



**TESTIMONY OF:**

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**BROOKLYN DEFENDER SERVICES**

**Presented before**

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

**New York City Council Oversight Hearing on  
Immigrant Exclusion in COVID-19 Response**

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**I. Introduction**

My name is Nyasa Hickey. I am the Director of Immigration Initiatives at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 clients in Brooklyn every year.

BDS' immigration practice represents people in applications for immigration relief, including asylum, before U.S. Citizenship and Immigration Services ("USCIS"), and in removal proceedings in New York's immigration courts. In addition, BDS is one of three New York Immigrant Family Unity Project ("NYIFUP") providers and has represented more than 1,500 people in detained deportation proceedings since the inception of the program in 2013.

Since 2009, BDS has counseled, advised, or represented more than 15,000 clients in immigration matters including deportation defense, affirmative applications, advisals, and immigration consequence consultations in Brooklyn's criminal court system. About a quarter of BDS's criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of losing the opportunity to obtain lawful immigration status as a result of criminal or

family defense cases. Our criminal defense immigration specialists provide support and expertise on thousands of cases, including advocacy regarding enforcement of New York City's detainer law, individualized immigration screenings, and know-your-rights advisals.

I thank the New York City Council and the Committee on Immigration and Chair Menchaca for the opportunity to testify about the exclusion of immigrant in COVID-19 response and the proposed resolutions.

## II. **Brooklyn Defender Services Supports the Proposed Resolutions**

Brooklyn Defender Services supports all of the proposed resolutions.

*Resolution 1399 calling on the New York State Legislature to pass, and the Governor to sign, A10433/S5167, which would allow for state agencies, municipalities, and authorities to provide state or local public benefits regardless of immigration status.*

Brooklyn Defender Services supports this resolution. State and local public benefits should be provided to all people regardless of their immigration status. Especially during a public health crisis, such as the one we are undergoing right now, public benefits must be made available to all of those in need. This resolution is an important step toward accomplishing some of the recommendations listed in this testimony.

*Resolution 1404 calling on the United States Department of Justice to issue guidance that establishes protocols for the Executive Office of Immigration Review in times of public health crises, such as the SARS-CoV-2 outbreak.*

Brooklyn Defender Services supports this resolution. In particular, the Executive Office of Immigration Review (EOIR) should release clear public criteria for reopening the courts. The public criteria should be based on the local health conditions under COVID-19 and necessary changes in protocol in each court to ensure health and safety of the staff, attorneys, and individuals in courts.

In addition, EOIR should release a nationwide standing order on filing evidence, telephonic hearings, and allow for the waiver of Respondent's presence at their request, adopt a functioning e-filing system, and hold regular stake-holder meetings to discuss protocol needs and the appropriate functioning of the court.

*Resolution T2020-6386 calling on the United States Department of Homeland Security to halt all deportation proceedings for the length of the COVID-19 pandemic, as a means of restricting the global spread of this disease.*

Brooklyn Defender Services supports this resolution. All people currently in immigration detention should be released on their own recognizance (ROR), and the U.S. should immediately end their shameful practice of exporting COVID worldwide due to ICE's deportation of people they exposed to the virus while in U.S. immigration detention centers.

In addition, all current ICE enforcement actions should be halted and the Governor of New York State should sign the Protect Our Courts Act S425/A2176 immediately to codify the illegal use of New York State Courts as stalking grounds for ICE enforcement actions.

***Resolution T2020-6535** calling on the United States Congress to pass, the President to sign, legislation that would permit employment-based status holders to retain lawful status, after loss of employment, if such loss was related to the COVID-19 pandemic.*

Brooklyn Defender Services supports this resolution.

***Resolution T2020-6518** calling on the United States Department of Homeland Security to place a moratorium on all removal proceedings for employment-based status holders that suffered a loss of employment during or due to the COVID-19 pandemic.*

Brooklyn Defender Services supports this resolution.

***Resolution T2020-6534** calling on the United States Congress to pass, and the President to sign, legislation that would provide immigration relief for family members who derive lawful immigration status from a frontline worker who passed away due to COVID-19.*

Brooklyn Defender Services supports this resolution.

