



TESTIMONY OF:

**Nyasa Hickey – Supervising Attorney, Immigration Practice
BROOKLYN DEFENDER SERVICES**

**Presented before
The New York City Council
Committees on Immigration and Youth Services
Oversight Hearing on Abolish ICE
Int. 1092-2018 & Resolution on Abolish ICE**

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I. Introduction

My name is Nyasa Hickey. I am a Supervising Attorney of the Immigration Practice at Brooklyn Defender Services (BDS). I thank the City Council for this opportunity to testify about the Abolish ICE movement and the many ways that Immigration and Customs Enforcement (ICE) actively harms New York City and our immigrant communities.

Brooklyn Defender Services (BDS) is a full-service public defender office in Brooklyn, representing nearly 35,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children or face deportation. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients. We are a Board of Immigration Appeals-recognized legal service provider.

BDS strongly supports the Abolish ICE movement. The civil and human rights violations perpetrated by ICE against immigrants and people of color are longstanding and well-

documented.¹ But we believe that our immigration system requires a complete overhaul in order to end these abuses. Simply initiating a bureaucratic reorganization of ICE is not sufficient. We call on the City Council to join with us to demand a fundamental transformation of our immigration system to one that recognizes the humanity of all people and that upholds the values of equal justice and due process for all.

Dismantling of the current immigration system will require a different Congress and President committed to true reform. *Until this transformation becomes a political reality, we urge the Council to proceed with caution in determining which temporary measures to support.* In particular, we will focus our testimony below on the harm that closing down New York City-area detention centers would have for our clients and their families. We look to the Council for your support in this advocacy work.

The New York City Council has led the nation in efforts to protect and support immigrant communities. The first-in-the-nation public defender program for detained immigrants facing deportation, the New York Immigrant Family Unity Project (NYIFUP), is a model for legal services provision that is now being replicated in jurisdictions across the country.² NYIFUP representation has resulted in a 1,100% increase in the success rate for NYIFUP clients, as compared to New York City residents facing deportation prior to NYIFUP. Since the project's inception in 2013, NYIFUP has reunified more than 750 people with their families and helped more than 400 New Yorkers gain or maintain work authorization by winning their immigration cases. The Vera Institute of Justice projects that these successful outcomes will produce tax revenue from this cohort of NYIFUP clients of \$2.7 million each and every year, for years to come.³ In addition, the City invests millions of dollars every year for additional immigration legal services, English language lessons, citizenship outreach and education, and other programming that support the success of immigrant New Yorkers.

And yet despite these significant investments from the City, immigrant New Yorkers face increased risk of targeting and apprehension by ICE. First, we lay out the history of ICE and modern immigration policy to give the Council context about the system that our clients currently face. We then lay out many of the problematic practices that we see in New York City on a daily basis. Next we describe ways that the Council can advocate for fundamental system change while minimizing harm to New Yorkers currently caught up in the immigration deportation system. Finally, we offer our support for the two measures currently before the Council today.

¹ See, e.g., American Civil Liberties Union, *ICE and Border Patrol Abuses*, available at <https://www.aclu.org/issues/immigrants-rights/ice-and-border-patrol-abuses>.

² Learn more at Vera Institute of Justice, *SAFE Cities Network*, <https://www.vera.org/projects/safe-cities-network>.

³ Vera Institute of Justice, *Report Summary: Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (Nov. 2017), available at <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

II. Background

In the wake of 9/11, the U.S. Department of Homeland Security was formed to oversee “immigration enforcement actions to prevent unlawful entry into the United States and to apprehend and repatriate aliens who have violated or failed to comply with U.S. immigration laws.”⁴ Within DHS, Immigrations and Customs Enforcement (ICE) is responsible for immigration enforcement, detention, and removal. While abuses by ICE have garnered national attention, our country has a long and troubled history of persecuting immigrants. In our support of Abolish ICE, we also urge the City Council to support comprehensive immigration reform which is necessary to create humane immigration policies.

