



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

**Nyasa Hickey - Immigration Attorney**

***BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council Committee on Immigration**

**Budget Hearing on**

**March 28, 2016**

**I. 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 the important work that immigration legal service providers do for New York City's diverse residents.

We cannot express enough how thankful we are to this City Council and this City for its visionary investment in legal service programs that have made New York the nation's leader in promoting access to justice and opportunity for its immigrant communities. BDS remains honored to work with this City Council to serve as a legal service provider under one of these programs—the New York Immigrant Family Unity Project (NYIFUP). NYIFUP, as the nation's first public defender system for detained immigrants facing deportation, promotes family unity and a more fair and just process for our immigrant New Yorkers.

My written testimony today will provide the Committee with updates about some of the innovative immigration legal work that City-funded service providers have

accomplished in the last year. I will also identify additional ways that City Council, service providers, and the community can work together to better serve New York's immigrant communities. Most critically, this includes continuing to fund organizations like BDS and other members of immigrant service provider coalitions to provide complex immigration services.

## **II. Current Immigration Legal Services Landscape in New York City**

New York City is the nation's leader in supporting immigrant communities, in large part because of the advocacy and funding provided by the City Council. The Council currently funds NYIFUP, which is among its most ground-breaking immigrant legal service initiatives and is described in greater detail below. The Council has also funded the Immigrant Children Advocates Relief Effort (ICARE), in partnership with private funders, to assist unaccompanied children in removal proceedings and on the priority dockets of the New York immigration court. A third City initiative, ActionNYC, is funded through the Executive Budget and in partnership with the City Council, and is the nation's largest investment by a municipality to prepare for executive action. Action NYC has created a city-wide system rooted in immigrant community organizations to provide quality immigration-related information and affirmative immigration benefit support—at least for simple applications such as DACA, TPS, I-130 petitions, straightforward I-485 adjustment of status applications, greencard renewals, FOIAs, and work authorization applications—to thousands of New Yorkers. Finally, our understanding is that the City's Immigrant Opportunities Initiative (IOI) will remain an additional source of funding for the provision of immigration legal services, although current and prospective providers under the IOI await further clarification from the City as to when and how IOI funding will be allocated in coming years.

The need for all this funding has never been more acute. The years 2009 to 2016 have brought more immigration enforcement than this country has previously ever seen. Nationally, the Department of Homeland Security (DHS) officials reported early this year that they intend to continue the raids, hoping to send a signal and prevent a repeat of the surge in illegal border crossings. Although the numbers dipped last spring, a new spike saw more than 10,000 children reach the border in October and November alone. Immigrant families across the country and in New York City experienced widespread panic in the wake of DHS's announcement. Fear of detention led to children staying home from school and parents not reporting to work and contributed to distrust of all law enforcement.<sup>1</sup> Although "surge"-related DHS arrests have not been confirmed yet in New York City, just over the past year we have seen a dramatic increase in the rates of home arrests where ICE apprehends New Yorkers at home, often in pre-dawn hours, sometimes with misleading pretenses to locate targeted individuals.<sup>2</sup> ICE has also

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<sup>1</sup> Liz Robbins, "Rumors of Immigration Raids Stoke Fear in New York," NEW YORK TIMES, Jan. 6, 2016.

<sup>2</sup> Pamela Constable, "Deportation raids to continue, despite outcry," THE WASHINGTON POST, Jan. 8, 2016.

arrested clients in the courts as well as in sensitive locations such as homeless shelters.<sup>3</sup> Long-time and new residents of our city alike are facing deportation in high numbers.

Furthermore, over the past several decades, the immigration detention and deportation laws have become increasingly intricate and complex. These laws are extremely harsh, often mandating deportation and detention for individuals with the most minimal criminal records. It is extremely difficult, if not impossible, for immigrants and their families to navigate on their own in most deportation cases. Not until New York City launched NYIFUP in 2013 was any city resident ensured the right to assigned counsel in her deportation defense if she could not afford one.

### **III. The need for additional funding for complex immigration cases**

As described above, New York City's current funding landscape for immigration legal services includes resources to protect the due process rights of detained immigrants in deportation proceedings (through NYIFUP) and non-detained unaccompanied minors and adults with children on the "surge" dockets at 26 Federal Plaza (though ICARE). It also includes (through Action NYC) resources to help thousands of immigrant New Yorkers to identify what options they may have to obtain lawful immigration status and to provide them with affirmative immigration application assistance for simple cases such as DACA, TPS, I-130 petitions, straightforward I-485 adjustment of status applications, greencard renewals, FOIAs, and work authorization applications.

