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**TESTIMONY OF:**

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**Presented before**

**The New York City Council**

**Committee on Immigration**

**Oversight - Protection for Immigrant Communities**

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My name is Ellen Pachnanda, and I am the Director of the Immigration Practice at Brooklyn Defender Services. BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. Brooklyn Defender Services (BDS) is grateful to the Council for holding this timely and critical hearing. We recognize that there are many questions about potential changes to federal immigration policies and enforcement that may have a significant impact on New York City's immigrant communities. We want to thank the Committee on Immigration, particularly Chair Avilés, for inviting us to testify today about how we can continue to collaborate in protecting New York City's immigrant communities.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. We represent approximately 22,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals and administrative staff who are experts in their individual fields. BDS is fortunate to have the support of the City Council to supplement the services we provide as a public defender office in Brooklyn. Through specialized units, we provide extensive wrap-around services to meet the needs of people with legal system involvement, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

BDS works at the intersection between the criminal legal and family court systems and the immigration legal system. We witness everyday how these systems treat immigrant New Yorkers unequally. Even minor criminal offenses, often the result of over-policing, can lead to mandatory incarceration in the Department of Homeland Security (DHS) detention facilities, or permanent

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separation from family and exclusion from this country because of the entanglement of the criminal or family legal systems and our federal immigration laws.

As a result, “the immigration system’s historic reliance on criminal arrests and convictions to inform discretionary decisions about whom to detain and deport incorporates these disparities directly into the immigration system”<sup>1</sup> results in the over-policing of Black and brown communities. An arrest alone, even where the district attorney declines to prosecute or where a judge dismisses and seals the case, can lead to immigration detention.

BDS’ Immigration Practice works to minimize the negative immigration consequences of family court and criminal charges for non-citizens, represent people in applications for immigration benefits, and defend people against Immigration and Customs Enforcement (“ICE”) detention and deportation. Since 2009, BDS has counseled, advised, or represented more than 22,000 people in immigration matters including deportation defense, affirmative applications, and immigration consequence consultations in Brooklyn’s criminal court system. Our *Padilla* team attorneys are criminal-immigration specialists who provide support and expertise on thousands of cases, including advocacy regarding enforcement of New York City’s detainer law, individualized immigration screenings, and legal consults.

### **New York Immigrant Family Unity Project (NYIFUP)**

NYIFUP continues to be a model of access to justice nationwide and has inspired replication in many states and cities that want to stand beside their immigrant communities to ensure families are not separated by deportation because they cannot afford counsel. In 2013, with funding from the City Council, BDS became one of the three legal providers for the New York Immigrant Family Unity Project (NYIFUP), the nation's first-ever universal representation program for detained immigrants facing deportation. Along with the Bronx Defenders and The Legal Aid Society, BDS specializes in representing people who are detained while they await their deportation hearing. We also provide continued representation on immigration matters to our previously detained immigrant clients after securing their release from ICE custody. Since the inception of the program, we have represented over 1,852 people in deportation proceedings.

Nationwide, there are now over 50 localities that have committed public dollars to deportation defense, with NYIFUP as the gold standard and the model. This includes expanded funding in New Jersey and Pennsylvania’s renewed program, PAIFUP (the Pennsylvania Immigrant Family Unity Project). BDS has regularly provided support and training to those programs. Additionally, we routinely provide training and technical assistance on federal work for organizations in New Jersey.

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<sup>1</sup> Policy Brief, *Disentangling Local Law Enforcement from Federal Immigration Enforcement*, National Immigrant Justice Center (Jan. 13, 2021), available at <https://immigrantjustice.org/research-items/policy-brief-disentangling-local-law-enforcement-federal-immigration-enforcement>

BDS seeks to preserve family unity for people facing deportation, keep individuals living and working in their communities, protect the legal rights of immigrants, reduce the number of people in immigration detention, and strengthen the fabric of immigrant communities. Our work is centered on our clients and, in addition to providing legal representation and counsel, we support the health and stability of people facing deportation and their family members by connecting them to essential services, such as healthcare, counseling, BDS' civil legal services, and other community-based support.

