (ICE) without a valid judicial warrant and without guaranteeing access to legal counsel and an immigration hearing. Additionally, this legislation revokes current sales tax exemptions on jet fuel purchases for non-compliant airlines, ensuring that taxpayer funds do not subsidize activities that undermine civil liberties.

"For generations, New York State has been the gateway to a better life in the United States for immigrants from across the globe," **said bill sponsor Senator Patricia Fahy**. "The Trump administration's attacks on due process, the Constitution, and the courts should trouble every American. I'm introducing the SAFE AIR Act to ensure that New York State facilities and resources are not used to facilitate removals that violate an individual's right to due process under the U.S. Constitution. The federal government's respect for due process is not optional; it is the bedrock of our democracy. This legislation sends a clear message: if you want to do business with New York State, you must respect the rule of law, and the Constitutional rights afforded to every person on American soil."

Under this legislation, airlines that wish to contract with New York State entities may not transport detainees for ICE without a valid judicial warrant and due process assurances. Airlines who fail to meet these requirements will be ineligible for future state contracts and will lose eligibility for tax benefits, including the existing sales tax exemption on jet fuel purchases. This is a powerful financial incentive for compliance, with the jet fuel exemption

saving airlines approximately \$170 million annually in New York State.

Underscoring the urgency of this legislation is increasingly troubling actions taken by the Trump administration, ICE, the Department of Homeland Security (DHS), and corresponding data. It's been **widely reported** that many deportations are being initiated based on administrative ICE detainers under the Alien Enemies Act of 1798 without judicial warrants or due process protections. Reports by the American Civil Liberties Union (ACLU) and Human Rights Watch have documented numerous instances where individuals subject to ICE detainers were denied basic procedural rights, leading to wrongful removals, which more recently **include 3 children who were U.S. citizens**, including one who had stage IV metastatic cancer.

The Trump administration has **routinely stated** that "a judicial or administrative arrest warrant is not necessary to apprehend a validated Alien Enemy" under the Alien Enemies Act of 1798, which only applies during wartime. U.S. Attorney General Pam Bondi has said that "[immigrants detained under the AEA] are not entitled to a hearing before an immigration judge, to an appeal of the removal order to the Board of Immigration Appeals, or to a judicial review of the removal in any court of the United States." However, the U.S. Supreme Court **unanimously ruled** this year that AEA detainees *are* subject to due process and can challenge their detainment through habeas corpus petitions.

The SAFE AIR Act does not conflict with federal immigration authority as it does not prohibit airlines from complying with legitimate federal immigration orders; instead, it regulates the state's proprietary authority and tax benefits, which is traditionally and constitutionally reserved to the states. The "market participant doctrine," which has been upheld by the U.S. Supreme Court in numerous cases, allows states to regulate interstate commerce when acting as a market participant, and this legislation utilizes New York's financial leverage as a market participant, contracting party, and taxing authority without

directly regulating interstate commerce or immigration enforcement itself.

Finally, participation by commercial airlines in removals based on mere administrative detainers—without judicial oversight—raises significant constitutional concerns under the Fourth and Fifth Amendments, which affords these rights to every person on United States soil. The SAFE AIR Act ensures New York State does not become complicit in these due process violations and reaffirms its commitment to protecting due process and the Constitution.

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