### III. Importance of NYIFUP at the Height of COVID-19

After four months with limited ICE operations in the New York area during COVID-19, at the end of July 2020 BDS started to again receive calls from terrified families whose homes have been violently raided and loved ones kidnapped by federal agents in the early hours of the morning. ICE enforcement and detention is inhumane, and a danger to us all, especially in the middle of this deadly pandemic. A plethora of reports and evidence show that jail staff and immigrants in ICE jails alike have been exposed to, and died from, COVID-19. The immigration jails are once again accepting newly detained immigrants with a complete disregard for the health and safety of the individuals and the community. As we have been throughout the pandemic, NYIFUP staff will continue to fight this unjust and dangerous practice before EOIR and in the federal courts.

Despite the drop in the detention of new individuals from April to July 2020, the BDS NYIFUP team experienced *no* slow-down in work whatsoever, as the pandemic posed (and continues to pose) a life-threatening danger to our clients locked in ICE detention facilities, and also caused incredible chaos and instability in our non-detained removal cases and in the lives and livelihoods of our non-detained clients. The BDS NYIFUP team came together to file an enormous number of ground-breaking habeas corpus petitions, documenting in great detail that ICE was holding vulnerable people in conditions that threatened their lives and health. Separately, we also

filed a large number of Second Circuit appeals of deportation orders (Petitions for Review), as a result of the poor and often politicized decision-making at the Board of Immigration Appeals.

On March 26, BDS won a precedential victory ordering release for 10 clients in *Basank v. Decker*, the first decision in the United States to find that ICE was showing “deliberate indifference” to the health of detained people. While continuing to file case after case under this theory, the BDS NYIFUP staff distributed our court filings to hundreds of practitioners, conducted local and national habeas trainings, and collaborated with the Legal Aid Society and the Bronx Defenders on litigation, press, and advocacy strategies to get as many clients released safely as possible.

BDS staff ultimately filed over thirty habeas petitions in a matter of months, some for large groups of clients, and filed administrative release requests for *every* detained client we represented – over 105 clients at the beginning of March. From March 16 to June 30, BDS won the release of 81 of our clients, through a combination of habeas corpus work, release requests to ICE, immigration court bond hearings, and winning removal cases on the merits. We are extremely proud of our staff’s work during this time of crisis, including the contributions of social workers and support staff who supported our clients even while working remotely.

***Client Story:*** Lisa is an example of a BDS client who was released as a result of our advocacy during COVID-19. Lisa is a Brooklyn mother and pillar of her community. She was represented by BDS’ NYIFUP team, as well as our Criminal Defense Practice and Family Defense Practice.

Lisa has been a New York City resident for over 14 years and is the mother of a U.S. citizen daughter. She works full time as a home healthcare aide. Lisa’s passion is designing costumes for the West Indian Day Parade – she has a small business designing and selling elaborate and colorful costumes. She is also very active in her church in Flatbush, where she likes to sing in the choir and help at food pantries.

As a result of a single misdemeanor charge stemming from a family misunderstanding, Lisa was arrested by ICE at her home in front of her daughter. She was taken to ICE detention, where she was terrified for her safety during the COVID-19 pandemic as someone who has asthma and panic attacks. Extremely concerned for her health, the BDS NYIFUP team rushed to file litigation demanding her release. A federal judge ordered Lisa’s release in the landmark *Basank* ruling, and she was released that night. Lisa was so concerned about any possible COVID-19 exposure at the Bergen County Jail that she self-quarantined for two weeks at a relative’s home before finally and emotionally hugging her daughter and reuniting.

#### IV. Needs and Challenges Faced by BDS Immigrant Clients under COVID-19

Job loss, housing insecurity, food and financial insecurity, difficulty accessing medical care and COVID testing, as well as language access and technology barriers are some of the major challenges and predominant concerns among the immigrant clients that BDS represents. While some

of these challenges existed before COVID-19, they have been greatly exacerbated under the current global pandemic. In many cases, immediate pressing concerns about how to pay rent, the threat of eviction, whether they will be able to feed their families or seek medical care are more pressing even than the threat of deportation.

## **JOB LOSS**

Under COVID-19, an estimated 40% to 90% of the clients lost their jobs. In many cases, people who have lost their jobs or are seeking employment include those who have valid work authorization. Due to the delays in application processing at U.S. Citizenship and Immigration Services (USCIS) even before COVID, many of these clients have waited six or more months for their work authorization application to be processed. After many months of waiting, their authorization finally arrived, but due to COVID they are now unable to secure any employment.

## **HOUSING INSECURITY**

We estimate that 100% of the people we represent in the Immigration Practice are facing housing insecurity. In fact, many clients have told our social workers that their inability to pay rent is their number one concern. While there is currently an eviction moratorium in place, it is scheduled to expire in two weeks with no rental assistance planned and employment options have not been restored.

