

**New York City Council
Committee on Justice System
Preliminary Budget Hearing
March 19, 2019
Testimony of The Bronx Defenders
By Justine Olderman, Executive Director**

The Bronx Defenders provides innovative, holistic, and client-centered services to low-income people of the Bronx- these services include criminal defense, family defense, immigration representation, civil legal services, social work support and advocacy. Our staff of over 350 represents nearly 30,000 individuals each year and reaches many more through outreach programs and community legal education. The primary goal of our holistic defense model is to address the underlying issues that drive people into the various legal systems and to mitigate the devastating impact of that involvement, such as deportation, eviction, the loss of employment, student loans and public benefits, or removal of children from the home. 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 legal system involvement.

One of the unique aspects of our model is our interdisciplinary team structure. 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 has seamless access to multiple advocates and services to meet his or her legal and related needs.

Our interdisciplinary model reflects the intersectional nature of system involvement. A woman, arrested in her home on low level drug possession charges, will not only be put through the criminal legal system, but if she lives in public housing she may face eviction; if she is an immigrant, she may face deportation; and if she is a mother, she may end up fighting to retain her right to parent her child. Legal system involvement begets more system involvement. Our model of indigent defense means that we not only anticipate this intricate web of enmeshed penalties but that the client has a team of lawyer and non-lawyer advocates to help her navigate these different systems. We are there with her every step of the way. We go where she goes.

Our model works.

A groundbreaking 10 year study by RAND and the University of Pennsylvania revealed that being represented by The Bronx Defenders had the following impact on criminal case outcomes:

- **Reduced incarceration rates by 16%**
- **Reduced incarceration lengths by 24%**
- **Reduced pre-trial detention by 9%**
- **Saved clients 1.1 millions days in jail**
- **Saved city and state taxpayers \$165 million dollars**

A study conducted by the VERA Institute of Justice found that our first-of-its kind New York Immigrant Family Unity Project,

- **Increased the chances of winning a deportation cases by 1,100%**

And our own internal data shows that in just one year, The Bronx Defenders,

- **Prevented evictions in 80% of housing cases**
- **Enrolled more than 1000 families in public benefits with a value of 4.3 million dollars**
- **Retrieved more than \$72,000 worth of property seized by NYPD**
- **Kept 61% of parents under investigation by ACS from having a case filed**
- **Helped 81% of clients avoid having their children removed and placed in foster care**

Despite this strong record of success, our model is under threat.

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CRIMINAL DEFENSE

- **We are asking the City for the \$3.3 million in ILS funding.**
- **We are asking the City for \$1,061,095 to cover increases in annual costs.**
- **We are asking the City for \$150,000 for reform work.**
- **We are asking the City for \$200,000 for pre-arraignment representation.**

Criminal defense attorneys at The Bronx Defenders work side-by-side with the other advocates on their holistic teams to identify the causes of our clients' criminal justice involvement and to protect them from the enmeshed penalties associated with their cases. We spend time getting to know our clients and gaining a deeper understanding of their lives and needs. Armed with this understanding, we pursue justice for our clients by thoroughly investigating their cases, raising novel legal arguments, and using creative tools of persuasion to succeed at trial.

Because each client is unique, we advocate for individualized and comprehensive alternatives to incarceration rather than relying on a "one size fits all" solution to complex problems. Moreover,

our support and advocacy are not confined to the courtroom and do not begin or end with the criminal case. Providing seamless services that address all of the clients' needs, not just their legal ones, is at the core of holistic defense and redefines what it means to be an effective public defender.

We recently entered into a new contract with MOCJ for trial-level criminal defense representation. This new contract runs from January 2019 to June 2024. While our new contract addresses some of the issues that have undermined our work historically, our program continues to struggle with the contracting delays, insufficient funding allocation, and staffing shortages of the past.

