



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Nyasa Hickey - Immigration Attorney

BROOKLYN DEFENDER SERVICES

Presented before

The New York City Council Committee on Immigration Hearing

on Resolution 928A-2015

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Introduction

My name is Nyasa Hickey. I am a practicing immigration attorney at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 40,000 clients in Brooklyn every year. I thank the City Council Committee on Immigration for the opportunity to testify today about BDS's support for Resolution 928A-2015 and the impact that Deferred Action for Childhood Arrivals (DACA) program and the new Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program would have on the communities that BDS serves.

United States v. Texas

It is critical that the United States Supreme Court issue a decision in *United States v. Texas* that overturns the Fifth Circuit's ruling in *Texas v. United States* and upholds the

implementation of President Obama's expanded DACA and DAPA programs. Not only will this expand the benefits and protections of the existing DACA program to millions more immigrants nationwide, it will set a precedent encouraging the continuation of this program until comprehensive immigration reform occurs. BDS is deeply concerned about the hundreds of young New Yorkers that we assisted in requesting DACA relief in the original program who, by applying for DACA, exposed themselves and their families to the Department of Homeland Security for future deportation if subsequent administrations choose to terminate the DACA program and order ICE to roundup and deport former DACA recipients.

We ask the Committee on Immigration to pass Resolution 928A-2015 urging the U.S. Supreme Court to uphold the implementation of expanded DACA and DAPA. New York City and the Council have already demonstrated their deep support for President Obama's programs by creating and funding Action NYC, a critical new initiative that is already facilitating the City's response to DACA/DAPA by connecting New Yorkers to free or low-cost immigration legal services. We hope that when a favorable decision comes down, the City Council will work with the Mayor's Office of Immigrant Affairs and Action NYC to ensure that legal services providers are funded to assist with complex DACA/DAPA requests, not just the simple ones.

BDS's Provision of DACA/DAPA Services

Since 2009, BDS has counseled, advised or represented more than 6,500 immigrant clients. In 2015 alone, we handled more than 1,500 immigration matters across a full spectrum of services. BDS' vibrant Immigration Practice is composed of 17 full-time immigration attorneys, five paralegals¹, and four legal assistants. We are a Board of Immigration Appeals-recognized legal service provider. We defend detained clients facing deportation, clients identified through our criminal and family defense dockets, and clients referred from our community partners or who connected with us through community outreach clinics.

BDS recently completed a contract with the Division of Youth and Community Development (DYCD) to provide DACA services.² Through that contract we established ourselves as a well-known DACA provider in Brooklyn, and we continue to receive DACA and other immigration referrals from community-based organizations and literacy providers, as well as from former DACA clients referring their friends and family members to us. While many New Yorkers with "simple" expanded DACA/DAPA cases can be helped by community based organizations and programs like Action NYC, we stand ready to help those with cases made more complicated by interactions with the criminal justice system and/or immigration enforcement.

¹ One of our paralegals is fully accredited by the Board of Immigration Appeals (BIA). The other four paralegals on our Immigration Practice Team are partially accredited by the BIA.

² It is our understanding that future RFPs related to DACA/DAPA services will be made through the Mayor's Office of Immigration Affairs and/or Action NYC.

Indeed, BDS and other public defender offices like ours are in a unique position to provide complex immigration legal services for clients who may not otherwise seek immigration assistance but come to us by way of the criminal and family court systems. **We estimate that at least 1,000 and up to 4,000 of the 40,000 clients that BDS represents every year could be eligible for expanded DACA or DAPA. We also represent a significant number of U.S. born children of immigrant parents who we are in a unique place to identify and advise about DAPA.**

To give you an example, I work in BDS's *Padilla* practice, meaning that I work with criminal defense lawyers to advise BDS clients facing criminal charges on the ramifications of any plea or conviction on their immigration status.³ Often when I screen clients through our *Padilla* practice I am able to identify family members of our clients who are eligible for DACA/expanded DACA/DAPA. Consequently, even if the clients who we represent in our criminal defense/family defense cases are ineligible for DACA/DAPA themselves (either because of a pending case, past criminal history or because they already have status), I am able to flag for clients that their family members are eligible and may call our office for an intake. Other times, once I start speaking with the client about his or her immigration status, the client will ask if they can send their family members to us for help, too. Thus, through our robust *Padilla* representation, BDS attorneys earn the trust of our clients who may then actually confide in us to help their family members come out of the shadows and apply for DACA/DAPA.

Funding

The City should provide funding for BDS and other defender offices to do screenings of all of our clients for DACA/DAPA eligibility--and through those screenings we may also obtain access to our clients' family members. Right now we only have the capacity to do intakes of those clients who are facing potential immigration consequences from their family/criminal defense case. If we had more funding we could set up a "refer all" policy at BDS to refer all undocumented clients (as well as LPR or USC clients who have undocumented family members) to BDS attorneys for a DAPA/DACA screening of themselves and their families.

Our office is perfectly situated to assist our clients in-house with expanded DACA and DAPA requests that are more complicated than cases that will be handled by other City providers. Unfortunately, our clients' justice involvement complicates otherwise straightforward DACA, expanded DACA or DAPA requests. Also, DAPA, which is a form of relief for parents of U.S. citizens, are older than the young people formerly eligible for original DACA, and consequently many have backgrounds that involve criminal and family court issues. Smaller legal service providers do not have the resources or criminal

³ In 2010, the U.S. Supreme Court held in *Padilla v. Kentucky* that the Sixth Amendment requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea. Absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel. See *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).

law expertise and familiarity with family and criminal courts that public defender offices have that allow us to efficiently handle these cases in-house.

Conclusion

We look forward to working with the City to ensure that our clients with former or pending criminal justice-involvement are not left behind when these programs finally roll out so that all immigrant New Yorkers have access to the quality immigration legal services that define our City.