Historically, immigration policies addressed the civil process of determining who was eligible to cross borders or reside in the United States.⁵ The Reagan administration ushered in rhetoric of equating noncitizens with crime, relying on prejudice and stereotypes about immigrants present in this country from the United States’ earliest days.⁶ As tough on crime policies of the 1980s led to prison crowding, noncitizens increasingly became a scapegoat; the Reagan administration promoted anti-immigrant rhetoric focused on falsehoods such as immigrants’ economic burden on the citizen taxpayers a result of their presence in prisons, schools, and hospitals.⁷ The Reagan administration passed the Anti-Drug Abuse Act⁸ and the Immigration Reform and Control Act⁹, which expanded grounds for deporting noncitizens with drug conviction and created a system for deporting any noncitizens following prison sentences.¹⁰ These laws created a narrative that centered immigrants in discussions of drug use and crime, though immigrants were actually arrested at lower rates than citizens—which still holds true today.¹¹ This conceptual shift in the collective view of immigrants as criminal paved the way for more restrictive immigration laws.

The Immigrant Justice Network and NYU School of Law report *Dismantle, Don’t Expand: The 1996 Immigration Laws* outlines how three major bills passed and signed into law by President Clinton laid out the framework for ICE as we know it today.¹² First, the Antiterrorism and

⁴ Bryan Baker, *Immigration Enforcement Actions: 2016*, Department of Homeland Security Annual Report (Dec. 2017), available at <https://www.dhs.gov/immigration-statistics/enforcement-actions>

⁵ D’Vera Cohn, *How US Immigration Laws and Rules Have Changed Through History*, Pew Research Center RSS, (Sep. 2015), available at <http://www.pewresearch.org/fact-tank/2015/09/30/how-u-s-immigration-laws-and-rules-have-changed-through-history/>

⁶ See, e.g., Kenneth C. Davis, *Anti-Immigrant Rage Is Older than the Nation Itself*, NPR, May 25, 2010, available at <https://www.npr.org/templates/story/story.php?storyId=126565611>.

⁷ Donald Kerwin, *From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis*, *Journal on Migration and Human Security*, (2018).

⁸ Pub. L. No. 99-570, 100 Stat. 3207 (1986.)

⁹ Pub. L. No. 99-603, 100 Stat. 3349 (1986).

¹⁰ Patricia Macías-Rojas, *Immigration and the War on Crime: Law and order politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*. *J. on Migration & Hum. Sec.*, 6, 1, (2018).

¹¹ Robert Adelman, et al., *Urban Crime Rates and the Changing Face of Immigration: Evidence Across Four Decades*, *Journal of Ethnicity In Criminal Justice*. 15 (2016).

¹² Bobby Hunter & Victoria Lee, *Dismantle, Don’t Expand: The 1996 Immigration Law*, Immigrant Justice Network and NYU School of Law Immigrant Rights Clinic, (2017). available online at https://www.immigrantdefenseproject.org/wp-content/uploads/1996Laws_FINAL_Report_5.10.17.pdf

Effective Death Penalty Act¹³ (AEDPA) “expanded the criminal grounds for deportation, limited relief from removal, restricted judicial review, and expanded mandatory detention.”¹⁴ Second, the Personal Responsibility and Work Opportunity Reconciliation Act¹⁵ barred immigrants from federal public benefits and allowed state and local government to impose additional restrictions.¹⁶ Finally, the Illegal Immigration Reform & Immigrant Responsibility Act¹⁷ (IIRIRA) created sweeping changes to immigration law. IIRIRA expanded the grounds for mandatory detention and removal, limited access to discretionary relief from removal, restricted avenues for relief from deportation and detention, authorized cooperation between federal immigration local law enforcement, and created funding for additional.¹⁸ Additionally, IIRIRA created income requirements for citizens trying to sponsor family members, created a provision to prevent poor immigrants who may become a “public charge,” and created multiyear bars from re-entry following deportation.¹⁹ These bills disproportionately impacted low-income immigrants of color. Broken Windows policing, as operationalized by the NYPD starting in the early 1990s, almost exclusively targeted people of color, new immigrants and other socially and economically marginalized groups.²⁰ For noncitizens, a single interaction with local law enforcement may trigger immigration detention and deportation.²¹