Contracting Delays

Delays with contracting, registration, and payment continue to threaten the effectiveness of our program. As we explained last year, MOCJ delayed contracting with the trial-level indigent defense providers for 1.5 years past the expiration of the contract period. While we finally have a registered contract with MOCJ, a critical piece of the funding, for which MOCJ is responsible, has been delayed by an entire year with no payment in sight.

As part of the Hurrell-Harring settlement, the State has allocated funding to NYC to be disbursed to the trial-level indigent defense providers to reduce caseload levels and support quality improvements. However, this funding is not allocated directly to the individual providers through contracts with the Office of Indigent Legal Services (ILS). Instead, ILS contracts with MOCJ to provide the funding through its trial-level indigent defense contracts. In the first year, The Bronx Defenders was awarded 1.1 million dollars. The year started April 1, 2018. However, we have yet to see a single dollar of that money. Despite receiving no money, we have been required by ILS to hire and demonstrate how that money has been spent. In other words, rather than being ahead \$1.1 million, we are at a deficit of \$1.1 million that we were required to spend without first receiving payment. No non-profit organization can function on these terms.

In the second year, which starts in 2 weeks, we have been awarded 2.2 million dollars. ILS expects us to once again demonstrate how that money has been spent. Yet, there is no sign that MOCJ and ILS have entered into a contract that would enable our organization and the other providers to actually receive the funds we have budgeted for and so desperately need. While we recognize that ILS may share responsibility for the delay in contracting, funding for indigent defense is ultimately MOCJ's responsibility. Indigent New Yorkers facing criminal charges should not have to suffer because of issues with when and how the City gets reimbursed for funding the State has promised.

We are asking the City to provide the overdue \$1.1 million and to advance the \$2.2 million for the upcoming state fiscal year which begins on April 1, 2019.

Staffing Shortages and Growing Costs

The biggest expense in our Criminal Defense Practice, like all of our practices, is staffing. While intake is down owing to the expansion of diversion programs, like the Council's Criminal Justice Reform Act, and other progressive successes, this does not mean costs are down proportionately. They are not. The cases that have been culled from the system are the proverbial low-hanging fruit, the ones that are typically resolved at first appearance. The cases that remain are the ones that used to, and continue to, dictate our pending caseload. In fact, these cases are becoming more complicated over time, involving new and controversial forensics, expert witnesses, and complex intersystem litigation related to child welfare, civil and immigration consequences. It is this group of cases that is the main driver of our costs.

Last year, we provided testimony explaining the crippling effect that MOCJ's failure to account for growing annual costs in our contracts had on our financial stability and effective programming. We laid out how resource allocation from the City remained flat for 7.5 years while costs associated with salaries, health care, and rent continued to rise. Despite the clear crisis that such a discrepancy creates, MOCJ has now repeated the mistakes of the past and has failed to account for rising costs in our new 5.5 year contract that started January 2019. Our contract for trial-level indigent defense with MOCJ reflects a \$17,684,926 allocation of funds. Yet, the costs associated with salary increases, health care, and rent for 2020 alone are anticipated to rise 6% leaving us with a deficit of \$1,061,095.

A flat budget with known fixed rising costs associated with raises, cost of living expenses, health care, and rent, means that the only available way to offset this deficit is to cut staffing. This is not a realistic option. Insufficient staffing would not only weaken the services we provide to indigent New Yorkers facing criminal charges but it would violate our ethical obligation to provide zealous representation.

Moreover, the state legislation providing the funds to ILS dictates that money from ILS can never replace money from MOCJ. This means that if our staffing on the MOCJ budget is reduced we cannot use ILS funds to replace these positions. Put simply, we cannot rely on state funding to make up for costs that MOCJ does not cover. It is the responsibility of the City to provide adequate funding to cover both staffing and other expenses.

We are asking the City to amend our contract to take into account the increase in our annual costs for 2020 and allocate an additional \$1,061,095 to cover these costs.