As part of NYIFUP, BDS immigration staff conduct intake and are assigned the cases of anyone who qualifies for our legal services. Though we screen each person's case for immigration relief, we represent every individual who qualifies for our legal services. Our staff work tirelessly to avoid deportation and to keep our clients with their families, in their communities. With the support of this Council we are also able to provide education and resources to the broader community and other legal providers.

## **NYIFUP Providers are Well-Positioned to Address Anticipated Immigration Policy Changes**

In 2018, NYIFUP saw a 40% increase in detained cases based on federal immigration policies. Our offices pivoted to address increased detention, utilizing our expertise in detained removal defense and federal practice to secure release and immigration relief for clients. During the previous presidential administration, immigration enforcement policies and guidance focused on increased efforts to arrest and detain all removable noncitizens, and a revised policy intended to increase the use of detention for civil immigration enforcement.<sup>2</sup> There were increasingly aggressive incidents involving ICE enforcement in sanctuary jurisdictions throughout the country.<sup>3</sup>

BDS stands ready to respond to the anticipated rapidly changing policies of the incoming administration. From 2016 to 2020, and then during the period of COVID, the NYIFUP providers

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<sup>2</sup> See, e.g., ICE, "ICE ERO immigration arrests climb nearly 40%," available at <https://www.ice.gov/features/100-days> (noting "In the 100 days since President Donald J. Trump signed Executive Orders (EOs) regarding immigration enforcement priorities, U.S. Immigration and Customs Enforcement (ICE) has arrested more than 41,000 individuals who are either known or suspected of being in the country illegally. This reflects an increase of 37.6 percent over the same period in 2016. Between Jan. 22 and April 29, 2017, ICE Enforcement and Removal Operations (ERO) deportation officers administratively arrested 41,318 individuals on civil immigration charges. Between Jan. 24 and April 30, 2016, ERO arrested 30,028.")

<sup>3</sup> The Marshall Project reports, "In the eight months after Trump's inauguration, ICE arrests in the New York area jumped by 67 percent compared to the same period in the previous year." See *New York on ICE*, The Marshall Project in collaboration with New York Magazine (Jul. 23, 2018) available at <https://www.themarshallproject.org/2018/07/23/new-york-on-ice>; Pew Research Center details that "The number of interior arrests made by ICE...rose 30% in fiscal 2017...[and] went up again in fiscal 2018." See Gramlich, J., *How border apprehensions, ICE arrests and deportations have changed under Trump*, Pew Research Center (March 2, 2020), available at <https://www.pewresearch.org/short-reads/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/>

quickly pivoted to these changes. We filed more federal actions to secure release of clients, preserved their rights in immigration court by filing more appeals, and used our motion practice before the courts to fight off advancement of cases that would have prejudiced their rights. We also developed We Have Rights, an empowerment campaign to aid our immigrant communities in preparing for and safely defending their rights in the face of ICE enforcement. Videos are available here <https://www.wehaverights.us/> and available in seven languages. With another expected surge in ICE detention, the NYIFUP program will require enhanced funding to meet the increased needs of New York’s immigrant communities.

### **Anticipated Immigration Policy Changes**

ICE has the authority and discretion to detain individuals in any state or territory in the United States. We anticipate an increase in the detention of New York City residents, and subsequent transfer to locations far away from their families and homes, possibly to places where they will not have access to legal services. The incoming presidential administration has stated it will prioritize “immigration-related executive actions within days, including a dramatic shift in immigration enforcement in the interior of the United States.”<sup>4</sup> We anticipate, not just an escalation in immigration enforcement efforts, but also enforcement efforts that are hyper focused on individuals who come into contact with the criminal and family legal systems. We further anticipate increased efforts by ICE to arrest individuals at and around their homes and places of work. There are recent reports of plans to rescind a long-standing policy which has prevented immigration enforcement at protected areas/sensitive locations except under certain circumstances.<sup>5</sup> Should this policy be eliminated, we will begin to see ICE arrest immigrants outside New York City schools, hospitals and other healthcare facilities, and places of worship.<sup>6</sup> With enhanced funding, NYIFUP will work to meet the demands of increased ICE enforcement.

