



**TESTIMONY OF:**

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BROOKLYN DEFENDER SERVICES**

**Presented before  
The New York City Council  
Committee on Immigration  
Oversight Hearing on the Need for Legal Representation in Immigration Court  
Under Trump  
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**I. Introduction**

My name is Andrea Sáenz. I am the Attorney-in-Charge of the New York Immigrant Family Unity Project (NYIFUP) team in Immigration Practice at Brooklyn Defender Services (BDS). I thank the City Council for this opportunity to testify about the work that legal service providers across New York City, including Brooklyn Defender Services, are doing to represent community members who are facing deportation in New York City's Immigration Courts, and the ongoing and dire need for our services given the Trump Administration's sweeping and harsh enforcement regime.

BDS is a full-service public defender office in Brooklyn, representing nearly 30,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children, or facing 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.

Our immigration practice consists of more than 50 staff who work in three distinct teams that specialize in different aspects of immigration law:

- **The BDS Padilla Team** advises BDS's criminal defense and family defense attorneys and their immigrant clients on the immigration consequences of a guilty plea to help avoid or minimize negative consequences. About a quarter of BDS's

30,000 criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of deportation or loss of opportunity to obtain lawful immigration status as a result of their criminal case. Our specialists provide support and expertise on thousands of cases, including Padilla advisals, advocacy regarding enforcement of New York City's detainer law, as well as with ICE officials to secure the release of our clients while charges are pending against them.

- The **New York Immigrant Family Unity Project (NYIFUP)** is the New York City Council-funded first-in-the-nation program providing counsel to immigrant New Yorkers who are detained and facing deportation and separation from their families and communities. BDS is proud to be a NYIFUP provider, along with The Bronx Defenders and The Legal Aid Society. Since the project's inception three years ago, BDS NYIFUP attorneys have defended more than 1,000 people in deportation proceedings. Jointly the NYC NYIFUP providers have won release from ICE custody for over 900 clients and won the cases of over 500 clients, with hundreds of cases still pending. The Vera Institute of Justice's comprehensive November 2017 study found that 48% of NYIFUP cases end successfully – a 1,100% increase from the rate for unrepresented cases before NYIFUP.
- **BDS' Immigrant Youth and Communities Team** has represented thousands of Brooklyn immigrants in their applications for lawful immigration status and in removal proceedings for people who are not detained, including motions to reopen prior orders of removal. Highlights of our work include representing young people in their pursuit of Special Immigrant Juvenile Status (SIJS) or Deferred Action for Childhood Arrivals (DACA) and working with Haitian and Central American New Yorkers to file or renew applications for Temporary Protected Status (TPS). We regularly provide Know Your Rights trainings for the community, including information on encounters with ICE and family preparedness planning. We also produced four short animated films as part of a national empowerment campaign called *We Have Rights* that informs community members how to prepare for and safely defend their rights during encounters with ICE.<sup>1</sup>

## **II. Recent National Trends in Immigration Enforcement and Due Process in Immigration Court**

BDS has represented individuals who are in “removal proceedings,” or court proceedings where the government seeks a person's deportation, since 2009, and has done so at high volume since pioneering the NYIFUP program in 2013-14. This work has always been complex and time-intensive, and has always revealed injustices in the ways our current immigration laws separate parents from children, do not allow for second chances from long-ago arrests or errors, and impose the harsh and usually permanent penalty of deportation on people who served no jail time or have shown true rehabilitation and service to their communities, all while reinforcing the devastating racial and economic inequalities of our criminal legal system. Even under the Obama

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<sup>1</sup> Learn more about the campaign at [www.wehaverights.us](http://www.wehaverights.us).

Administration, rates of immigration detention and annual deportation rose to record levels, and the administration used cruel, stigmatizing rhetoric about deporting “felons, not families” that demonized anyone with criminal justice contact, even though many of those individuals had loving families and strong defenses to removal.

However, under the Trump Administration, we are experiencing the harshest and broadest-sweeping immigration enforcement regime in modern history, as well as an unprecedented undermining of due process in the immigration courts. Combined, this means that New York City’s commitment to fund high-quality legal representation for low-income people in our city’s immigration courts is more critical than ever. Ultimately, we believe our federal government must fundamentally transform its immigration system to recognize the humanity of all people, including by repealing the laws that created our current mass immigration detention system.