Lack of Funding for Reform Work

Today, New York City is engaged in an unprecedented effort to reform our criminal justice system. Each week brings a new initiative, taskforce, working group, and hearing. As public defenders, we have decades of experience, expertise, and proximity to the problem as well as those most impacted. As a result, we are in a unique position to identify the systemic issues and help craft long-term solutions to make the system more fair and more just. Over the past year, we have testified in approximately a dozen hearings. We have sat on numerous citywide task forces, committees, and working groups. In addition, we are constantly working internally to reform the criminal legal system. For example, we recently launched an LGBTQ project to document and address the systemic mistreatment and abuse of our LGBTQ clients by legal system actors from the police, court staff, judges, and corrections. We have also created a Bail Advocacy Team to engage in targeted advocacy for our clients held in pre-trial detention. And we have developed the Liberty Project which engages in policy work and community organizing to help reduce the pre-trial detention population and inform the borough-based jail plan. Our role in reform work does not only benefit our clients. It benefits the City as a whole. Yet, the focus and effort that is required to engage in this critical reform work has associated costs. A staff attorney cannot be responsible for the zealous representation of 75 indigent New Yorkers and simultaneously provide testimony, attend city-wide meetings, and build new initiatives designed to bring greater fairness to our legal system. This work requires dedicated staff. Yet neither MOCJ nor the City Council fund such positions.

We are asking the City to provide \$150,000 for 2 full time positions to do policy reform work so that we can continue to partner with local stakeholders to create a more fair and just legal system.

Lack of Funding for Pre-Arrest Representation

Over the past few years, there has been an increased recognition of the extreme wealth disparities embedded in our criminal legal system, especially when it comes pre-trial detention. However, there is an overlooked aspect of this wealth disparity that has an equal if not greater impact on the fairness of our system - pre-arrest representation. Wealthy New Yorkers who learn that they are being investigated or wanted by law enforcement can obtain representation before charges are even brought. During this period of time, their lawyer can obtain information about the allegations, conduct early investigation before witnesses and evidence disappears, proffer their client and advocate that charges not be brought. Even where charges cannot be avoided, they can arrange a voluntary surrender on a date and time that minimizes disruption to the person's life, negotiate charges and bail with the prosecutor, and arrange for the necessary bail resources before the person even appears in court. Early advocacy can help mitigate the harm of criminal system involvement but is only available to those with the means to pay for it. Indigent New Yorkers should have the same access to representation as our wealthy counterparts. However, the scope of services in our contracts only allow for representation once a case is filed

in court. Moreover, the resources allocated to our contracts are insufficient to provide representation during this critical phase of the proceeding.

We are asking the City for \$200,000 to fund 2 full time lawyers and one full time investigator to ensure that indigent New Yorkers receive the same early advocacy as wealthier New Yorkers.

FAMILY DEFENSE

- **We are asking the City for an additional \$1.2 million to meet current staffing needs.**
- **We are asking the City for \$588,000 to cover increases in annual costs.**
- **We are asking the City Council for \$597, 398 to fund preventive advocacy and SCR representation**

The dedicated attorneys, social workers, and parent advocates in our office’s family defense practice zealously defend parents against the painful and unnecessary removal of their children and the potential dissolution of their families. Despite the myriad studies showing that children are better off staying with their own parents, parents are often targeted in child neglect and abuse investigations and lose custody of their children because they have marginal resources, are unemployed, have unstable housing, suffer from mental illness or addiction, or are victims of abuse themselves. Each year, these issues drive thousands of children into the child protection system. Once in the system, children often languish in foster homes as their parents and caretakers attempt to meet the court’s often lengthy and onerous requirements to secure their return. Without a strong legal defense and the resources and support to address and resolve the problems that brought them there, many families will continue to cycle in and out of family court for years on end, sometimes generation after generation, destabilizing their lives, families, and communities in the process.

