



TESTIMONY OF:

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

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Budget Hearing on Immigration
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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 impact of increased immigration enforcement and the need for significantly increased funding in order to meet the needs of the communities we serve.

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. Our immigration practice is composed of 27 full-time immigration attorneys, one law graduate, five paralegals accredited by the Board of Immigration Appeals, two social workers, five legal assistants and three Immigrant Justice Corp Legal Fellows representing more than 1,000 immigrant New Yorkers every year. We are a Board of Immigration Appeals-recognized legal service provider.

Our three immigration practice areas include:

- **The BDS Padilla Team** advises BDS's criminal defense attorneys and their noncitizen clients on the immigration consequences of guilty pleas to help avoid or minimize negative immigration 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 eight criminal-immigration specialists provide support and expertise on thousands of cases, including advocacy regarding enforcement of the NYC 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-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 (BXD) and The Legal Aid Society (LAS). Since the project's inception three years ago, BDS NYIFUP attorneys have defended more than 1000 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's Immigrant Youth and Communities Team** has represented thousands of Brooklyn immigrants in their applications for lawful immigration status and in defending against deportation in non-detained removal proceedings. Highlights of our work include representing young clients 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).

II. Client Stories

Public defender offices like BDS are uniquely situated to advocate for New Yorkers whose criminal or family court involvement threatens their ability to modify their immigration status and lawfully remain in New York with their children and families.

Just this month BDS obtained a remarkable result for our non-citizen youth client Daniel (name changed to protect his identity) because of the joint efforts between our criminal practice, Padilla team, and NYIFUP team. ICE arrested Daniel in criminal court early this year even though he had no criminal convictions and the pending misdemeanor case was scheduled to be resolved with an ACD. After he was detained, Daniel's mental health immediately deteriorated. The criminal defense team worked with the District Attorney's office to bring Daniel to court to finalize his criminal case so that he would be eligible for a bond hearing in Immigration Court. Daniel is eligible to adjust his immigration status as the spouse of a US citizen, and his Padilla attorney immediately filed the application to begin the process. He also collected the documents that would be helpful at Daniel's bond hearing. Because of the complex coordination of a

variety of BDS attorneys and social workers, when Daniel finally did get to see the immigration judge after six weeks in detention, a bond hearing was immediately held – a rarity at this relatively early stage in a case – and the immigration judge released Daniel on his own recognizance. After 40 heart-wrenching days in detention, during which time Daniel’s mental health had suffered tremendously, Daniel was returned to his loving wife and children and is on his way to obtaining legal immigration status.

Because of our unique role as both public defender and NYIFUP provider, BDS is able to advocate on a continuum. We want and believe that we should be able to provide this kind of complex and comprehensive representation to all of our non-citizen clients, not only to those clients who will be assigned a NYIFUP attorney, but also to clients who are not detained with removal proceedings, those who have prior orders of deportation, and those who are eligible to apply affirmatively for immigration status.

While hundreds of our Padilla clients have the potential to modify their status, and need our assistance, we are unable to take on the majority of their cases because we lack the capacity. Now because of increased enforcement, these clients are at a heightened risk of deportation by ICE because of their criminal justice or family court involvement. Our clients, many accused of low-level charges and with no prior convictions, have been targeted by ICE at their home, in the community, at work or in court. Our criminal and family courts are becoming an increasingly unsafe place for our immigrant clients and while providing representation upon detention through the NYIFUP program is critical to minimize some of this harm to our communities, it is not enough.

We are here today to ask for increased funding for immigration legal services generally, and Brooklyn Defender Services in particular, to help New York City live up to its aspiration of truly being a sanctuary jurisdiction that values and protects all of its citizens, including immigrant New Yorkers.