On a national level, enforcement and policy trends include:

- The highest rate of daily immigration detention in history, with a shocking average daily population of over 42,000 people, which is even above ICE’s Congressionally-mandated “bed mandate” level.<sup>2</sup>
- So much spending on enforcement and detention that DHS has raided the much-needed funds of other agencies like FEMA and TSA in order to spend it on detaining more immigrants.<sup>3</sup>
- Mass detention of parents and children, some together, and some in separate facilities after inhumanely pulling them from each other’s arms at the border with no systems or plans to track and reunite them.<sup>4</sup>
- Record-high levels of children detained in Office of Refugee Resettlement custody, along with reports of ICE arrests of sponsors trying to take in these children.<sup>5</sup>
- Constant arrests inside and near local courthouses, undermining people’s ability to even seek justice in the criminal legal system.<sup>6</sup>
- The use of baseless and uncorroborated allegations of gang membership to target Central American youth for detention, deportation proceedings, and denial of benefits.<sup>7</sup>

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<sup>2</sup> <https://www.cnn.com/2018/11/12/politics/ice-detention/index.html>

<sup>3</sup> <https://www.nbcnews.com/politics/immigration/dhs-transferred-169-million-other-programs-ice-migrant-detention-n909016>

<sup>4</sup> [https://www.washingtonpost.com/politics/2018/10/02/triple-barreled-indictment-trumps-family-separation-policy-his-homeland-security-department/?utm\\_term=.3fe251f39965](https://www.washingtonpost.com/politics/2018/10/02/triple-barreled-indictment-trumps-family-separation-policy-his-homeland-security-department/?utm_term=.3fe251f39965)

<sup>5</sup> <https://www.cnn.com/2018/11/23/politics/hhs-record-14000-immigrant-children-us-custody/index.html>

<sup>6</sup> <https://www.npr.org/2018/12/13/676344978/judges-ask-ice-to-make-courts-off-limits-to-immigration-arrests>

<sup>7</sup> <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/>

- Widespread workplace arrests that target undocumented workers for criminal and immigration arrests, but only fine the employers who may have coerced and mistreated them.
- The attempted end of DACA as well as TPS for almost every country that held the designation, meaning millions of people will lose affirmative status and be vulnerable to removal proceedings.
- New policies allowing U.S. Citizenship and Immigration Services to deny more applications for citizenship, permanent residence, and other benefits more quickly, and to trigger the beginning of removal proceedings more automatically for people who have an application denied.
- Aggressive attempts to “denaturalize” people already granted citizenship by combing through past applications looking for small mistakes or omissions, and deport them.

On a national level, immigration court trends include:

- The highest immigration court backlog in history, at over 800,000 cases.<sup>8</sup>
- The end of ICE counsel using prosecutorial discretion, a bedrock tool of any prosecutor’s office, to close low-priority cases and lighten the court docket.<sup>9</sup>
- Former Attorney General Sessions making repeated public remarks that many asylum seekers are lying and pressing fraudulent claims, that “dirty” immigration lawyers are assisting in asylum fraud, and that immigration judges must decide cases faster and avoid feeling sympathy for the people who come before them.<sup>10</sup>
- The Attorney General using the “certification” process to send long-standing immigration precedent to himself for review faster than any Attorney General has ever done,<sup>11</sup> overturning only cases that were favorable to asylum seekers or that helped immigration judges exercise their own discretion and manage their large dockets, including:
  - New decisions from the Attorney General taking away immigration judges’ ability to “administratively close” or terminate certain cases to await pending visa applications or otherwise manage their documents, and cautioning judges not to

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<sup>8</sup> [http://trac.syr.edu/phptools/immigration/court\\_backlog/](http://trac.syr.edu/phptools/immigration/court_backlog/)

<sup>9</sup> <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration>

<sup>10</sup> See <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review> , <https://www.politifact.com/truth-o-meter/statements/2018/jul/02/jeff-sessions/jeff-sessions-false-claim-80-percent-asylum-appli/>, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-largest-class-immigration-judges-history>

<sup>11</sup> <https://www.vox.com/policy-and-politics/2018/5/14/17311314/immigration-jeff-sessions-court-judge-ruling>

grant many continuances, along with ICE counsel aggressively moving to put some prior closed cases *back* on the clogged immigration court dockets.