Staffing Shortage

During Fiscal year 2016 and 2017, new cases alleging abuse and neglect were being filed at an alarming rate. Fiscal year 2017 saw a 7.6% increase in reports of abuse or neglect over FY 2016, and an 11.9% increase in the rate at which reports were substantiated.¹ But ACS filings increased much, much more. “Between October 2016 and May 2017, ACS filed more than 10,500 cases

¹ The New School Center for New York City Affairs, “Watching the Numbers: A Six-Year Statistical Survey Monitoring New York City’s Child Welfare System,” November 2017, available at <http://www.centernyc.org/watching-the-numbers-2017> (7.6% appears in the first bullet point; 11.9% calculated by comparing 36.1% with 40.4% in the second line of data in the chart).

accusing families of child abuse or neglect in Family Court—an increase of 64 percent over the number of cases filed by the agency during the same months of the previous year.”²

While intake over the past fiscal year has slowed, the intake rate tells only part of the story. When the intake rate increases so precipitously but the number of judges and amount of other resources do not change, the entire system moves much more slowly. So the number of cases pending at any time -- which was always high, as these cases generally remain active for a long time -- goes up. And it is the pending rate, the number of cases for which we are responsible at a given time, that determines the workload. As but one data point: the number of New York City abuse or neglect cases that were pending without having reached a determination, called a “fact-finding,” increased by 38.9% from the end of calendar year 2016 to the end of 2017.³ Although our pending caseload has begun to flatten out, it will take time before it begins to mirror the decline in intake.

With cases pending longer, our clients are more likely to generate additional cases, such as custody or termination of parental rights matters, for which we receive no additional compensation. And our cases are increasingly complex. For example, we have seen increasing numbers of cases, filed as serious abuse allegations, that turn out, upon careful investigation and consulting with experts for which we are not adequately funded, not to be abuse at all but, rather, missed diagnoses of underlying pediatric medical conditions.

The increased caseloads that have resulted from all of this have created a crisis in Family Defense. The rise in cases means we need more attorneys and administrative staff to handle these cases as well as more social workers and parent advocates to help parents negotiate service plans, attend meetings and conferences with caseworkers, and fulfill the requirements of the service plans required by ACS. To provide quality representation and ensure children do not languish needlessly in foster care, our staffing must ensure that each attorney is handling a manageable caseload of approximately 50 cases, the standard for child representation. In addition, we need to ensure appropriate 2:1 ratios of attorneys to social workers and parent advocates as well as appropriate 2.5:1 ratios for attorneys to paralegals. Despite the multi-year increase in filings and the inflated pending caseload, we are experiencing a shortfall in our funding for fiscal year 2019 and even more severe shortfall in fiscal year 2020.

² The New School Center for New York City Affairs, “ACS in Overdrive: Since the Death of a Harlem 6-Year-Old, Are Fewer Families Getting the Help They Need?,” 2018 (emphasis added), available at <http://www.centernyc.org/acs-in-overdrive/?rq=acs%20in%20overdrive>.

³ Data are from the New York State Unified Court System, comparing 1,140 at the end of 2016 (*see* the second row, penultimate column of the chart available here: <http://www.nycourts.gov/publications/pdfs/Family-Court-statistics2016.pdf>) with 1,584 at the end of 2017 (*see* the second row, penultimate column of the chart available here: <http://www.nycourts.gov/publications/pdfs/Family-Court-statistics2017.pdf>).

The reason for this extreme shortfall in our budget is that the City has not increased our funding sufficiently to meet the growing epidemic of case filings in Family Court, the increase in our pending caseload, the growing complexity of our cases, and the expanded need for preventative work. We were optimistic that we would receive the requisite level of funding when, last year, the City asked us to project what it would cost to right-size our budget, ensure sufficient staffing to handle the increases in both cases and pending caseload, ensure sufficient ratios to meet client needs, and ensure sufficient funding to meet growing costs. The answer was approximately \$11 million. While the City did increase our contractual targets in fiscal year 2018 and 2019 to better reflect the pace of new filings, and made a minor adjustment to our cost per case, the City only increased our annual revenue to \$9.8 million.