Following the passage of IIRIRA, the negative impact on immigrant families became clear. Income requirements to sponsor family members, mandatory bars on returning to the U.S. after deportation, and mandatory detention following deportation orders penalized dual-status families, long term residents and green card holders. Calls to reform this legislation (“Fix ‘96”) gained bipartisan support, including from the bill’s sponsor Rep. Lamar Smith.²² The campaign centered the need to “amend IIRIRA’s provisions concerning retroactive deportations, constraints on judicial review, mandatory detention, the use of secret evidence, and expedited removals.”²³

These efforts, however, were largely forgotten in the wake of 9/11. Following the terror attacks, the IIRIRA provisions which allowed for quick detention and deportation were again seen as keeping America safe. Widespread fear of crime and distrust of immigrants allowed Congress’s creation of DHS and ICE. Since September 11, 2001, we have seen the traumatic impact of enforcing IIRIRA. In particular, over the last few months, the public has become aware of the lived reality of ICE’s impact on immigrant individuals, families, communities and human rights principles. ICE is tearing apart families, deporting parents and spouses, and destabilizing low-

¹³ Pub. L. No. 104-132, 100 Stat. 1214 (1996).

¹⁴ Cohn, *How US Immigration Laws and Rules Have Changed Through History*.

¹⁵ Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁶ Hunter & Lee, *Dismantle, Don’t Expand*.

¹⁷ Pub. L. No. 104-208, 110 Stat. 3009-546 (1995)

¹⁸ Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006).

¹⁹ Kerwin, *From IIRIRA to Trump*.

²⁰ *Statement of Shawn Blumberg, Broken Windows Policing and Protecting Immigrant New Yorkers*, Feb. 21, 2017 available online at <http://bds.org/wp-content/uploads/2017.2.21-Statement-by-Brooklyn-Defender-Services-on-Broken-Windows-Policing.pdf>

²¹ Hunter & Lee, *Dismantle, Don’t Expand*.

²² Macías-Rojas, *Immigration and the War on Crime*.

²³ *Id.*

income communities of color. In addition to calls to Abolish ICE, we encourage the City Council to work to create a humane immigration system that restores due process rights, allows judicial discretion, and treats immigrants with dignity.

III. ICE's Ramped Up Enforcement in New York City Immigrant Communities

The impact of enforcement policies at the federal level are felt every day by our immigrant clients, their families and New York City communities. The mass separation of parents and children at the border this spring and summer were one of the most publically visible and shocking example of the agency's actions, but their cruel and illegal enforcement tactics harm people in New York City, too. We have written about all of these practices at length in previous testimony²⁴, but list many of ICE's most pernicious practices here:

- Arrests
 - Increased ICE arrests in and around city courthouses, limiting access to the court system²⁵
 - Increased home and workplace raids in the community²⁶
 - Reliance on ruses and other nefarious means to lure targets into ICE custody²⁷
 - Effectuating arrests or entering private homes without judicial warrants²⁸
 - Racial profiling, including relying on unsubstantiated gang allegations²⁹
 - Detaining people at Order of Supervision (OSUP) check-ins³⁰
 - Re-arresting people who have won relief in immigration court but have not yet received their visas or green cards³¹
- Court Appearances
 - Abolishing in-person appearances at Varick Street Courthouse and requiring detained people to appear in court via Video Conferencing (VTC)³²
 - Failing to produce detained people for state court proceedings where writs are issued by the courts or prosecutors to ensure their appearance

²⁴ Please see our previous testimonies before the City Council, available on the Brooklyn Defender Services website at www.bds.org/#policy.

