

**Written Comments of The Bronx Defenders**

**New York City Council Committee on Immigration  
Oversight Hearing: Examining How NYC Evaluates the Effectiveness of the Provision of  
Indigent Criminal Legal Defense and Reviewing Attorney Compliance with *Padilla v.  
Kentucky***

**Jointly with the Committee on Fire and Criminal Justice**

**September 23, 2013**

My name is Sarah Deri Oshiro, and I am an Immigration Attorney at The Bronx Defenders. I submit these comments on behalf of The Bronx Defenders and thank the City Council for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 200 represents 30,000 individuals each year and reaches hundreds more through outreach programs and community legal education. In the Bronx and beyond, The Bronx Defenders promotes justice in low-income communities by keeping families together.

Nearly a third of Bronx residents are not US citizens. To serve this client community, The Bronx Defenders first hired a full-time attorney with special expertise in the immigration consequences of arrest and conviction in 2002. Today, seven full-time immigration attorneys work closely with criminal defense attorneys on integrated teams, providing a full range of services from plea consults to deportation defense. Last year, we preserved the unity of 139 families by preventing the deportation of a parent or child, affecting more than 232 family members, and we obtained lawful immigration status for 52 other clients.

I am here today to describe the way in which our holistic defense practice developed and realizes the robust representation articulated by the Supreme Court in *Padilla v. Kentucky*. The

Bronx Defenders is arranged into ten interdisciplinary teams. Each team is comprised of criminal defense attorneys, family court attorneys, immigration and general civil attorneys, investigators, social workers and other social services advocates. Through the team model, each client of The Bronx Defenders has seamless access to multiple advocates and services to meet his or her legal and non-legal needs. The primary goal of our holistic defense model is to address the effects of criminal justice involvement—whether the risk of deportation, the loss of employment, housing or public benefits, or removal of children from the home, to name just a few. Instead of referring to these outcomes as “collateral consequences,” we use the term “enmeshed penalties,” which better reflects the grave risks and realities that our clients face from the moment of arrest.

From the day we opened our doors in 1997, our clients have been telling us that these enmeshed penalties sometimes *far exceed* the scope of the criminal case. In response to client need, we developed a model that focuses on more than just the criminal case long before the Supreme Court required defense attorneys to do so in its decision in *Padilla*.

In the immigration context, The Bronx Defenders’ model allows our criminal defense attorneys and clients to have immediate access to immigration counsel from the moment of the pre-arraignment interview. Our defense lawyers are trained to gather the precise information that is necessary to properly advise clients about potential immigration consequences. A “checklist” system modeled on best practices developed for hospitals ensures that all non-citizen clients are identified and offered specialized advice. Immigration attorneys are “on-call” to provide this advice during every arraignment shift. Working together, each non-citizen client, criminal defense attorney and immigration attorney reviews the client’s complete immigration background and criminal history, identifies the risks of deportation stemming from past or

present criminal justice involvement, and ultimately reduces the chance of triggering a deportation case that could otherwise tear our client from his family and community.

Antonio's story is an example of the way our holistic model seamlessly tracks *Padilla* and its mandate. When Antonio entered the United States as a minor, he was caught at the border and detained. His uncle provided information about their intended address of residence in the United States, and Antonio was released upon the condition that he appear for future immigration court hearings. Antonio never received any notice of scheduled hearings for his deportation proceedings, and his court file in fact confirmed that the envelopes were returned. Because he was never notified, Antonio did not attend his hearings and was ordered deported in absentia.

Last year, Antonio was arrested on a minor marijuana possession charge in the Bronx, and an immigration detainer dropped at arraignments due to the Secure Communities program. On the day of his arraignment, the district attorney offered Antonio to resolve the case with an "adjournment in contemplation of dismissal" plea ("ACD"), which is essentially a dismissal. Had Antonio accepted that plea—which would have been practically a foregone conclusion under any traditional criminal defense model—he would have been immediately picked up by Immigration and Customs Enforcement (ICE) and summarily deported back to Mexico, without even having a chance to fight his case. Instead, our criminal defense attorney realized that the immigration attorney on her team needed to take a second look at Antonio's case. We asked the judge to set a low bail and refused the otherwise appealing plea offer in order for him to go into criminal custody and have the time to do a thorough immigration intake. His immigration attorney soon discovered that he qualified for Special Immigrant Juvenile Status—a path to permanent residency for minors who have been abandoned, neglected, or abused by one or both

parents—for another three months until he turned 21. Antonio chose to remain incarcerated at Riker’s Island for six months on nominal bail while his lawyers obtained a family court order, allowing him to reopen his old deportation order and apply for permanent residency. Ultimately, his criminal case was dismissed—not a surprise, given the original plea offer. What was unique about his case was the creative way that our criminal defense representation not only stopped an otherwise imminent deportation but reversed the course of this undocumented young man’s life and put him on the path to legal status. Antonio’s story embodies the way that one of the pillars of “traditional” criminal defense—one’s liberty interest—may be overshadowed by the enmeshed penalties such as deportation. It also underscores the importance of a model where defenders flag these issues and attorneys with expertise in immigration and other enmeshed penalties work collaboratively with defenders, clients, and their families to address them.

Ali’s case illustrates another way in which the holistic defense model neatly tracks *Padilla*. Ali had been arrested following a domestic dispute with his wife, and was offered to plead guilty to a harassment violation—a non-criminal infraction that would have spared him from getting a criminal record. Knowing that he was a non-citizen and that there were distinct, negative immigration consequences which stemmed from that particular offer, his team of defense counsel—both criminal and immigration—negotiated a plea to a trespass *misdemeanor* instead. Such an outcome might surprise the traditional defense bar, as he chose to “plea up” from a violation to a misdemeanor, but Ali had made his priority clear to his team: he wanted to stay united with his wife and children and avoid deportation to the Ivory Coast, even if it meant ending up with a misdemeanor record.

Each year, immigration attorneys at The Bronx Defenders counsel over a thousand people like Ali and Antonio. These services are tracked and evaluated using a customized case

management system built to facilitate and manage holistic practice. Defense attorneys are evaluated by supervisors on the volume and timeliness of referrals they make to immigration and other Civil Action Practice staff; their ability to identify risks of enmeshed penalties; and their track record of working collaboratively with clients, their families, and their team of advocates to mitigate enmeshed penalties through creative advocacy.

For all of these reasons, holistic defense has been recognized by the United States Department of Justice, which funds the Center for Holistic Defense at The Bronx Defenders to provide training and technical assistance to public defenders across the country. To date, we have trained defenders in over fifteen jurisdictions on how to employ holistic defense to comply with the requirements set forth in *Padilla* and—more importantly—to meet the unique needs of each client and family they serve. This bold redefinition of public defense, requiring attorneys to treat clients as whole people rather than “cases”, is the true promise of *Padilla*.