We are asking the City to right size our budget for 2020 and allocate an additional \$1.2 million to our parent representation contract.

Growing Costs

As with our criminal defense contract, MOCJ has indicated that it has no intention of adjusting funding for fiscal year 2020 to cover increases in salaries, health care costs, and rent. This failure to adequately account for our growing annual costs leaves us in dire financial straits. Not only do we not have enough funding to meet caseloads and staffing standard and ratios in fiscal year 2019 but now have to use that inadequate funding to pay for increases. The only way we can cover these costs is to increase caseloads and reduce staffing further. Our contract for trial-level parent representation with MOCJ reflects a \$9.8 million allocation of funds. Yet, the costs associated with salary increases, health care, and rent are anticipated to rise 10,388,000% leaving us with a deficit of \$588,000. Reducing staff will leave us unable to meet our constitutional and ethical requirements to provide zealous representation and will lead to more unnecessary family separation.

We are asking the City to amend our contract to take into account the increase in our annual costs for 2020 and allocate an additional \$588,000 to cover these costs.

Lack of Funding for Preventive Advocacy and to Help Parents Clear their Names off Central Register of Child Abuse and Maltreatment (SCR)

Currently, parents with child welfare involvement are not assigned attorneys until ACS files an abuse or neglect case against them in Family Court. However, before a case is filed in court, critical decisions are made that have grave consequences for how the cases proceed, including whether the family will be diverted to programs and services; whether the case will be filed in court; and, most significantly, whether children will be separated from their parents. Because our contracts with the City do not fund us to represent, advise, or support parents through the pre-filing investigations, they participate in these investigation alone and unadvised resulting in

hundreds of unnecessary family separations and court filings. We are currently seeking funding from the City Council to provide parents with the advocacy they need to make decisions for their families and get the services they need to ensure that their children are safe and their families can stay together.

New Yorkers are routinely denied employment based on unproven allegations of child abuse and neglect that remain accessible to employers and others for up to 28 years on the state's SCR. The majority of indicated cases are never reviewed by a judge to determine whether the allegations are supported by evidence and warrant drastically limiting a person's employability. Indicated reports often have no relationship to a parent's ability to work and affects primarily people of color, precluding them from a tremendous array of job opportunities, including in the fields of health care, education, security, and transportation. The only way to challenge an indicated report in the SCR is to request a fair hearing before an administrative law judge. Most parents are not aware of their right to request this proceeding, let alone how to navigate the complicated process, obtain documentary evidence, or represent themselves in the hearing. Parents do not have a right to appointed counsel and our contracts with the City do not include representing parents in administrative hearings to clear their SCR record. We are currently seeking funding from the City Council to provide representation to these parents.

We are asking the City to allocate \$597, 398 to fund this critical work.

CIVIL ACTION

- **We are asking the City to fund civil lawyers at a ratio of 10:1 as part of our Criminal and Family Defense contracts.**

A sweeping array of civil punishments are triggered the moment someone faces arrest, deportation, or the removal of their children. Our clients risk losing their jobs, homes, income, property, and basic civil rights — hardships that can be more devastating and long-lasting than the charges themselves. This civil fallout, sometimes referred to as “collateral consequences,” effectively traps individuals in a cycle of poverty and justice involvement. We know it does not have to be this way.

At The Bronx Defenders, we have the unique opportunity to intervene early and break this cycle by integrating transformative civil action within our criminal, family, and immigration defense work. Our experts work collaboratively on teams to represent our clients in civil courts and tribunals throughout the City and to increase access to basic civil needs. In addition, we work to facilitate the reentry of our clients into the community and to restore their rights.