Many of the people we represent have been threatened with eviction—a few of our social workers even report that an estimated 100% of the clients they work with have been threatened with eviction. We know of instances of clients leaving their homes and moving elsewhere due to the threat and stress of eviction by their landlords, and we know of numerous clients who have chosen to remain in their apartments because of the moratorium on evictions but are subjected to ongoing verbal abuse and threatening behavior by their landlords. For example, a person represented by BDS fell behind on rental payments due to COVID circumstances. His landlord told him he had one week to pay or he had to leave the building. The BDS Civil Practice informed the client of his rights and called the landlord to inform him about the law. The landlord illegally threatened the client that he had already called the police and they were on their way. However, despite being informed of his rights and the fact that the client had done nothing wrong, the client was so fearful of having police interaction that he left the apartment and was forced into a homeless shelter.

Moreover, even though there is currently a moratorium on evictions, clients are apprehensive to call the police and clients have relied on BDS staff to inform them of their rights and to advocate for their rights. For example, a 19-year old immigrant client of BDS fell behind on his rent due during COVID. The landlord threatened to lock him out of his apartment. Civil Practice at BDS spoke to the landlord and informed client of his rights to prevent a lock out. As a result he was able to stay in his apartment. This is just one of the many cases in which our Civil team has provided critical support and information to clients who are being harassed by landlords and have helped them understand the protections afforded to them under the eviction moratorium.

In another case, a BDS client lost her job in March due to COVID circumstances. The client was planning to move herself and her two children into shelter because she couldn't afford to pay for her April rent. The BDS Civil Practice advised her not to take the health risk of moving herself and her children to a shelter. They informed her that her U.S. citizen children were eligible for benefits and helped her apply so she could get assistance contributing to her rent during the pandemic.

Without access to benefits or programs aimed at financial assistance or canceling rent, clients in already unstable or informal living situations will face self-help evictions or be evicted in holdover proceedings when landlords realize they can't pay. To minimize these evictions, access to financial assistance and housing subsidies is necessary for all New Yorkers, regardless of their immigration status.

## **FOOD AND FINANCIAL INSECURITY**

Almost all of the people represented by the Immigration Practice have expressed the need for assistance to buy groceries and necessary daily household items. An estimated 50% to 95% of the people we represent have less than \$500 in cash savings. Of the clients who are exceptions, they are generally people who live with larger extended families with multiple sources of income and live within a family where some family members are receiving COVID financial assistance from the government.

The majority of the people we represent are ineligible for federal aid and food assistance due to their immigration status, however our social workers have been able to help many clients access free school lunches through the Department of Education (DOE) in New York City, food from food pantries or mutual aid assistance within their communities. For example, many of the people we represent were able to access food through the City's successful food distribution program. The structure of the program was important to avoid some of the barriers that our immigrant clients face such as identification, language, and technology. The DOE food distribution allowed clients to receive food with no questions asked and without requiring kids to be present. We encourage the City to continue and expand on this model of food distribution.

Even for those who are eligible for federal stimulus assistance, there are barriers such as access to technology and language access needed to apply for and process the payments. Even for those who have been able to apply for the federal aid, there have been significant delays in processing and receiving the payments.

Similarly, while many of the immigrant people we represent are ineligible for unemployment insurance, an estimated 5%-10% of the people we represent are eligible for either Unemployment Insurance (UI) or Pandemic Unemployment Assistance (PUA). However, our immigrant clients who could claim these benefits, suffered around three months of delays in accessing their earned claims because of internal screening procedures at the Department of Labor (DOL) that flagged work authorization for review by overburdened staff, and language accessibility failures that made filing and claiming UI or PUA especially burdensome for non-English speakers. Many forms were not translated into other languages, so the only way a non-English speaker could get help was by phone. However, the phone system was completely overburdened, and clients were

waiting on the phone for hours. Even those clients who were able to connect to a representative often received inadequate interpretation. DOL policies prevent advocates from submitting secure messages on behalf of clients unless they are physically together and the DOL did not create a pandemic exception to this rule.

## **PROBLEMS ACCESSING MEDICAL CARE AND TESTING**

Multiple clients, including clients with severe COVID-19 symptoms, have had difficulty accessing COVID-19 testing or medical care. Of the clients who have received medical care, language access has been a major barrier to the successful transmission of information. Among the problems for clients who are trying to access COVID-19 testing, the primary issues have been lack of access to technology, language barriers, denied testing even when exhibiting serious symptoms, difficulty reaching places of testing—thus necessitating private car service.

