



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

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***BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council Committees on Courts and Legal Services & Immigration**

**Oversight Hearing on ICE Enforcement in NYC Courts**

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My name is Lisa Schreibersdorf. I am the Executive Director of 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 over 30,000 clients in Brooklyn every year. I thank the New York City Council Committees on Courts and Legal Services & Immigration, and in particular Speaker Melissa Mark-Viverito, Chair Lancman, and Chair Menchaca, for holding this oversight hearing on Immigrants and Customs Enforcement (ICE) enforcement in New York City courts. Coming together to demand an end to courthouse arrests is urgent and critically important. BDS is proud to work with the Council to strengthen our city's resistance of federal practices that would infringe on the rights and well-being of our clients and all immigrant New Yorkers and we are hopeful that greater progress may be made as the scope of the problem becomes increasingly evident. Specifically, we must work together to protect immigrants' access to justice, not only by mobilizing to prevent ICE arrests in court, but also by continuing to reduce unnecessary points of contact with the criminal legal system altogether which often put our New York immigrant families and community at risk of separation.

It is important to state at the outset that studies show immigrants commit fewer crimes than native-born Americans and the majority of them are never even accused of a crime.<sup>1</sup> To the contrary, an influx of immigrants has been shown to reduce crime in New York City neighborhoods.<sup>2</sup> That said, immigrants who do become court-involved often face disproportionate punishment and harm, including banishment, for offenses that are largely tolerated in affluent communities.

### **Impaired Access to Justice**

Since Trump took office, our immigrant clients have increasingly expressed concerns about the risks of coming to court. These clients include people with lawful status, those with citizenship claims, those seeking asylum and even naturalized citizens. They are often confused about the entanglement between ICE and the criminal legal system. They express fear of collusion between ICE and local government officials, or those they perceive to be government officials, including court staff, judges, prosecutors, and even their own defense counsel. BDS's in-house immigration attorneys, who specialize in advising our criminal and family defense clients about the immigration consequences of criminal legal system contact, are routinely required to counsel our clients on the very real possibility of ICE's presence in criminal or family court weighted against the serious and definite risks of not appearing for their proceedings.

We are certain this fear, which is perpetrated by ICE's willful arrest practices, has a grave and chilling effect on immigrant communities' willingness to avail themselves of civil and criminal courts and the legal system generally. In practice, this means fewer innocent people or people with mitigating circumstances mounting a defense against criminal allegations, likely resulting in permanent criminal records and incarceration and/or triggering warrants; fewer cases bringing to light abuses and constitutional violations by police in immigrant communities and fewer people exercising their legal rights in housing court to compel their landlords to repair unsafe conditions that endanger immigrants and non-immigrants alike. This chilling effect is starkly present in Family Court, where immigrant New Yorkers are afraid to show up to prosecute domestic violence, assert their parental rights or participate in visitation, custody or child support payment proceedings.

One particularly egregious example of ICE's callousness was the attempted arrest of a woman in Queens' Human Trafficking Intervention Court (HTIC) on June 16, 2017. This action, along with the three completed arrests in the Queens Criminal Court that day, brought the total number of attempted and actual ICE arrests in New York City courts to date in 2017 to 38, or nearly *five times* the total number reported for the entire year of 2016. It must be repeated that these are not only undocumented immigrants, as news outlets often erroneously report, but also people with lawful status like green card-holders.

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<sup>1</sup> Rafael Bernal, Reports find that immigrants commit less crime than US-born citizens The Hill (2017), <http://thehill.com/latino/324607-reports-find-that-immigrants-commit-less-crime-than-us-born-citizens> (last visited Jun 27, 2017).

<sup>2</sup> Yoni Bashan, Immigrants in New York City Bolster Housing Values The Wall Street Journal (2014), <https://www.wsj.com/articles/immigrants-in-city-bolster-housing-values-1397086910?tesla=y> (last visited Jun 27, 2017).

ICE has blamed Sanctuary City policies for the spike in courthouse arrests, arguing that preventing the agency from apprehending people in City jails and police precincts leaves them no choice but to find our clients in court.<sup>3</sup> However, many of the local policies in question have been in effect for several years and, moreover, they only prevent City agencies from turning people over to ICE when there is no valid judicial warrant to verify the legitimacy of the arrest.

There is simply no excuse for ICE's courthouse arrests. New York State Court officials must loudly and publicly rebuke these arrests and make clear that New York State's policy is to prohibit them, unless there is a judicial warrant for an individual's arrest. They must also ensure that court staff adheres to this policy. If ICE flouts this policy, we must all stand together with our colleagues and allies across the country and condemn the agency.

## Client Stories

The following client stories are excerpted from affidavits written by BDS attorneys. These affidavits and others are attached to this testimony for your review.

### *ICE Arrests in Court: Adding to the Pressure on Innocent People to Plead Guilty*

Many facets of our criminal legal system are used to pressure defendants to plead guilty, rather than mount a defense, including: bail and pre-trial detention, mandatory minimum sentences, the Blindfold Law, and missing work, family duties, and other appointments for seemingly endless court dates. The threat of arrest by ICE only adds to this pressure.