**There is a very noticeable gap in funding, however, for immigrant New Yorkers to access quality legal services for other, more complex immigration cases.** Action NYC educates undocumented communities about immigration options and provides navigators to assist with straightforward immigration applications. Everywhere they go, these navigators are finding immigrants with complex cases who need legal representation. **Action NYC is a great start, but with existing immigrant legal services programs at capacity, thousands lack the representation needed to retain or obtain lawful status given the complexity of their legal issues.** These more complex immigration cases that require competent counsel include but may not be limited to:

- *Affirmative benefits cases that routinely involve more substantial attorney or BIA-accredited representative work, such as Special Immigrant Juvenile cases; U visas, S visas, and T visas; VAWA self-petitions; I-485 adjustment of status applications that also require I-601 waivers (of unlawful presence or criminal inadmissibility bars) or I-212 waivers (for prior deportation/removal cases) or other waivers; and Asylum;*
- *Non-detained removal defense cases (other than those on the "surge dockets" that may obtain counsel through ICARE);*

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<sup>3</sup> See Kirk Semple, "Advocates Seek to Make Courthouses Off Limits to Immigration Officials," NEW YORK TIMES, May 26, 2014; see also Max Rivlin-Nadler, "Why Are the Feds Stalking Immigrants at Courthouses in New York?," VICE, Dec. 9, 2015.

- *Cases involving appeals to the Board of Immigration Appeals (BIA), the Administrative Appeals Office (AAO), or state or federal courts where necessary or appropriate, such as an appeal to a higher state court upon the denial of a family court guardianship petition, or a federal habeas petition or Petition for Review;*
- *Immigrant workers' rights cases; and*
- *Other complex affirmative immigration benefits cases, including those that may otherwise be more straightforward applications but that present complications such as evidentiary issues or criminal histories.*

**The City should fill this gap by increasing funding for non-profit immigration legal service providers like BDS across the city to provide this immigration assistance in these complex cases.** We respectfully submit that, in doing so, the City should be mindful of the fact that complex immigration cases often take years and are resource-intensive. Ensuring continuity of quality representation means, ideally, funding multi-year contracts with experienced legal services providers and paying a case rate commensurate with the work involved. This investment will pay off. Every deportation prevented or Green Card obtained means tens of thousands of dollars in wages, taxes, and federal benefits that will flow into and through our communities.<sup>4</sup> These cases save lives, as people fleeing violence abroad, or vulnerable to exploitation here, are granted a safe harbor and a new beginning.

BDS is a proud member of LEAP, a diverse coalition of direct civil legal services providers. LEAP members work collaboratively to increase the availability and quality of civil legal services for low-income persons in NYC, and view representation as a continuum, connecting people to benefits and services to maximize their long-term stability in addition to providing them the legal services assistance they need. BDS currently provides complex immigration services through our NYIFUP and Immigrant Youth and Communities Projects. More details about these projects and our criminal-immigration *Padilla* practice are located in the sections below.

#### **IV. BDS Provision of Immigration Legal 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 paralegals<sup>5</sup>, 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

<sup>4</sup> See The Center for Popular Democracy, *The New York Immigrant Family Unity Project: Good for Families, Good for Employers and Good for All New Yorkers*, available at [http://populardemocracy.org/sites/default/files/immigrant\\_family\\_unity\\_project\\_print\\_layout.pdf](http://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf)

<sup>5</sup> 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.

community outreach clinics. The following section outlines how BDS uses current funding to defend our clients and promote stability for immigrant communities.

### ***a. New York Immigrant Family Unity Project***

The New York Immigrant Family Unity Project (NYIFUP) is New York City's groundbreaking, first-in-the nation program providing quality 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).

In its first three years, NYIFUP has shown remarkable success and served as a model for access to justice. The following numbers were provided to us from the Vera Institute of Justice based on a preliminary and ongoing analysis of NYIFUP.