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<sup>4</sup> Orozco, A., “What Will Mass Deportations Look Like?”, *Immigration Impact*, American Immigration Council (Dec 6, 2024) available at <https://immigrationimpact.com/2024/12/06/what-will-mass-deportations-look-like/>

<sup>5</sup> Ainsley, J. and Martinez, D., *Trump plans to scrap policy restricting ICE arrests at churches, schools and hospitals*, NBC News (Dec. 11, 2024) available at <https://www.nbcnews.com/investigations/trump-scrap-restriction-ice-arrests-churches-schools-rcna183688>

<sup>6</sup> In 2011, ICE issued a memorandum on “Enforcement Actions at or Focused on Sensitive Locations,” describing its policy on immigration enforcement actions (such as arrests, interviews, searches, and surveillance operations) at what it calls “sensitive locations.” John Morton, Memorandum on “Enforcement Actions at or Focused on Sensitive Locations,” (Oct. 24, 2011), available at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> U.S. Customs and Border Protection (CBP) also released its own memo regarding its operations at sensitive locations in 2013. In 2021, Secretary of Homeland Security Alejandro N. Mayorkas replaced the sensitive locations guidance with the issuance of “Guidelines for Enforcement Actions in or Near Protected Areas,” an updated memorandum which described a unified, Department-wide policy to guide CBP and ICE enforcement actions, such as arrests, interviews, searches, and immigration enforcement surveillance operations, in or near areas that require special protection. Alejandro N. Mayorkas, Memorandum on “Guidelines for Enforcement Actions in or Near Protected Areas,” (Oct. 27, 2021) available at [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf)

We also anticipate that prosecutors in immigration court will no longer be required to utilize their discretion to resolve or dismiss cases. Thus, the immigrant New Yorkers will remain in removal proceedings for years. Additionally, as we saw from 2016 to 2020, there will be rapid changes in policies and legal authority - during that period, the U.S. Attorney General weekly certified cases to himself so that he could change the law regarding immigration relief. We anticipate that once again policies will shift to limiting bases for asylum relief, for example denying relief for victims of domestic violence. We also saw Special Immigration Juvenile Status (“SIJS”) be suspended - taking away relief for children who were neglected or abandoned by their parents.

### **New York City Detainer Laws**

The New York City Council continues to be a leader in ensuring the protection of all New Yorkers. In October 2014, the Council passed groundbreaking legislation (detainer discretions laws) that removed ICE from Rikers Island and prevented the New York City Department of Corrections (“DOC”), the New York City Police Department (“NYPD”), and the Department of Probation (DOP) from unlawfully detaining non-citizens without a judicial warrant.

These detainer discretion laws were intended to prevent non-citizens detained in DOC and NYPD custody from being transferred to immigration detention. However, given the intransigence of ICE’s aggressive apprehension and detention policies, and the agency’s enforcement priorities, years later, it is evident that our criminal legal system continues to cause non-citizens to be apprehended by ICE as the vast majority of New York City residents detained by ICE have had contact with the criminal legal system. This is especially concerning given the provisions of the Laken Riley Act, now pending before the U.S. Senate, that would allow for mandatory detention of those merely accused of crimes.<sup>7</sup>

During an oversight hearing before the New York City Council in February 2023, DOC testified that it interprets the 2014 detainer discretion laws to contain a loophole which allow DOC to notify the Department of Homeland Security (DHS) of an individual’s release based on a finding of “dangerousness,” as established by a recent criminal conviction for one of the enumerated 177 offenses, or inclusion on the FBI’s terrorist watch list.<sup>8</sup> Once ICE is notified of the person’s impending release, ICE is free to show up at the DOC facility and take custody of the person directly from DOC.

