

**Testimony Before the New York City Council's Committee on Immigration  
Regarding Council Budget, Presented on March 20, 2019**

Good afternoon, my name is Zoe Levine and I am the Legal Director of the Immigration Practice at The Bronx Defenders. I would like to thank the New York City Council for its consistent and generous support of immigration legal services, specifically Immigration Chair Menchaca and Finance Chair Dromm.

The Council is well aware of the remarkable success of our legal services programs. However, in light of escalating challenges and needs in the Bronx community, this testimony will outline additional funding requirements to support our services. New York City has prided itself on being a sanctuary to immigrants from around the world. Part of this commitment has involved the provision of robust legal services to keep families together and communities united. Our programs have done just that, and have become the example looked to by cities across the country. This commitment, however, has also made New York a target for the Trump administration and its enforcement against immigrants and attacks on their fundamental rights. The Administration has identified and shown us that another way to harm immigrants is to undermine the programs and people who serve them. Therefore, to keep our City's legacy alive and maintain our commitment, there must be an increase in investment in the programs that allow us to fight back.

The Bronx Defenders pioneered the model of immigration services embedded in a public defender office over fifteen years ago. Our robust immigration practice is today comprised of over forty attorneys, social workers, advocates and administrators. We provide deportation defense in both detained and non-detained court settings. We work closely with non-citizen clients and their advocates throughout the pendency of their cases in both Criminal and Family Court to avoid or mitigate negative immigration consequences, and provide affirmative immigration services.

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 Council 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.**

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

### **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 in 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.

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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.