#### Record of Success.

- **Outcomes:** NYIFUP has obtained relief, termination, or administrative closure for 154 clients, who may now remain in the United States. NYIFUP attorneys have won approximately 70% of their trials.
- **Clients Released from Detention:** Counting these 154 successful outcomes, NYIFUP has secured release from custody for 452 clients. Thus, 31% of NYIFUP's clients have been released from detention thus far and have been reunited with their families.
- **Ancillary Proceedings:** NYIFUP has initiated 153 ancillary proceedings—proceedings in other courts or with USCIS that are critical to obtaining successful outcomes or release from detention in the deportation proceedings.
- **Voluntary Departures:** NYIFUP has negotiated 102 voluntary departures so that individuals could avoid the onus and legal consequences of a deportation orders
- **Families Across the City:** NYIFUP has represented clients living in 49 out of 51 City Council districts.

#### National Model.

- **Spurring Replication Across New York State:** Inspired by New York City's leadership, the New York State Assembly provided funding in FY 2015 for a small pilot program at the Batavia Immigration Court in upstate New York, which has shown great success reuniting detained immigrants with their families. In FY 2016, the State Assembly has doubled this funding, expanding the reach of NYIFUP pilot programs upstate.
- **Inspiring Efforts Across the Country:** NYIFUP has been the subject of national press and inquiry from jurisdictions across the country. In 2015, a NYIFUP-inspired universal representation program opened its doors in New Jersey, and cities including San Francisco, Chicago, and Boston have convened formal "study groups" to issue reports on access to counsel and develop programs like NYIFUP in their jurisdictions.

We are proud that NYIFUP has accomplished so much in such a short time. **For FY 2017—we are requesting—together with the other NYIFUP providers—additional resources to continue this ground-breaking program and ensure that it addresses the needs of this population of immigrants in ICE detention.**

### *Continued High-Quality Legal Services*

NYIFUP's primary goal is to preserve the unity of families, but it also aims to keep New York City's vibrant immigrant communities strong. As documented by The Center for Popular Democracy,<sup>6</sup> keeping families together saves New York government and employers significant sums, offsetting much of the cost of representing each NYIFUP client.

NYIFUP teams, including experienced immigration attorneys, BIA-accredited representatives, and social workers, provide culturally competent representation for our clients in highly complex cases:

- NYIFUP provides representation in immigration court at master calendar hearings, bond hearings, mental competency hearings, and merits hearings.
- NYIFUP handles appeals at the Board of Immigration Appeals and federal circuit courts of appeals.
  - A NYIFUP case at the Second Circuit Court of Appeals, *Lora vs. Shanahan*, established for the first time our clients' right to an individualized bond hearing after six months of detention, even for those who are subject to mandatory detention.<sup>7</sup>
- NYIFUP provides representation in family court to obtain Special Findings Orders, which allow abused, neglected and abandoned children to file Special Immigrant Juvenile Status Petitions and become LPRs.
- NYIFUP attorneys assist in criminal court to resolve open cases, and to obtain vacatur or other post-conviction relief that allow New Yorkers to remain with their families.
- NYIFUP attorneys assist in federal district court when collateral proceedings – such as habeas corpus petitions or requests for declaratory judgment – are necessary for their immigration cases.
- NYIFUP social workers provide social work services to detainees to support and assist them to obtain appropriate programs related to psychological assistance, drug/alcohol addiction and job services.
- NYIFUP has increased awareness of detention issues through work with other legal services providers, community based organization and through media advocacy.

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<sup>6</sup> The Center for Popular Democracy, *The New York Immigrant Family Unity Project: Good for Families, Good for Employers and Good for All New Yorkers*, available at

[http://populardemocracy.org/sites/default/files/immigrant\\_family\\_unity\\_project\\_print\\_layout.pdf](http://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf)

<sup>7</sup> Batya Ungar-Sargon, "Immigrants' fates depend on access to lawyers," CITY LIMITS, Dec. 17, 2015, available at <http://citylimits.org/2015/12/17/immigrants-fates-depend-on-access-to-lawyers/>.

- NYIFUP attorneys have raised the level of practice in the immigration courts by providing high quality legal services.

The following two BDS NYIFUP client stories demonstrate how NYIFUP makes a difference in comparison to study results that have shown that 95 percent of detained unrepresented immigrants do not make a claim that would entitle them to stay in the country and 97 percent of detained unrepresented immigrants lose their cases. Without representation, these two immigrants would virtually certainly have been deported.