- New decisions from the Attorney General attempting to reduce grants of asylum to victims of severe domestic violence whose countries will not protect them, as well as reducing protections to people targeted for persecution and death on the basis of their family membership or as a result of resistance to transnational gangs, in short attempting to sharply limit long-standing precedent that protected many Central American people who are in grave danger in their countries.
- Policy memos from the Executive Office for Immigration Review (EOIR) requiring that judges meet case completion quotas or face poor evaluations, and instructing them to move certain types of cases more quickly and with stricter standards for granting continuances for people to seek counsel and properly prepare their cases.<sup>12</sup>
- Increased need for Board of Immigration Appeals and federal court appeals to challenge unsound Immigration Judge rulings affected by increasingly anti-immigration case law

All of these trends result in more New Yorkers being detained and placed into deportation proceedings, straining the capacity of BDS and other legal service providers who want to defend as many people as possible. For example, in the last year, NYIFUP has represented many clients who were arrested at or near city courthouses, as well as many 18 and 19 year-old clients who were not released from ORR custody to a waiting sponsor in a timely way and instead were cruelly arrested by ICE on their 18<sup>th</sup> birthdays and taken to adult ICE custody in a county jail. In particular, BDS has represented dozens of people who would likely have qualified for an exercise of prosecutorial discretion or for a grant of administrative closure in immigration court, but now are forced to fully litigate their cases, which necessitates more legal assistance.

### **III. Recent Local Trends in Immigration Enforcement and Due Process in Immigration Court**

In addition to the above, we have experienced several local trends that have made these problems worse and created new obstacles in our representation. These include:

- Particularly aggressive courthouse arrests, the highest rate New York has ever seen. Such arrests often interrupt existing criminal cases, delaying favorable dispositions and also requiring more resources by defense counsel.<sup>13</sup>
- ICE officials explicitly threatening to punish “sanctuary cities” or cities with detainer discretion policies, like New York, with more community raids and arrests. We saw the plain facts of this trend when new ICE numbers were released Friday showing that

<sup>12</sup> <https://www.apnews.com/d8008f7a66a54562b612bd74156f2bed>

<sup>13</sup> <https://theintercept.com/2018/11/02/ice-arrests-video-nyc-courts/>

national ICE arrests are up 11% in the last fiscal year while New York ICE arrests are up 35%.<sup>14</sup>

- New York ICE exercising no discretion to release arrested individuals on their own recognizance or set their own bond amount, as once occurred, so virtually all detained people, including those with no criminal history or serious medical needs, stay detained until they see a judge and retain counsel to successfully advocate for their release on bond. The increased arrests combined with the failure to ever release people short of a court order is the principal reason the detained backlog has grown and the need for representation at Varick Street has grown along with it.<sup>15</sup>
- The sudden decision, in late June 2018, to stop producing any detained people to their own hearings at Varick Street and require everyone to appear via highly flawed video teleconference technology. This has: prevented NYIFUP from using its long-standing and successful same-day intake model that allowed us to move cases on the first hearing; prevented private and non-profit attorneys alike from brief meetings with clients to sign documents or discuss strategy at Varick Street; caused significant back-ups and wait times at the jails where our clients are held just to briefly meet clients; and prevented clients from seeing or making eye contact with their loved ones in the courtroom.<sup>16</sup>
- Most recently, EOIR adding unrepresented individuals to the detained dockets without notice, outside of the set NYIFUP intake days that we and the court have agreed and collaborated on over the last five years, as well as indicating plans for a sharp increase of cases on the detained docket in early 2019.

**Specifically, EOIR has recently informed us that they will be opening up to seven new courtrooms at Varick Street and that two of them will be for full-time detained dockets, while other judges will hear non-detained cases but have “flexibility” to hear additional detained cases.** This change is expected in February 2019 or even sooner. This potentially represents a sudden and sharp increase in unrepresented detained New Yorkers, and NYIFUP providers do not have the resources or the staff to nearly double our workload, especially when staff are spending substantially more hours to do our existing cases because of all the factors above.