III. The Effect of Increased Enforcement on Clients in Local Courts

The worst fears that we expressed last year at the 2017 Immigration Committee Budget Hearing about increased federal enforcement have come true. The Trump Administration has been aggressively targeting people who come into contact with the criminal justice system with open criminal charges, regardless of the individuals’ criminal history, the relative innocuousness of the allegations, particular vulnerabilities such as medical or mental health needs, the person’s role as caretaker to others and/or the age of the immigrant or the likelihood of success in the deportation case. This was the case for Daniel, whose story is described above and it is the case for many other clients who need the continuum of immigration services that starts with a proper screening and ends with the ability to fully advise and file applications for status. The NYPD’s ongoing policy of broken windows policing adds to the problem by placing thousands of immigrants into ICE’s crosshairs for the most minor offenses, destroying families and harming communities.

a. Broken Windows Policing Leads to Deportation

NYPD's policy is to fingerprint anyone who is arrested, even if only for a low-level offense like fare evasion. Some police armed with tablets are even fingerprinting people in their neighborhoods, without even making an arrest that leads to a trip to the precinct and processing at Central Booking.¹ Fingerprints collected by the NYPD are transmitted to the FBI, who in turn share them with the Department of Homeland Security, often leading to an arrest by ICE and deportation. Even if a district attorney declines to press charges, an immigrant is put at immediate risk of being apprehended by ICE at home, at work, or in their community. Broken windows policing, or the criminalization of the most minor offenses, even without a resulting conviction, thus directly places thousands of immigrants at serious risk of permanent harm every year.

b. ICE in Courts

Since we last testified about ICE arrests in courts in 2017, arrests in and around Brooklyn courthouses have increased 1,100%, according to the Immigrant Defense Project report.² An estimated 28% of the undocumented immigrants targeted by ICE had no prior criminal history. The majority of people caught up in this wave of enforcement were reporting to court on low-level offenses, many for traffic violations. Since the beginning of this year alone Brooklyn Defender Services have had 17 of our criminal defense clients arrested by ICE in or outside the courthouse or in the community because of pending criminal allegations, mostly misdemeanors.

Our immigrant clients and their family members are rightly terrified to appear in court. But they cannot modify their immigration status if they have an open criminal case, and they cannot resolve their criminal or family case if they fail to appear in court.

IV. The Effects of Increased Enforcement in Federal Court

Last year we shared with the Council the many challenges facing our immigration attorneys in immigration court. In addition to rising caseloads, we also reported that our clients seeking asylum were no longer being released on bond, that we increasingly saw ICE targeting people who had won immigration relief but had not yet received their visas or green cards, and that non-detained clients were being taken into ICE custody both at Order of Supervision (OSUP) appointments and when they reported to immigration court. These issues continue to harm our clients.

¹ Tatiana Schlossberg, *New York City Police to Be Equipped with Smartphones and Tablets*, N.Y. TIMES, Oct. 24, 2014, available at <https://www.nytimes.com/2014/10/24/nyregion/new-york-city-police-to-be-equipped-with-smartphones-and-tablets.html>.

² Immigrant Defense Project, *Press Release: IDP Unveils New Statistics & Trends Detailing Statewide ICE Courthouse Arrests in 2017* (Dec. 31, 2017), available at <https://www.immigrantdefenseproject.org/wp-content/uploads/ICE-Courthouse-Arrests-Stats-Trends-2017-Press-Release-FINAL.pdf>.

In the recent decision *Jennings v. Rodriguez*, the Supreme Court held that federal immigration law authorizes the prolonged detention of immigrants during their removal proceedings without the chance for even a 5-minute bond hearing – detention that can last months or even years as people fight their cases. This decision erases many of the gains we had won since our landmark win in *Lora v. Shanahan*, a case involving a BDS NYIFUP client, under which hundreds of New Yorkers have been released on bond since 2015. All of the NYIFUP providers remain committed to challenging our clients' indefinite detention in federal court. But we are asking for additional resources in the next fiscal year to continue this fight (see section VII below).

V. Criminal Carve-Out

Last year the Council significantly increased funding for immigration legal services including NYIFUP. We were grateful to utilize these much-needed resources, but the money came with some troubling restrictions. The Mayor insisted that NYIFUP funding not be used to represent people convicted of any of the “170 crimes” listed in the Department of Corrections Detainer Discretion administrative code law. Since July 2017 when the Mayor’s policy change went into effect, 61 clients with convictions on the 170 list were represented by NYIFUP, all of whom could only be represented through a private funding stream that we fear will not be renewed in the coming year.

It is our understanding that the Mayor intends for ALL immigration contracts to contain the same restriction, even if the person has a claim to status, has a green card or has been in this country for years or decades.