²⁵ See, e.g., Immigrant Defense Project, *Press Release: IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017*, available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

²⁶ Immigrant Defense Project, *ICEwatch: ICE Raids Tactics Map* (July 2018), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICEwatch-Trends-Report.pdf>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Kavitha Surana, *How Racial Profiling Foes Unchecked in Immigration Enforcement*, PROPUBLICA, June 8, 2018, available at <https://www.propublica.org/article/racial-profiling-ice-immigration-enforcement-pennsylvania>.

³⁰ Saenz, March 15, 2017.

³¹ *Testimony of Andrea Saenz, Presented before the New York City Council Committee on Immigration Oversight Hearing on the Impact of New Immigration Enforcement Tactics on Access to Justice and Services*, March 15, 2017.

³² *Testimony of Nyasa Hickey, Presented before the New York City Council Oversight Hearing on the Impacts of the Trump Administration Family Separation Policy on New York*, July 12, 2018;

- Detention
 - Sub-standard detention conditions for detained immigrants
 - Insufficient access to medical care and mental health treatment³³
 - Insufficient or spoiled food³⁴
 - Damaged and insufficient clothing and hygiene products³⁵
 - Lack of access to programming and other supports
 - Lack of sufficient language services to facilitate communication with non-English-speaking detained people

Other actors in the immigration deportation system also frequently violate our clients' rights, and our concerns about their actions are listed in previous testimony before this committee. The combined effect of these injustices are that our clients are increasingly likely to be targeted for enforcement or swept up in mass raids, held for months or years without bond in horrible detention conditions. All of this occurs on top of harsh and unfair laws like IIRIRA that disproportionately punish low-income people of color.

IV. Urge Caution

Because of all of the harmful practices, policies and laws that we listed above, we urge the Council to remain committed, first and foremost, to advocating for reform that will not harm impacted communities. Robust funding for immigration legal services like NYIFUP are critical to keeping families together and we urge you to maintain and increase your financial support.

Brooklyn Defender Services has very serious concerns about the impacts of closing immigration detention facilities in Hudson, Essex and Bergen Counties in New Jersey on the people we represent. Local news outlets have recently reported on efforts by New Jersey residents to urge their local legislators to end detention contracts with ICE.³⁶ Ending mass immigration detention – or any immigration detention at all – is paramount, but simply closing these facilities, where detained people have access to free representation through NYIFUP will result in grave consequences for detained immigrants and their families.

If the New Jersey detention facilities end their contracts with ICE, New Yorkers arrested by ICE will be shipped off to distant facilities, perhaps several states away to rural areas. Outside of the New York City area and Varick Street Immigration Court, they will not have access to their families or a NYIFUP attorney. Families play a critical role in supporting detained people during the pendency of their case. The presence of a detained person's spouse, children and close family friends not only build up their loved one's morale, they also are frequently critical witness or are

³³ New York Lawyers for the Public Interest, *Detained and Denied: Healthcare Access in Immigration Detention* (2017), available at http://www.nylpi.org/wp-content/uploads/2017/02/HJ-Health-in-Immigration-Detention-Report_2017.pdf.

³⁴ Human Rights First, *Ailing Justice: New Jersey, Inadequate Healthcare, Indifference, and Indefinite Confinement in Immigration Detention* (Feb. 2018), available at <https://www.humanrightsfirst.org/sites/default/files/Ailing-Justice-NJ.pdf>.

³⁵ *Id.*

³⁶ Matt Katz, *Religious Leaders Sue to End Hudson County's ICE Contract*, WNYC NEWS, August 26, 2018, available at <https://www.wnyc.org/story/religious-leaders-sue-end-detention-ice-immigrants-hudson-county-jail/>.

able to collect evidence essential to prove a detained person’s legal claim to remain in the U.S. with their family.

In New York City, NYIFUP representation, in which BDS is one of the three providers, has increased the likelihood of detained people winning their cases by a factor of 12 – from 4% to 48%. In addition to saving people from deportation, family dissolution, and worse, this program has shown that nearly half of the people arrested and detained by ICE have a legal claim to remain in their homes and communities here under the law.