Funding and Ratios are Insufficient to Meet Criminal and Family Defense Civil Legal Needs

For the first time, MOCJ, through our criminal defense contract, has provided separate funding for civil attorneys to assist our criminal defense clients in the areas of housing, employment, property, and benefits. However, MOCJ is only funding civil attorneys at a ratio of 1 civil attorney for every 20 criminal defense attorneys. The needs for civil representation in related civil matters requires at least double that ratio. A single client's entire life can be upended because of criminal system involvement. They can lose their housing, have their benefits cut off, and be terminated from their job. These consequences can be graver and more destabilizing than the criminal cases itself. Civil attorneys and advocates are a critical tool in our effort to mitigate the harm of criminal system involvement, reduce rates of re-arrest, and help clients on the pathway to success. However, providing one civil attorney for every 20 criminal defense attorneys who handle on average 75 clients at any one time, is woefully inadequate to meet our clients' civil legal needs.

The need for representation in civil matters is just as important to our family defense clients. The biggest driver of family separation is poverty not abuse or actual neglect. Children are taken from loving parents because of issues related to housing, employment, and benefits that can be addressed with the help from civil lawyers and advocates. By providing funding for civil attorneys as part of our family defense contract, parents facing ACS investigation can challenge unsafe conditions and illegal evictions as well as seek settlement for non-payment of rent in housing court that would help keep their children safely at home. They can advocate for their child's unmet educational needs that often lay at the heart of educational neglect cases. They can appeal the denial or termination of benefits at administrative hearings and get the support they need to provide for their families. In short, with sufficient funding for the civil needs of our family defense clients, we can avoid the unnecessary family separation happening in our own backyard. However, our current contract with MOCJ for parent representation does not provide any funding for civil attorneys despite the direct correlation between keeping children safely at home and housing, employment, and benefits.

We are asking the City to fund civil lawyers at a ratio of 10:1 as part of our Criminal and Family Defense Contracts.

IMMIGRATION

Our Immigration Practice is made up of three related but distinct programs: NYIFUP, Padilla Representation, and Affirmative Representation.

- **We are asking the City Council for \$500,000 in additional funding in FY19 to handle the increase in intake.**
- **We are asking the City Counsel to fund NYIFUP at \$16.6 million to handle the increase in anticipated annual intake.**

- **We are asking the City to fund *Padilla* attorneys in our Criminal and Family Defense contracts at a ratio of 1:10**
- **We are asking the City to allocate \$300,000 to fund 4 full time attorneys to provide affirmative representation for our Criminal and Family Defense clients.**

New York Immigrant Family Unity Project

Last year, the City Council funded the New York Immigrant Family Unity Project (NYIFUP) for \$10 million. This included \$3.3 million to each of the three providers, all part of the defender community—Brooklyn Defender Services, The Bronx Defenders and The Legal Aid Society.

NYIFUP providers represent people who are detained by ICE during their deportation cases -- also known as removal proceedings -- at the Varick Street Immigration Court (and detained New York City residents appearing at the Elizabeth courthouse in NJ). For those who receive a lawyer, their chances of successfully fighting their case and staying in the United States are dramatically increased. A recent study showed that there is a 1,100% increase in successful outcomes when immigrants, especially those with long-standing ties in this country, are properly represented by counsel in removal proceedings.

Assault on NYIFUP and Access to Counsel is Requires a Greater Expenditure of Resources

As immigration legal services providers, we are currently experiencing what can only be described as an assault on NYIFUP, access to counsel and due process for detained immigrants. First, ICE stopped physically bringing our clients in court, which means all court appearances are happening by way of video teleconference. Our clients don't get to sit in the room where their deportation proceedings are underway -- they are in a cell in a jail, appearing only through the video. Video appearances undermine our ability to have confidential communication with our clients, impede our clients' ability to meaningfully participate in the proceedings, and reduce the effectiveness of our advocacy efforts. Moreover, it requires our staff to make many more trips to the jails where our clients are held, increasing the number of hours required to zealously represent each client and reducing the overall number of clients any one staff member can represent. While we have filed a lawsuit to stop this practice, right now our work as advocates is being undermined and our ability to handle the workload threatened by ICE's dramatic shift in policy.