As a public defender office, our mission is to provide the highest quality representation to all people, regardless of their charge or past record, their immigration status, their race, sexual orientation, gender expression or identity, or religious beliefs. There should be no disqualifying factors when it comes to legal representation because without an attorney, the laws are impossible to navigate. We strongly oppose the Mayor’s policy of limiting legal representation, particularly based solely on a particular conviction without further analysis or exception. Given the sharp racial disparities in arrest, prosecution and conviction, the Mayor’s policy both exacerbates these prejudices and deprives people of a chance to rectify further injustice. Furthermore, the policy is an attack on universal due process and undermines our city’s commitment to equal justice under the law.

We urge the City Council to reject any exclusions to representation except for financial eligibility and work with providers to ensure that all New Yorkers have access to immigration legal representation.

VI. Increased Need for FY2019

a. NYIFUP

The Council's commitment to universal representation for every detained person who meets the income requirements of NYIFUP has been a critical investment in the rights of New York City's immigrant population. Now more than ever it is essential to ensure that every person who comes before immigration court in New York City is afforded the right to make his or her case. BDS attorneys have represented hundreds of clients who have been able to stay in the United States because of an immigration remedy they would not have known about and could not have proven without an attorney. This includes many who were convicted of crimes that we later successfully vacated or which did not preclude an immigration remedy. We have uncovered that many clients, including those whose criminal history falls within the "170 criminal carve-out," were actually U.S. citizens, but often never had the resources or tools to find the evidence to prove their citizenship until they were appointed a NYIFUP attorney. NYIFUP is the strongest example of our City's commitment to immigrant New Yorkers and due process, made stronger still by a commitment to universal representation without exception.

The NYIFUP providers are requesting continued funding of \$10 million (\$3.33 million per organization) to continue protecting New York families from facing a harsh detention and deportation regime alone. NYIFUP has been a model of access to justice nationwide and has inspired replication in many cities that want to stand beside their immigrant communities at a time of increased indiscriminate enforcement and hostility. We hope that for FY 2019, the City Council will continue to send the message that in New York, no family should be separated by deportation because they could not afford an attorney.

b. Continuous representation for Padilla clients

More than 20% of our criminal defense clients were born outside of the U.S. We meet and in many cases exceed the obligations required by the U.S. Constitution under *Padilla* when we identify a client who has an opportunity to obtain status. Unfortunately, we are not able to assist every client who is eligible for an immigration remedy due to insufficient staff and resources to make this happen, despite our strong desire to do so.

The most efficient way for the City to fund immigration legal services for people with criminal or family court involvement is to fund representation for those clients through the criminal and family defense contracts negotiated and administered by the Mayor's Office of Criminal Justice (MOCJ). However, the substantial delays in our criminal contract as well as the inadequate funding in our family contracts have created a reduction in immigration services rather than an increase.

We call upon the Council to work with MOCJ to ensure that comprehensive Padilla and Padilla-plus representation are included in our criminal and

family court contracts so that all immigrant New Yorkers who come through our doors are able to receive the high-quality immigration legal services that they require in-house.

c. Immigrant Opportunities Initiative (IOI)

This year, Brooklyn Defender Services requests \$200,000 for our Immigrant Youth and Communities Team to continue serving Brooklyn with high-quality, comprehensive immigration legal services. With this funding, BDS will provide immigration status and rights screenings, advice, and direct representation in pursuit of affirmative immigration benefits such as citizenship, lawful permanent residence, special trafficking and victims' visas, VAWA relief, TPS and DACA, and in their defense against deportation in non-detained deportation proceedings, including motions to reopen prior orders of removal, an area where there is a great need for advocacy.

VII. Conclusion

The Council plays a critical role in safeguarding the vibrancy and strength of New York City's immigrant community. This Council has been a national leader in the creation of a first-in-the-nation assigned counsel, NYIFUP program. The allocation of funding to provide legal services to low-income vulnerable immigrant New Yorkers without any criminal history restrictions is one of the most important ways that this Council can send a clear message to reassure the immigrant community that this city values and stands behind every single immigrant New Yorker.

Furthermore, the Council should ensure that the Mayor's Office of Criminal Justice continues to provide adequate immigration resources for us to screen and serve all of our non-citizen clients.

Finally, BDS requests additional funding through the Immigrant Opportunities Initiative to add staff that will provide essential direct immigration services to our clients.