We understand that DOC facilitates the transfer of individuals to ICE custody based on the notification loophole, when people have a qualifying conviction. The spirit behind these laws was

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<sup>7</sup> H.R.7511 - 118th Congress (2023-2024): Laken Riley Act

<sup>8</sup> New York City Council Hearing “Oversight - New York City’s Detainer Laws,” Committee on Immigration Jointly with the Committee on Criminal Justice, February 15, 2023 10:00 AM, meeting video available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1078800&GUID=54D0B5D1-9B0B-4A5D-B7C3-F6E67806FBC5&Options=info%7C&Search=#>

to ensure that New York City protected its residents, and NYC should not be denying New Yorkers this protection because of a criminal conviction.

The City Council should make clear that city agencies cannot communicate with ICE about an individual for the purposes of civil immigration enforcement without the presentation of a judicial warrant. DOC's interpretation of the law as allowing communication with ICE without a judicial warrant is not in line with the law. The city cannot adequately protect New Yorkers, or uphold the detainer discretion laws, without upholding the requirement that ICE present a judicial warrant in interactions with city agencies about an individual for the purpose of civil immigration enforcement.

### **Protect Our Courts Act (“POCA”)**

Prior to the passage of the Protect Our Courts Act (POCA) in 2019, ICE and oftentimes, court personnel, used courtrooms, hallways, entrances and exits of court buildings to aggressively target and apprehend immigrants attending court proceedings in local criminal, family, housing, civil or other courts. This not only created suffering for the people who were arrested and subsequently detained, but it also created fear among litigants and witnesses who were afraid to appear in court to resolve their cases which resulted in mayhem in courthouses across the state. POCA was passed in 2019 for the specific purpose of stopping this egregious behavior and disallowing federal immigration agents from engaging in civil arrests in New York Courts. POCA applies to all state and local courts—criminal, family and civil courts, town and village courts as well as traffic and summons courts. The law specifies that immigration agents may not make an arrest unless they have a judicial warrant, identify themselves, show a copy of the judicial warrant to court officers and judges, and await a sitting judge to authorize execution of the civil warrant.<sup>9</sup>

### **Recommendations**

#### **1. Renewed commitment to defending immigrant New Yorkers by investing in expanding NYIFUP.**

For over a decade, the New York City Council funded NYIFUP program has been the national model for universal representation for immigrants facing deportation. Our offices have provided robust and comprehensive legal representation and wraparound support services for people in detained deportation proceedings. During this time, our offices have represented thousands of people in deportation proceedings, providing representation and expertise in the complex legal issues that arise in these immigration cases. We continue to represent these clients and add new cases to our docket every year. With anticipated increase in need, we ask the Council to continue

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<sup>9</sup> Protect Our Courts Act, New York State Senate Bill S425A, *available at* <https://www.nysenate.gov/legislation/bills/2019/S425>

its support and expand the resources available to meet the pressing needs of the families served by this program.

## **2. Strengthen New York City’s Detainer Laws by passing Intro 214.**

When local agencies share sensitive information about individuals with ICE, such as immigration status, it can lead to the unjust targeting of vulnerable populations. This Council should prioritize the use of our city’s resources to meet the needs of all New Yorkers, not to engage in the enforcement of immigration law which localities do not have the authority to enforce as that is the responsibility of federal agencies, such as ICE.

This Council should enact new, and strengthen any existing, policies that keep communities’ personal data private. By doing so, New York City can ensure that immigrant communities are not subject to unlawful surveillance or data-sharing practices. For example:

- minimize, as much as possible, the amount of data that is collected and stored by city agencies;
- avoid the retention, transmission, or storing of sensitive data such as immigration status;
- enact transparent policies on data sharing with federal agencies.

This Council should also augment New York City’s detainer discretion laws - those harmed by violations of the law must have the ability to hold the government accountable. needs to include the ability to enforce the law if or when it is not followed. Intro 214 creates a private right of action for individuals who experience harm as the result of a violation of the detainer discretion laws.