Second, there have been drastic changes to the way calendars are being handled in the court. What used to be separate morning and afternoon calendars are now all set for the morning. Judges' dockets are very lengthy, which means that lawyers often end up waiting for hours on

cases that previously did not require so much wasted time. Judges may run out of time and not call their cases at all, or push them into the afternoon even though the attorney spent the morning waiting. This ever-changing and inefficient scheduling is further burdening an already unmanageable workload.

Finally, the Immigration Court has started advancing cases from their previously scheduled trial dates. While this may appear to be an attempt to reduce the backlog of cases and ensure that our clients have their matters heard and adjudicated expeditiously, it is anything but. Trial dates that were set by Immigration Judges are being advanced without warning or communication to the attorneys on the cases. There is no discussion or negotiation about the date to ensure that assigned counsel can even be present. Most importantly, the cases are being moved forward so far as to be imminent, and the new date effectively leaves counsel without sufficient time to prepare a defense.

Current Funding is Insufficient to Maintain Universal Access to Counsel

In addition to the above threats to our program, the Trump Administration has increased dramatically the number of immigrants being arrested and put into deportation proceedings. ICE is no longer exercising its discretion to release certain immigrants while their cases are pending. Previous administrations would exercise some discretion, and decline to initiate removal proceedings for certain individuals, or choose not to detain them during the court of any removal proceedings. Now, under the enforcement policies of the current administration, the number of detained immigrants facing deportation has skyrocketed over the last couple of years resulting in a ballooning backlog of cases. To manage the backlog, the Varick Street courthouse is adding two additional courtrooms for detained cases this month, which we anticipate will result in a 66% increase in our annual intake.

To maintain this groundbreaking program, we would need a corresponding 66% increase to our NYIFUP budget for a total of \$16.6 million. Increasing our funding commensurate with the increase in intake is the only way to preserve universal access to counsel for detained immigrants. Our current funding and staffing is woefully inadequate to handle this anticipated increase in intake. While close, our current funding is not projected to cover all of our costs for fiscal year 2019 at the current intake level and so certainly cannot cover the additional costs associated with this anticipated influx of clients. In addition, our staff are already handling the maximum possible caseload especially given the obstacles thrown in their way by ICE and the courts. We simply do not have the funding or capacity to staff these additional intake shifts and additional clients.

In light of the above, we are asking the City Council to provide \$500,000 in additional funding in FY19 that would allow us to start increasing our staff immediately and staff the new detained immigration courts as they open.

We are also asking the City Council to increase our funding for next year to a total of \$16.6 million so we can continue our mission of representing every detained person, based on need only, and continue our groundbreaking work for immigrants.

Padilla Representation

The Bronx Defenders employs another group of immigration attorneys known as “*Padilla*” attorneys, after the Supreme Court case *Padilla*, which established that immigration advice is part of the right to counsel in criminal cases. The work of *Padilla* attorneys to provide in-depth screening, advisals and representation to all non-citizen clients facing criminal charges is more important now than ever. ICE has ramped up every aspect of its enforcement activities, and non-citizen New Yorkers of all statuses are at greater risk of being targeted for removal proceedings. This work requires accurately advising clients on how to avoid adverse immigration consequences such as pleas that render them criminally removable or ineligible for defenses from removal or bond from immigration detention. This work also requires counsel to take into account the risk of ICE apprehension of their clients in criminal custody (even under the DOC detainer law!), on probation, or in the courthouse over the course of multiple court appearances. While MOCJ, under our trial level indigent defense contract provides funding for immigration attorneys working on behalf of criminal defense clients, it only does so at a ratio of 1 immigration attorney for every 20 criminal defense attorneys. This ratio and its corresponding funding is woefully inadequate to meet the need of our immigrant clients facing criminal charges. Based on this ratio and our current needs, each immigration attorney would be handling 250 cases at any one time. That caseload is simply untenable and would be a violation of our constitutional and ethical obligations. We need, at minimum, one immigration attorney for every 10 criminal defense attorneys.