**Mr. S** had consistently attended several court appearances before ICE agents came to the Kings County Supreme Court to arrest him. His criminal defense attorney called his Padilla attorney to assist her in court. The Padilla attorney quickly arrived at the court house and attempted to speak to the Agents, but they refused. She asked the agents not to detain her client, which would interfere with his right to appear in court and resolve his case. However, as a result of ICE's presence in court and intent to apprehend and detain Mr. S, the client decided to waive his right to trial, plead guilty to a lesser offense, and begin his jail sentence that day.

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**Mr. W's** case spanned nearly a year and included time before the 2016 election and the 2017 inauguration. He had been a Legal Permanent Resident (LPR) for more than ten years, with a stable address and an on-the-books job, when he was arrested on felony assault charges. Video footage was consistent with self-defense, and the case was swiftly reduced to a Misdemeanor. Mr. W knew he was innocent, and I believed we could and should win the case, so he refused to plead. He returned to court eight times before his case was ultimately completely dismissed and sealed. At each of the five court dates preceding the inauguration of the new federal

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<sup>3</sup> Alan Neuhauser, Sessions, Kelly Defend Courthouse Immigration Arrests U.S. News & World Report (2017), <https://www.usnews.com/news/national-news/articles/2017-03-31/jeff-sessions-john-kelly-defend-courthouse-immigration-arrests> (last visited Jun 27, 2017).

administration, he was impressively positive and showed up to court early. His employer knew he was a good man and kept him on the payroll even though he'd have to miss work for court. He was confident that he would win and did not even consider a plea deal.

After the inauguration, everything had changed. Mr. W showed up to his next court appearance late, stressed and tearful. His eyes were bloodshot and he was shaking with fear. He hoped the case would finally be dismissed, but the prosecutor was still offering only a plea to a non-criminal violation. His attorney had to advise him that this plea would not be entirely safe given his immigration status. Also, even if he were to accept the plea, he would have to return to court to pay the surcharge. He decided to continue fighting. The case was adjourned. He walked out into the hallway and admitted to his attorney that he had heard about ICE making arrests in court and was utterly terrified to be there.

In this case, he had developed a long and trusting relationship with his attorney, and together they were able to work through the relative risks of showing up to court, failing to appear, or pleading guilty, and ultimately get the case dismissed. Most of our clients' cases resolve much quicker than that, and many of them are too afraid to open up to use about their concerns because of their perceptions that everyone in criminal court is collaborating with ICE. This is devastating, as it interferes with our clients' ability to feel safe and exercise their due process rights, as well as our ability to build trusting, confidential relationships with them. Ultimately, it only adds to the immense pressure on them to plead to whatever would resolve their cases and make space for the next New Yorker's case to be called.

### *ICE Arrests in Court: Thwarting the Court's Administration of Humane and Effective Justice*

Another client, Mr. R, was detained and questioned by ICE outside the Brooklyn Mental Health Treatment Court. He is an LPR who had been successfully participating in a mental health treatment program for nine months and was well on his way to completing the program and resolving his case favorably. However, to this day, approximately eight month later, he remains in ICE custody at the Hudson County jail, where his seizure condition has become acute and the medicine he needs to treat it has been regularly withheld. BDS is very concerned about his health, including his mental health, especially given the history of substandard health care at the detention center and the recent death in custody there.<sup>4,5</sup> We continue to advocate for humanitarian release from ICE custody, but in the meantime his criminal case—and, more importantly, his mental health treatment and life—have been derailed.

### *ICE Arrests in Court: Warrants Issued*

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<sup>4</sup> Nina Bernstein, Health Care at New Jersey Immigrant Jail Is Substandard, Watchdog Groups Say The New York Times (2016), [https://www.nytimes.com/2016/05/12/nyregion/health-care-at-new-jersey-immigrant-jail-prompts-claim.html?\\_r=0](https://www.nytimes.com/2016/05/12/nyregion/health-care-at-new-jersey-immigrant-jail-prompts-claim.html?_r=0) (last visited Jun 27, 2017).

<sup>5</sup> Andrew Keshner & Victoria Bekiempis, Sick Honduran immigrant mistakenly cuffed by ICE dies in custody NY Daily News (2017), <http://www.nydailynews.com/new-york/sick-honduran-immigrant-mistakenly-cuffed-ice-dies-custody-article-1.3263023> (last visited Jun 27, 2017).

Last month, a client decided to leave the country before receiving his sentence of probation due to fear of ICE apprehension in criminal court. The client was being assessed for a probation sentence. In the probation report, the probation officer noted in that she called ICE to confirm our client's immigration status. After seeing this information in the probation report, our client became so afraid of his risk of being arrested by ICE in criminal court and detained, that he decided to leave the United States. As a result, this client was not sentenced and his case remains open.

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On October 19, 2015, our client Clarence Threlkeld shared the story of his courthouse arrest in testimony before the Council. He was walking down a hallway in Brooklyn Criminal Court for a second appearance to answer Misdemeanor charges when he heard his name called. He assumed that it was the lawyer who would stand up on his case, but instead found himself arrested by two plainclothes ICE officers. After more than five months in detention at the notorious Hudson County Correctional Center in New Jersey, he received representation by a BDS attorney through NYIFUP, who discovered that he had a citizenship claim and never should have been detained. He was released three days later, and eventually won his immigration case. Yet the criminal court judge had already issued a bench warrant that appears on his record.