**Simon** (a pseudonym) immigrated to the United States from the Dominican Republic as a Lawful Permanent Resident (green card holder) in 1992. At that time, he joined his mother and sister in Brooklyn, who were operating two bodegas in Crown Heights. Simon inherited one of the stores after his mother died in 1994, and managed it for the next seven years. Thereafter, he worked a number of jobs, most recently as a medical equipment deliveryman. He has not been able to work since 2010, however, when he suffered a debilitating on-the-job injury, slipping off his truck and sustaining severe back injuries. He has had two back operations and suffers from chronic pain that needs to be managed through regular medication and therapy.

Simon was arrested in an ICE home raid in 2014 based on a 1999 misdemeanor drug possession conviction, for which he received a conditional discharge and no jail time. His BDS NYIFUP lawyer argued that he was eligible for bond, but the judge ruled that the law precluded release. Thereafter, NYIFUP counsel filed an application for cancellation of removal in immigration court, and a petition for a writ of habeas corpus in federal court, arguing for a bond hearing. Before the application for habeas corpus was ruled upon, the immigration court granted the application for cancellation of removal based upon his strong family and community ties, entitling Simon to be reunited with his wife and sons and to remain permanently in the United States.

After successfully resolving his deportation case, Simon, with the help of BDS NYIFUP, applied for U.S. citizenship. His application was approved and, on August 19, 2015, at the age of 49, Simon was sworn in as a U.S. citizen at federal court in Brooklyn, becoming one of the first NYIFUP clients to obtain citizenship after winning his deportation case. Simon's naturalization automatically made his one son who was still under 18 a U.S. citizen as well.

**Christian** (a pseudonym) was a long-time LPR from Panama who moved to the United States at 18 years old to join his mother in the United States. Christian never knew his father, an African-American serviceman stationed at Fort Davis in the Panama Canal Zone. In New York, Christian worked as a refrigerator and air conditioning repairman, as well as in construction. He also became father to five

children of his own. His youngest daughter, Layla, is only two years old. Prior to Christian's detention by Immigration and Customs Enforcement ("ICE"), he, Layla, and her mother, Victoria, lived together in uptown Manhattan.

On April 30, 2014, Christian was arrested by ICE while making a routine court appearance in Kings County Criminal Court. He was detained and placed in removal proceedings. Christian was detained in New Jersey for nearly six months and appeared *pro se* before an Immigration Judge three times. Immigration officials said he was deportable based on misdemeanor convictions. Christian informed the judge that his father was a United States citizen in the hope that he would be spared from deportation. However, he struggled to fight his case alone and from detention. Eventually, in the middle of October 2014, after over five months in detention, Christian obtained counsel through NYIFUP. His BDS NYIFUP lawyer told ICE officers that Christian had a citizenship claim through his USC father, and that he should never have been placed in detention. Christian was subsequently released on October 20, 2014. His BDS NYIFUP attorney then briefed arguments that Christian's proceedings should be terminated on the grounds that the government had not met its burden to prove alienage and that Christian had acquired citizenship at birth through his USC father. The DHS trial attorney agreed with the latter argument, and filed his own motion to terminate on that ground. Christian's case was terminated with prejudice on September 11, 2015, nearly a year after his release from detention. He has applied for proof of citizenship with USCIS, and reunited with his partner, his children, and his extended family in the United States.

These are just two of the stories of the more than 1,000 New Yorkers that NYIFUP attorneys represented last year. In FY 2016, NYIFUP is well on-track to serve over 1,200 New Yorkers.

Projected Intake – TOTALS FOR ALL 3 NYIFUP PROVIDERS			
	FY 15	FY 16	FY 17
Clients Served	1,003	1,200	Approximately 1,400

**ASK: For FY 2017, the NYIFUP providers are requesting that the City fund \$2.37 million per legal service provider, for a total of \$7.11 million for legal and social services.<sup>8</sup>**

<sup>8</sup> While our carry-over docket has built up over the past two years, we anticipate it plateauing in FY 2017 as more of our non-detained carryover cases from FY 2105 are resolved. Starting with FY 2017, we believe our carry-over non-detained caseload will level out due to increased resources at 26 Federal Plaza and the natural catching up of our trial dates.

**This amount will cover comprehensive legal services for 1,476 people facing deportation.** This increase will allow us to represent more detained New Yorkers in need, as well as continue to provide high-quality representation in multiple forums for all of our clients.