NYIFUP achieves these incredible success rates because NYIFUP provides detained people with experienced and highly qualified deportation attorneys in immigration court. We are also funded by the Council to provide investigators, trained forensic social workers, expert witnesses, re-entry services, connections to rehabilitative programs and services, legal assistance from any of our other practice areas (including criminal defense, family defense and civil legal services) and federal court litigation expertise. These wraparound and inter-disciplinary advocacy and support will be lost to all detained people who are transferred far from New York City, effectively undercutting the Council’s efforts to provide the right to counsel and due process to its residents.

Our concerns are not hypothetical: ICE detainees were transferred *en masse* from the San Francisco Bay Area after Contra Costa County ended its contract with ICE.³⁷ An ICE spokesperson spoke unequivocally that advocates should have anticipated this result:

“When we were notified of the decision, ICE made it abundantly clear in July that it would have to now rely on its national system of detention bed space to house detainees. When ICE is not allowed to work with local jurisdictions to house detainees closer to their families, friends and attorneys, farther facilities must be utilized.”³⁸

We recommend that the Council work with your counterparts in New Jersey (the Hudson, Bergen and Essex County Freeholders) and urge them to continue their contracts with ICE while improving conditions for detainees, including improving access to medical care, visitation and other measures. We also ask that you encourage Freeholders to require that jails identify people in immigration detention who have upcoming court dates so that NYIFUP can go to the facilities prior to the first court date to do screenings and intake, a process that has been fundamentally undermined since ICE has decided not to bring detained people to their hearings at Varick Street Immigration Courthouse. These and other informed advocacy efforts in collaboration with service providers such as NYIFUP could go a long way towards supporting immigrant New Yorkers and ensuring they are able to take advantage of NYIFUP representation.

V. Intro 1092 – Prohibiting NYC from Contracting with Entities Engaged in Immigration Enforcement

³⁷ Tatiana Sanchez, *Transfers of Contra Costa ICE Detainees Spark New Concerns*, THE MERCURY NEWS, Aug. 24, 2018, available at <https://www.mercurynews.com/2018/08/24/transfers-of-contra-costa-ice-detainees-spark-new-concerns/>.

³⁸ *Id.*

BDS strongly supports Int. 1092, a Local Law to amend the Administrative Code of the City of New York, in relation to prohibiting New York City from contracting with entities engaged in immigration enforcement. *Documented* recently reported that the city currently has two contracts with ICE totaling close to \$500,000 to allow ICE agents access to the NYPD firing range and parking for the ICE New York field office.³⁹ The two contracts in particular only serve to facilitate ICE arrests in immigrant communities across the city. For all of the reasons articulated earlier in our testimony, BDS calls on New York City to immediately end all contracts with ICE.

VI. Resolution on Federal Bill H.R. 6361 – Establishing a Humane Immigration Enforcement System Act

New York City Council Resolution 2018-2722 (preconsidered) calls on the federal government to pass the Establishing a Humane Immigration Enforcement System Act (H.R. 6361). The bill would establish a Commission tasked with establishing a humane immigration enforcement system, terminate Immigration and Customs Enforcement, and officially document the long history of abuses perpetrated by ICE.

While BDS supports many of the goals of HR 6361, we believe that it falls short in rectifying the harm caused by ICE because it would not repeal IIRIRA, significantly reduce funding for immigration enforcement, or increase due process protections for immigrants. We urge the Council to go a step further and urge Congress to make these changes, as well. Simply abolishing ICE, as we noted above, will not end the harm perpetrated by the federal government against our immigrant communities.

VII. Conclusion

Thank you for inviting me to testify and for considering my remarks today.

Please reach out to Andrea Nieves, Senior Policy Attorney at anieves@bds.org or 718-254-0700 ext. 387 if you have any additional questions.

³⁹ Felipe De La Hoz, *Exclusive: City Council Bill Calls for Ban on All Contracts With ICE*, DOCUMENTED, Aug. 28, 2018, available at <https://documentedny.com/2018/08/28/exclusive-city-council-bill-calls-for-ban-on-all-contracts-with-ice/>.