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It is important to remember that people arrested by ICE but not deported still suffer serious harm. For example, approximately 30% of our New York Immigrant Family Unity Project (NYIFUP) clients ultimately win their immigration cases, but only after many months or years of detention, during which they are separated from their families and communities, where many are crucial income-earners and caretakers. People in immigration detention face inhumane jail disciplinary practices like long-term solitary confinement and are deprived of needed health care. They are unable to appear for ongoing criminal or family court matters as well because ICE is unwilling to have them produced for court. This act alone shows that ICE is not concerned about due process and the legitimacy of New York State's legal proceedings

### **Limiting Contacts with the Criminal Legal System**

Ultimately, the surest way for local policymakers to protect immigrant New Yorkers from federal immigration enforcement is to limit involvement in the criminal legal system. BDS thanks Speaker Melissa Mark-Viverito and the Council for passing important legislation to reduce such contacts and mitigate the harm for those who do become court-involved. In response to costly lawsuits and also heeding this Council legislation, NYPD has begun to reduce arrests and criminal court summonses, and crime rates continue to decline. Accelerating these reductions and ending Broken Windows policing is urgent, now more than ever, as the Trump Administration uses dragnet local law enforcement actions and state-level convictions to aid in its mass deportation effort. ICE can identify and track our clients through arrest fingerprints shared by the NYPD with the National Crime Information Center database, court appearances and, troublingly, some probation agents who call the agency to check immigration statuses.

### Three Active Reform Campaigns that Would Benefit from the Council's Advocacy

#### *I. Ending Arrests of Human Trafficking Victims and Sex Workers*

As BDS and others have reported for many years, mere arrests, even in cases that are later dismissed or resolved with a non-criminal violation, can lead to deportations, broken families and broken communities. Courthouse arrests are just one of many ways this occurs. Diversion courts like HTICs can help to reduce the likelihood of ICE enforcement actions by encouraging less punitive dispositions, but they can also serve as a trap, prolonging court involvement with mandated services. New Yorkers were rightfully shocked that ICE would even enter an HTIC part, and we must speak out against this impropriety, but policymakers should also ask themselves why a woman found to be a victim of human trafficking was arrested and prosecuted at all. The same question should be asked for those who voluntarily engage in sex work, many of whom are immigrants. Criminalization is a dangerous and inappropriate tool to help them move on to a different life, if that is the goal. Other major cosmopolitan cities permit and regulate the industry, enabling sex workers to openly organize and protect themselves and each other in ways that the criminal justice system is no substitute. Here in New York City, groups like the Red Umbrella Project and the Sex Workers Project are organizing for reform. Please consider holding a hearing on this subject.

#### *II. Narrowing the Definition of Illegal Gravity Knives to Exclude Common Work Tools*

Another common arrest charge that cuts against public safety is gravity knife possession. Under a poorly-written 1950's law intended to criminalize a specific type of knife that is no longer in use, the NYPD has arrested tens of thousands of working New Yorkers for mere possession of tools like utility knives and box cutters. These arrests do not follow any allegations of criminal behavior, threats, or intent and serve no public safety purpose. Often, our clients are in their laborers uniform—a construction union or moving company sweatshirt, or a Local 1 Stagehand t-shirt—when they are arrested traveling to or from a job site. A.5667A-Quart / S.4769A-Savino, bill to reform the gravity knife statute to end the criminalization of workers for carrying their tools passed both houses of the Legislature for the second time this year. An earlier version was vetoed by Governor Cuomo last year. The Council's advocacy with the Governor to sign the simplified version of the bill this year would help to convey the broad base of local support for it, even as the Manhattan DA uses fear tactics to lobby against it. Please consider a resolution or letter in support of the bill.

#### *III. Legalization and Regulation of Marijuana Access*

Lastly, it is long past time to end the drug war in New York City. The fourth and fifth most common arrest charges are low-level marijuana possession (18,136 arrests in 2016) and low-level non-marijuana drug possession (16,630 arrests in 2016), respectively. There is a growing recognition among policymakers of all parties, many of whom may struggle with addiction themselves or have friends or family members who struggle with addiction, that criminalization is an ineffective and, in fact, often very dangerous approach to drugs. The sharp racial disparities in these arrests—approximately nine-in-ten of those arrested are Black and/or Latinx—are inexcusable and the disproportionate adverse impacts, especially for immigrants, are severe. In fact, we are currently representing a man facing deportation due to his New York State marijuana possession conviction. As a preliminary step, the Council should sign-on as a supporter of the

Drug Policy Alliance's Start SMART NY campaign for state legislation enabling sensible and legal marijuana access through regulated trade that would help to economically empower those who are targeted under the current law.

With the surge in federal immigration enforcement actions against our families, friends, neighbors, co-workers, and clients, ripping apart our communities, New Yorkers must come together and make the necessary changes to build the sanctuary as promised.

Thank you for considering my comments.