#### **b. *Padilla*-support for BDS's criminal defense clients**

While our NYIFUP clients involve a large portion of our immigration practice resources because of the complex nature of those cases, BDS serves an even larger number of immigrant clients through our *Padilla* practice team.

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.<sup>9</sup> Absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel.

The consequences of the *Padilla* ruling for public defender offices like BDS have been nothing short of a sea change. BDS hired its first immigration attorney in 2009, before the *Padilla* decision came down, to help advise BDS's criminal defense attorneys and their noncitizen clients on the immigration consequences of guilty pleas and avoid or minimize the negative immigration consequences to the fullest extent possible. Since *Padilla*, our *Padilla* practice team has grown to five full-time equivalent immigration attorneys who provide this critical *Padilla* support to our noncitizen clients facing criminal charges. Still, with a criminal defense practice that represents around 40,000 Brooklyn residents every year, BDS requires additional resources to grow our *Padilla* practice team to meet the full extent of need.

About 23% of BDS's annual 40,000 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. On average, our *Padilla* team is called at least once in each arraignment shift to advise on the ramification of a plea offer at arraignment, and they provide support and expertise on about 5% of the cases that survive arraignment. The *Padilla* practice attorneys frequently go to court to explain the law and/or clarify issues for the prosecutor and judge in specific cases. They also work with BDS criminal defense attorneys on pre-pleading memoranda and to review prior convictions (identifying potential post-conviction relief options for clients) when that could mitigate the immigration consequences of the criminal case. The *Padilla* team writes travel letters for our noncitizen clients, explaining the facts of the current case to facilitate their re-entry into the U.S. without problems. Finally, because their *Padilla* consultations often require full immigration history interviews with clients, the team identifies available options for these clients to obtain lawful immigration status, advising them of those opportunities and either making internal referrals to our Immigrant Youth and Communities Project,

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<sup>9</sup> *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).

described below, or external referrals when our Immigrant Youth and Communities Project has insufficient capacity.

The following two *Padilla* Team client stories illustrate how critical *Padilla* immigration legal support can be for our noncitizen criminal defense clients:

**Sonia (a pseudonym)**. Toward the end of 2013, in the midst of unprecedented levels of violence in her home country of Honduras, Sonia began receiving threats from the same gang members who had killed her father, sister, and uncle. Fearing for her life, she and her young daughter left their remaining family behind and traveled to the United States, where they hoped to live with a cousin. Nearly a year after arriving, Sonia was arrested for improperly disciplining her daughter (she had been using methods that were common and acceptable in Honduras), and she was charged with endangering the welfare of a child. When Sonia's public defender learned that Sonia did not have lawful status in the United States, she referred the case to a BDS *Padilla* attorney. Upon hearing her story of persecution in Honduras, the BDS *Padilla* attorney, working with our Immigrant Youth & Communities Project (below), filed an asylum application on her behalf, narrowly avoiding the statutory bar for applications filed more than one year after a noncitizen's entry to the United States. He also identified the possibility of Special Immigrant Juvenile Status for the daughter, who had been abandoned at birth by her father. BDS is now working on obtaining SIJS for Sonia's daughter.

**Claudia (a pseudonym)**. Claudia married the man she hoped would be the love of her life. Within two months, however, she learned that he was having an affair. When she confronted him, he began a cycle of physical and mental abuse against her, apparently with the goal of convincing her to stay with him. The abuse continued even after she ended their relationship and he would frequently show up to her home and place of work to berate her. Claudia eventually went to a center for survivors of domestic violence where she was connected with a pro bono attorney. She then filed a petition for permanent residence under the Violence Against Women Act ("VAWA"). She was awaiting a decision from the U.S. Citizenship and Immigration Service when her ex-husband again forced his way into her home. When he saw that she was wearing a jacket he had bought her, he grabbed a knife and attempted to cut it off of her. In the process, he ended up cutting himself. He called the police and stated that she had assaulted him with a knife. Claudia was arrested and charged with a number of misdemeanor offenses, a conviction of some of which could have taken away her only defense to deportation. Due to the ex-husband's injury, which required stitches, the Kings County District Attorney's Office was not initially sympathetic to Claudia's self-defense claim. The BDS defense team including the assigned *Padilla* attorney, submitted a letter to the DA explaining the client's history of abuse, her impressive career goals (she was enrolled in nursing school), and the potentially drastic immigration consequences a conviction would have. The Assistant DA was moved by the letter and agreed to an adjournment in contemplation of dismissal, an outcome that carries no immigration

consequences. Claudia's application for permanent residence was approved soon thereafter.