We have countless examples of individual clients who have been harmed by the enforcement and court trends in the above lists. As just a few recent examples, BDS represents:

- Dane Freeman, who was brought to the U.S. at a young age, became captain of the Canarsie High School soccer team, married his high school sweetheart, and is beloved by his U.S. citizen wife and 3 U.S. citizen children. Dane had trouble seeking a green card because of a single drug possession offense from 2000. In 2016, ICE used their discretion

<sup>14</sup> [http://gothamist.com/2018/12/14/ice\\_deportations\\_surge\\_new\\_york.php](http://gothamist.com/2018/12/14/ice_deportations_surge_new_york.php)

<sup>15</sup> <https://www.theverge.com/2018/12/12/18138243/nyclu-lawsuit-ice-immigration-risk-assessment-tool>

<sup>16</sup> See <https://documentedny.com/2018/12/07/court-use-of-video-conferencing-causes-case-slowdown/>, <https://www.nytimes.com/2018/06/27/nyregion/new-york-immigrants-deportation-video-hearings.html>

to agree that Dane was not an enforcement priority and join a motion to close his case. This year, they forced his case back on the docket, and he is once again facing deportation.<sup>17</sup>

- “Ana,” an indigenous woman who survived violence so severe in Honduras the immigration judge asked ICE to consider agreeing to a grant of protection for her. When ICE refused, the judge denied her asylum claim and ordered her deported, citing 7 times to *Matter of A-B-*, a recent Jeff Sessions decision that guts long-standing protections for asylum seekers fleeing violence. Instead of a straightforward asylum victory, we will now represent her on a complex appeal.
- “Mario,” a high school student who already had been granted Special Immigrant Juvenile Status and had his green card application pending when he was arrested by ICE on completely baseless allegations that he was a gang member. It took 4 months of detention in a county jail before he had a bond hearing, when ICE filed photos of Mario taking a selfie of himself wearing a Chicago Bulls hat and challenged him to name the team’s roster to prove he was not in MS-13. The Immigration Judge was dismayed and granted bond, but Mario lost so much time detained he will probably have to repeat 11<sup>th</sup> grade.
- Levy Jaen, a father of 4 U.S. citizen children who has lived in Queens since childhood, who fought with us through almost 2 full years of detention and appeals to prove that he acquired U.S. citizenship through his father at his birth. This year, the Second Circuit Court of Appeals proclaimed Levy a citizen, ordered him immediately released, and one judge noted that she was “troubled” by the government’s choices in denying him his liberty and identity for so long.<sup>18</sup>

These national and local trends, taken together, represent an all-out attack on immigrant communities in New York. They have also impacted the daily practice of BDS and other legal service providers who represent people in New York’s immigration courts. In short, more people are being placed into removal proceedings, more people are being detained during those proceedings, and each case itself takes more resources to provide excellent representation in a hostile and high-pressure enforcement and court environment.

Nonetheless, we and our NYIFUP partners are fully committed to the critical work of defending our communities and values. In the coming year, we will need new and additional resources to truly stand up to the rising challenges of the current moment, including a significant increase in NYIFUP funding if the Council shares the goal of continuing to ensure high-quality representation for every person detained and facing deportation in New York who cannot afford an attorney.

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<sup>17</sup> Dane’s story is featured in <https://documentedny.com/2018/08/31/thousands-of-new-yorkers-could-be-headed-back-to-immigration-court/>

<sup>18</sup> See <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-ice-citizen-detained-paternity-appeals-court>

#### **IV. Conclusion**

Thank you for inviting me to testify and for considering my remarks today. I look forward to continuing to work with you to protect immigrant New Yorkers from the federal government's vicious attacks and ultimately, I hope, winning humane immigration reform to end these injustices.

Please reach out to Senior Policy Specialist Jared Chausow at [jchausow@bds.org](mailto:jchausow@bds.org) or 718-254-0700 ext. 382 if you have any additional questions.