Unlike our trial level indigent defense contract, our parent representation contract with MOCJ provides no funding for immigration attorneys to conduct screenings, provide advice, or represent our clients facing charges in Family Court. While the impact of criminal cases on our clients’ immigration status is well known and documented, we are beginning to see similar negative consequences of family court involvement. Our family defense practice has seen an influx of non-citizen clients who are accused of abuse or neglect of their children. At the same time, we have seen immigration judges using child welfare involvement against our clients in

their deportation case. Thus we must be able to accurately and promptly screen and advise this vulnerable client population. However, we simply do not have the staffing to do so.

If the City cares about protecting immigrant New Yorkers, it must recognize that providing counsel in deportation proceedings is not enough. The City must also invest in the front end screening, advice, and representation that helps our clients avoid deportation proceedings all together. The City should continue its pathbreaking support for our immigrant community by robustly funding *Padilla* representation at a ratio of 1:10 in both our criminal defense and our family defense practices. Without additional funding, we will not be able to meet the needs of our immigrant clients, we will run the risk of violating our constitutional obligation to provide advice and counsel to our immigrant clients facing criminal and family court cases, and we may unwittingly assist in feeding this administration's deportation machine.

We are asking the City to fund *Padilla* attorneys in both our Criminal and Family Defense Practices as a ratio of 1:10.

Affirmative Representation for Immigrant Clients

For many New Yorkers, representation in affirmative applications to USCIS, the immigration agency that adjudicates affirmative applications for benefits like some visas, is the key preventative measure to avoid removal proceedings. Many undocumented immigrants have no idea that they qualify for special visas or statuses, and certain lawful permanent residents do not realize they may be eligible to naturalize. But the ability to provide such assistance requires high-quality, deep screening of documented and undocumented immigrants. There must be capacity not only to screen for these different kinds of applications or pathways to lawful status but to provide the needed representation that follows as well. Our clients who have had contact with the criminal justice system require some of the most complex and time intensive affirmative relief applications, and are turned away from most other non-profits for these services. Moreover, under the current administration, USCIS has delayed processing times than ever, and is frequently denying applications in discretion that were previously approved. We are forced to appeal agency determinations or bring lawsuits in federal courts to compel agency action. Under this administration's recent policies, we expect that people whose applications are denied will be referred to removal proceedings, which has not been the case under previous administrations that exercised more discretion.

We are asking the City to allocate \$300,000 to fund 4 full time attorneys to provide affirmative representation for our Criminal and Family Defense clients.

Impact Litigation

With growing challenges to New York's immigrant communities under the current federal administration, we increasingly see issues that go beyond the scope of any single person's case and instead threaten the rights of hundreds of immigrants,- including many who are still waiting to see an attorney for the first time. Our Impact Litigation Practice, which builds on the experience of our office's individual representation and collaborates with our broader systemic reform team, is uniquely positioned to take on these challenges and ensure that immigrants' rights are protected. We have submitted a request to the New York City Council for \$225,000 to expand our litigation work to fight injustice facing low-income New Yorkers, particularly those facing the increased challenges of the federal immigration system. With this support, we will be able to hire a senior litigation attorney and a paralegal to help us build and litigate cases that will seek systemic reform that benefits all New Yorkers.

We are asking the City Council for \$225,000 to support impact litigation focused on protecting Immigrant New Yorkers.

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Thank you again for the opportunity to provide this testimony. It is an enormously important moment in the history of our City as regards the ongoing pursuit of justice. With the Council's continuing leadership, we will continue, together, to build upon the successes of recent years.