Even before the pandemic communicating with healthcare professionals or accessing medical for clients whose primary language is not English was challenging. Under the pandemic conditions, clients have had difficulty understanding COVID-19 diagnosis by a doctor due to language barriers, including clients who speak Spanish, a language widely spoken in New York City. As a result, our social work team has had to fill out online surveys, call emergency rooms and doctor's offices in order to help clients try to get testing and in order to understand whether advice from a doctor means positive or negative COVID diagnosis, in large part due to language barriers.

For non-COVID-19 medical needs, a lot of doctor offices were closed for the first few months of the pandemic and are only now starting to reopen with some limited capacity. Many offices were only doing televisit appointments which does not allow for the specialty care needed by some of our clients and televise appoints are often unavailable for clients without health insurance. The lack of non-COVID medical care has resulted in at least two documented instances of the client being admitted to the emergency room as a result in order to have her appendix was removed and for another client in order to receive an emergency 14-day refill for epilepsy medication. Another example is a client suffering from severe stomach pain whose visit to a City MD was not sufficient to resolve the issue. The client was told to go a specialist's office but they were all closed or did not accept the client's health insurance.

## **TECHNOLOGY BARRIERS AND LANGUAGE ACCESS**

The social work team reported that technology barriers and difficulty receiving information in the client's first language are problems in many aspects of COVID-19 relief. Both of these barriers have prevented clients from accessing online COVID-19 screenings, understanding advice given to them by doctors, accessing appoints for non-COVID-19 medical needs, applying for unemployment insurance and federal stimulus relief, as well as signing up and receiving benefits that they are eligible for.

Some people we represent lack access to a computer or smart phone and do not have sufficient computer or reading literacy. Online and phone application processes (such as SNAP and unemployment insurance) leave people out who are unable to read or do not have computer access

without access to benefits. As a result some clients lack access to information about the limited resources that are available to them.

Even when the client's own technology or language is not the barrier to accessing these services, many of the online portals are filled with glitches that prevent successful transmission of information or applications. In some cases, even when a client is eligible for benefits, they are erroneously denied access through an automated system and a misinformed employee. For example, our social workers have reported that clients have been denied health insurance or access to emergency shelter because they aren't "citizens or residents," when a social security number or other documentation is what is actually required to access those resources.

## V. **Recommendations:**

NYIFUP has continued to fight for the health, safety, and dignity of immigrants under the Trump Administration and duration of COVID-19. Given this essential role and a crisis with no end in sight, the unnecessary and heightened risk of immigrants in detention, and the fact that ICE has restarted raids and is continuing to detain people, including those medically vulnerable, the Council and City's ongoing support of our immigration programs and universal access to counsel is more important than ever before.

In addition, we have the following recommendations:

- Establish an emergency cash assistance for excluded workers fund to provide urgently needed financial relief to the hundreds of thousands of undocumented workers who have been disproportionately impacted by the crisis and excluded from almost all state and federal relief efforts.
- Expand food provision and distribution in ways that ensure accessibility to immigrant New Yorkers who may face barriers such as access to identification, language access, transportation access and technology. For example, the food distribution program through NYC schools is an example a successful effort to make food access accessible to the immigrant community.
- Cancel rent in New York City for the duration of the crisis. If rent is owed after the eviction moratorium is lifted, landlord harassment and evictions will skyrocket, with immigrant communities the most vulnerable to these harms.
- Ensure that everyone in New York City has access to comprehensive health care, regardless of immigration status.
- Accommodate for technology and language barriers. Increase the capacity of government workers to help people understand their benefits and rights over the phone in multiple languages in order to accommodate for people who are unable to read, do not have access to a computer and those who do not speak English.

## VI. **Conclusion**

We thank the New York City Council for your continued support of serve low-income immigrants by funding universal representation through NYIFUP and applaud the City for life-saving

successful food distribution efforts through schools. However, as the devastating consequences of the pandemic continue to disproportionately affect low-income immigrant New Yorkers, we urge the City to consider the recommendations outlined above. Immigrants are woven into the fabric of New York City and need equal access to the essential safety net services in order to survive this pandemic and to continue to contribute to the economic and cultural vibrancy of the City as we begin to move toward a collective reopening and recovering of New York City.

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