**Ask:** We are requesting that the City Council support our request to the Mayor's Office of Criminal Justice for supplemental funding to cover increasing criminal defense costs, including *Padilla* costs.

**c. BDS's Immigrant Youth and Communities Project—Quality Representation for both Simple and Complex Immigration Cases**

In addition to our advocacy work with LEAP (described above), BDS has applied separately for funds from the City Council's Immigrant Opportunities Initiative (IOI) to provide a broad range of immigration legal services to Brooklyn's low-income immigrant youth and families. IOI funding would help fund BDS's **Immigrant Youth and Communities Project**. Since launching the project in 2012, BDS 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 assisting more than 320 young clients in their pursuit of Special Immigrant Juvenile Status (SIJS), Adjustment of Status, U visas, Deferred Action for Childhood Arrivals (DACA) and other immigration benefits or removal defense, and assisting more than 1,000 Haitian New Yorkers with their applications for Temporary Protected Status, work authorization, and other immigration benefits or removal defense.

Our Immigrant Youth and Communities Project seeks to strengthen Brooklyn's immigrant communities by procuring or retaining lawful immigration status for its immigrant youth and adults, bringing them out of the shadows and securing their meaningful access to justice and opportunity. With IOI funding, BDS can maintain and grow our Project staff to provide community education, legal screening, advice and full representation to low-income Brooklyn immigrant youth and adults borough-wide, in their pursuit of affirmative immigration benefits such as citizenship, lawful permanent residence, asylum, Special Immigrant Juvenile Status, special trafficking and victims' visas, VAWA relief, TPS, and DACA, and in their defense against deportation in non-detained deportation proceedings.

Although BDS's Immigrant Youth and Communities Project includes application assistance in simple cases such as DACA and TPS, we have extensive expertise in the delivery of quality legal representation in much more complex immigration cases.

- **Cases involving appeals** to the Board of Immigration Appeals (BIA), the Administrative Appeals Office (AAO), or state or federal courts where necessary or appropriate, such as an appeal to a higher state court upon the denial of a family court guardianship petition, or a federal habeas petition or

Petition for Review. BDS's Immigration Practice has considerable experience litigating complex immigration cases at the appellate levels.

- **We have represented clients in 35 BIA and AAO appeals in the last two years**, primarily in the removal defense context whether we pursued the appeals on behalf of our clients or defended our clients against appeals brought by the government to challenge immigration judges' decisions in favor of our clients;
  - **We have represented clients in 29 federal habeas petitions in the last two years**, challenging our detained immigrant clients' being held subject to mandatory detention without the opportunity to seek release on bond.
- **Non-detained removal defense cases.** BDS represents hundreds of detained immigrant New Yorkers each year through NYIFUP. Consequently, our removal defense expertise is deep and ongoing. BDS's representation of immigrants in non-detained removal proceedings that are not covered by NYIFUP, however, remains currently unfunded, and our request to the City Council for FY 2017 IOI funding would allow us to continue and grow this aspect of our work.
  - **Affirmative benefits cases that routinely involve more substantial attorney or BIA-accredited representative work**, such as Special Immigrant Juvenile cases; U visas, S visas, and T visas; VAWA self-petitions; I-485 adjustment of status applications that also require I-601 waivers (of unlawful presence or criminal inadmissibility bars) or I-212 waivers (for prior deportation/removal cases) or other waivers; and Asylum. Our Immigration Practice handles many of these more complex affirmative benefits cases. **For example, we undertook 93 SIJS cases and 23 U visa cases in the last two years alone. And in both affirmative and defensive cases, we have engaged in 133 cases involving I-589 asylum and related persecution-based claims on behalf of clients.**
  - **Other affirmative benefits cases (including those that may otherwise be more straightforward applications but that present complications such as evidentiary issues or criminal histories).** As an Immigration Practice that is integrated into a larger public defender office, BDS is expert in representing criminal justice-involved immigrants—a population generally underserved by other immigrant legal service providers and an extremely complicated area of law. As just one example of this type of complex case we are well-suited to serve, a participant who may be eligible for Adjustment of Status may have a criminal arrest record that requires gathering of criminal court records, careful analysis thereof, and—if the participant is indeed adjustment-eligible— full representation in the preparation of a more substantial adjustment application complete with evidence of rehabilitation and other equities such as to enhance likely USCIS approval.