## **3. Work with city and state partners to reduce criminal legal system contact for immigrant New Yorkers:**

*Call on the state legislature to Pass Youth Justice and Opportunities Act (Myrie S3426)*

Young people in the communities we serve are particularly vulnerable to police interaction, especially when they are still continuing to grow and mature into their mid-twenties and grappling with peer pressure and decision-making skills. Contact with the criminal legal system for our non-citizen youth also increases the risk of deportation. Without the protections of youthful offender laws, young people are subjected to harsh mandatory minimum sentences and are similarly being coerced into guilty pleas because they are afraid to assert their rights and go to trial. Many of these guilty pleas can have serious immigration consequences. However, when a young person resolves their criminal case with youthful offender status, the risk of deportation is significantly decreased. This is because youthful offender status is not considered a conviction for immigration purposes. For this reason, we ask the Council to support and pass a resolution urging the state legislature to pass and Governor Hochul to sign the Youth Justice and Opportunities Act (Myrie S3426). The

Youth Justice & Opportunities Act expands eligibility for youthful offender status (“YO”) by making YO mandatory for most low-level offenses and gives judges discretion to grant YO, including opportunities for programs and other alternatives to incarceration and immediate record sealing. The bill will also reduce state and local spending on youth incarceration—money that should be invested in communities to alleviate poverty and homelessness, ensure quality education, and fund other needed resources. In turn, this bill would help stabilize communities, increase public safety, reduce the risk of wrongful convictions, and decrease the risk of youth deportation.

#### **4. Call on the New York State Legislature to pass the New York for All Act (S.987/A.5686)**

Immigrant New Yorkers make invaluable contributions to our city and state. Yet, many of New York’s 4.4 million immigrants live in growing fear of detection, apprehension and arrest by ICE or Customs and Border Protection (“CBP”).<sup>10</sup> New York for All is a piece of legislation that will help to protect immigrant families across New York by prohibiting the use of state and local resources for the enforcement of federal immigration laws and sharing of sensitive information with ICE. The bill prohibits ICE from entering non-public areas of state and local property without a judicial warrant. It also ensures that people in custody are given notice of their rights before being interviewed by ICE and starts the process of limiting ICE access to state information databases. We support Council Members Hanif and Aviles’ Resolution before this Committee that calls on the state legislature to reintroduce and pass, and the governor to sign this important piece of legislation.

#### **5. Fund Know Your Rights and public education efforts**

NYC should continue to support and fund efforts directed at educating immigrant communities to understand their rights. Community education campaigns can be a powerful tool in combating fearmongering targeted at immigrant communities.

By providing accurate information about existing laws and individual’s rights, public education efforts can help to counter misinformation. When individuals are educated about their legal protections and know their rights, they are less likely to succumb to fear. Community education campaigns are also a helpful way to help combat immigration services fraud.<sup>11</sup>

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<sup>10</sup> While CBP enforces immigration laws at the border and ports of entry, ICE is tasked with apprehending unauthorized immigrants in the interior of the country. Office of Homeland Security Statistics, Immigration Enforcement, available at <https://ohss.dhs.gov/topics/immigration/immigration-enforcement>

<sup>11</sup> According to the Gothamist “complaints to the statewide Office of New Americans immigration hotline more than doubled over the last year, from 21 in 2023 to 58 thus far in 2024.” Sundaram, A., *Surge in NYC migrants fuels rise in immigration services fraud complaints*, Gothamist (Dec. 13, 2024) available at <https://gothamist.com/news/surge-in-nyc-migrants-fuels-rise-in-immigration-services-fraud-complaints>





## **Conclusion**

All New Yorkers benefit when our diverse communities can thrive together. As this Council has always noted, immigrants, regardless of their status, are the backbone of our city, our culture and our economy. New York City has long made efforts to reassure our communities that the city welcomes and protects all New Yorkers, including its immigrant community. We applaud our City Council's leadership in forging city policies and laws that center the protection of all New Yorkers. However, immigrant communities continue to face an enormous threat in an era of increased surveillance and immigration enforcement. The city can and should do more to ensure that residents are not unnecessarily targeted for detention or deportation because of some action or failure to act by the city.

The City Council has played a critical role in safeguarding New York City's immigrant community and established itself as a national leader in the creation and ongoing support of the NYIFUP program. We thank the New York City Council for its continued support of low-income immigrant New Yorkers. This support and the need for our services is more acute than ever.

If you have any questions, please feel free to reach out to me at [epachnanda@bds.org](mailto:epachnanda@bds.org).