

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

P.L., A.Q., K.T., R.F.J., A.R.B., B.M.B., and)
J.C., individually and behalf of all others)
similarly situated;)
BROOKLYN DEFENDER SERVICES;)
THE LEGAL AID SOCIETY; and)
THE BRONX DEFENDERS,)
Plaintiffs)

v.)

U.S. IMMIGRATION AND CUSTOMS)
ENFORCEMENT;)
U.S. DEPARTMENT OF HOMELAND)
SECURITY;)
UNITED STATES DEPARTMENT OF)
JUSTICE; EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW;)
RONALD VITIELLO, Deputy Director and)
Acting Director of ICE, in official capacity;)
KIRSTJEN NIELSEN, Secretary of)
Homeland Security, in official capacity;)
MATTHEW G. WHITAKER, Acting)
United States Attorney General, in official)
capacity;)
MATTHEW T. ALBENCE, Executive)
Associate Director of ICE Enforcement)
Removal Operations, in official capacity;)
THOMAS R. DECKER, Director of New)
York Field Office of ICE, in official)
capacity;)
WILLIAM P. JOYCE, Deputy Director of)
New York Field Office of ICE, in official)
capacity;)
JAMES MCHENRY, Director of Executive)
Office for Immigration Review, in official)
capacity; and)
DANIEL J. DAUGHERTY, Assistant Chief)
Immigration Judge, in official capacity,)
Defendants.)

Civil Action No. 19-CV-01336 (ALC)

**DECLARATION OF ANDREA SAENZ IN SUPPORT OF PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**


Andrea Saenz, a member of the Bar of New York and a member of the bar of this Court, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows:

1. I am the Attorney-in-Charge of the New York Immigrant Family Unity Project (“NYIFUP”) team at Brooklyn Defender Services (“BDS”). Our NYIFUP office is located at 180 Livingston Street, Brooklyn, NY, 11201.
2. BDS is a nonprofit legal services provider which represents detained clients in removal proceedings under the auspices of NYIFUP.
3. Through NYIFUP, all qualified indigent individuals who are detained by the New York Field Office of Immigrations and Customs Enforcement (“ICE”) are entitled to free legal representation when they are facing deportation (“removal proceedings”).
4. In my capacity at BDS, I direct the NYIFUP team and supervise its staff. I am also responsible for coordinating with the heads of the NYIFUP practice at The Bronx Defenders (“BxD”) and The Legal Aid Society (“LAS”), the two other organizations that provide removal defense through NYIFUP.
5. At BDS, the NYIFUP staff currently consists of four supervising attorneys, fourteen staff attorneys or law graduates, seven support staff, and two social workers.
6. All of the BDS NYIFUP clients are indigent, and a significant portion of our clients have serious mental illness or cognitive impairments. Approximately one quarter of our clients are seriously mentally ill, and many more have been diagnosed with Post Traumatic Stress Disorder or depression. A substantial number of our clients – both those who are mentally ill and those who are not – have cognitive impairments.

7. Historically, NYIFUP cases represented by BDS, BxD, and LAS are assigned to the immigration court at 201 Varick Street, New York, N.Y. (“Varick Street Immigration Court”) while our clients are detained. Since late 2018, the immigration court at 26 Federal Plaza, New York, N.Y. (“26 Fed. Immigration Court”), which typically only hears non-detained cases, sometimes hears these detained cases as well.
8. Since the inception of NYIFUP as a pilot program in 2013, the BDS NYIFUP team has represented over 1,250 clients in removal proceedings. Nearly all of our clients are detained by ICE at one of three jails¹ in the New York City area at the beginning of their removal proceedings. The three NYIFUP providers attempt to split the cases evenly, meaning BxD and LAS both represent approximately the same number of detained immigrants.
9. In late June 2018, ICE suddenly stopped producing NYIFUP clients to court in person for their immigration proceedings (“Refusal to Produce Policy” or “Policy”). Instead, the only way that our clients can participate in their hearings is through videoconference (“VTC”) technology from the county jails where they are detained.
10. Since June 2018, this new policy has being applied broadly to our clients, regardless of the type of hearing that is being conducted. In 2018, BDS picked up 279 new cases, 135 of those since the Policy was implemented. We currently represent approximately 120 detained clients in removal proceedings. We represent many other clients who were initially detained by ICE but who were subsequently released on bond. Overall, our current docket includes about 370 removal cases. I understand that BxD and LAS picked up approximately the same number of cases in 2018.

¹ The three jails where most of our clients are detained are the Orange County Jail in New York or the Bergen or Hudson County jails in New Jersey.

11. From June until December 2018, none of our clients were produced to immigration court in person. Despite the vast array of legal arguments and broad range of mechanisms that NYIFUP attorneys used to try to ensure that clients were brought to court, ICE consistently and uniformly refused to produce them in person, and the immigration judges refused to order in-person production.
12. In early December 2018, we learned that ICE would “temporarily resume” in-person production of our clients who are detained at the Bergen County Jail to the Varick Street Immigration Court for their hearings. A few weeks later, we learned that ICE was occasionally bringing some detained immigrants from the Hudson County Jail to the 26 Fed. Immigration Court for their hearings. Even with these temporary changes, ICE is still refusing to bring to court most of our clients from the Hudson County Jail and all of our clients from the Orange County Jail. And while we are relieved to see our clients detained at the Bergen County Jail in person, the unpredictable and temporary nature of the current system is untenable.


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Dated: February 14, 2019
New York, NY