The following are just a few examples of the very complex immigration cases BDS works on:

- **SIJS case made further complicated by a necessary appeal** - We handled a successful appeal of a denial by a family court judge in a case involving Special Immigrant Juvenile Status (SIJS) client **Alicia** (name is a pseudonym). Following appeal to the 2<sup>nd</sup> Department Appellate Division of the New York State Supreme Court, the case was remanded to the family court and was ultimately granted by the family court judge. Alicia's application for SIJS has since been approved and her removal proceedings terminated, and she hopes to receive her green card in the next several months.
- **Case involving prior removal order** - BDS has represented numerous children and adults in reopening prior orders of removal, allowing them to pursue benefits such as Special Immigrant Juvenile Status, asylum, and family-based petitions. **Carlos** (a pseudonym) is eight years old and a client of BDS. Carlos failed to attend an immigration court hearing because his father got into a car accident while taking him to court. BDS filed a motion to reopen Carlos' case, arguing that the car accident, combined with the child's young age and dependency on his father, constituted "exceptional circumstances" warranting reopening of the case. The immigration court reopened Carlos' case, and he is now in the process of seeking Special Immigrant Juvenile Status, with our legal representation, based on severe neglect by his mother in Honduras.
- **Case of Crim-Imm, Removal Defense, and Complex Adjustment of Status** – **Michael** (a pseudonym), age 32, is from Haiti, and has lived in the U.S. since he was only seven years old. He does not know how or with whom he entered the U.S. When Michael was still a teenager, his father, a U.S. citizen, applied to sponsor Michael for a green card, but their private attorney failed to respond to requests for evidence from the former Immigration & Naturalization Service (INS), and he never received his green card. Years later, in 2009, he was arrested and charged with sale of a controlled substance. He initially pled guilty to possession of a controlled substance, rendering him ineligible for most immigration benefits including a green card. Michael was subsequently transferred to immigration (ICE) custody and placed into removal (deportation) proceedings, and BDS recruited pro bono counsel to represent him in these proceedings. BDS mentored pro bono counsel who assisted Michael in applying for a range of possible remedies against deportation, including Temporary Protected Status for Haitian nationals and protection under the Convention Against Torture (CAT). While his removal case was pending, BDS attorneys also advocated on Michael's behalf in criminal court, asking the judge to allow Michael to withdraw his guilty plea, and to allow him to participate in a drug treatment program so that his case could later be dismissed. Once Michael's plea was vacated, Michael was released on bond from immigration detention. After Michael's criminal case was successfully dismissed, BDS attorneys were able to secure termination of his removal case, and to finally help him apply once more

for his green card, this time under a complex provision of the Immigration and Nationality Act known as 245(i). BDS counsel accompanied Michael to his green card interview in February 2016, and the immigration officer indicated that he intends to recommend Michael's case for approval.

**Ask: BDS requires substantial funding from Immigrant Opportunities Initiative (IOI), through the City Council, and/or an HRA RFP to continue serving Brooklyn's immigrant youth and communities with high-quality immigration legal services.**

## **V. Conclusion**

Thank you again for this opportunity to share with you the life-changing impact that City Council funds have had on the thousands of immigrant clients that BDS represents every year. I trust that the testimony you hear from BDS and other service providers underscores for you the tremendous importance that City Council funding plays in protecting our immigrant New Yorkers, keeping their families united, and keeping our communities stronger. The next several months will continue to be times of political uncertainty and fear, as presidential candidates campaign on anti-immigrant platforms and we await the U.S. Supreme Court decision in the DACA case. The election in November will certainly have a dramatic impact on this climate of fear and uncertainty one way or another, and may dramatically impact enforcement trends. It is vital that the City of New York be poised to react to whatever political fallout results from the election. BDS looks forward to collaborating with City Council, city agencies, other service providers and community groups through our coalition work to ensure that New York City continues to provide immigrant families, employers and communities with the legal services we need to ensure success and growth for all.