

**The Bronx
Defenders**

**Redefining
public
defense**

**New York City Council
Committee on Immigration and Committee on Hospitals**

**Hearing re: Oversight - ICE's Escalated Attacks on NYC Policies Protecting Immigrants
February 28, 2020**

**Written Testimony of The Bronx Defenders
By Sophia Gurulé, Policy Counsel, Immigration Practice**

Good afternoon Chairs Rivera and Menchaca, my name is Sophia Elena Gurulé and I am Policy Counsel to the Immigration Practice at The Bronx Defenders. I also represent Mr. Duguid Gamboa — whose wife shared testimony about her family's experience being terrorized by ICE in their own home — in his deportation case at the Varick Street Immigration Court through the New York Immigrant Family Unity Project, also known as NYIFUP.

The Bronx Defenders (“BxD”) is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

Our Immigration Practice pioneered the model of integrated criminal defense and immigration representation over fifteen years ago. Immigration attorneys work closely with clients and their advocates throughout the pendency of their cases in both criminal and family court to avoid or mitigate negative immigration consequences. Additionally, immigration attorneys represent

clients in deportation proceedings in both detained and non-detained settings, provide affirmative immigration services, and pursue community-based systemic reform litigation and advocacy aimed at reforming federal immigration laws. Since November 2013, our immigration attorneys have also served as assigned counsel at the Varick Street Immigration Court under the New York Immigrant Family Unity Project (NYIFUP), the first-ever universal representation project in immigration court.

THE CITY COUNCIL MUST PROTECT IMMIGRANT NEW YORKERS WITH CRIMINAL LEGAL SYSTEM CONTACT

I thank the City Council for the opportunity to testify today. I also thank Chair Menchaca and his staff, who worked diligently to ensure that Mr. Duguid Gamboa obtained a NYIFUP public defender. Through NYIFUP, Mr. Duguid Gamboa was able to obtain bail from an Immigration Judge and reunite with his family in Sunset Park, their home.

As a NYIFUP public defender who has represented dozens of people in deportation cases at the Varick Street Immigration Court, I can say that, unfortunately, the experience of Mr. Duguid Gamboa and his family with ICE immigration law enforcement is not uncommon. ICE officers regularly engage in deceptive police tactics that result in months of incarceration, family separation, and deportation.

The Bronx Defenders has represented many people who were arrested by ICE officers pretending to be police officers throughout New York City. In most instances, people are arrested by ICE officers waiting outside their home, their work, or outside criminal court. It is unclear how ICE determines when or where to arrest, but one thing is clear: ICE regularly arrests people who have open criminal court cases. As ICE deliberately deceives immigrants with criminal legal system contact to effectuate civil arrests in the midst of heightened enforcement, New York must pass the Protect Our Courts Act to limit ICE's power.

That fear and predation have become the primary tools of ICE enforcement is evident not only in their targeting of courts, but in their deceptive practices they use to detain people. In one instance on Staten Island, ICE officers came to a family's home pretending to be police officers who could help their family member "dismiss his criminal case." Relying on this information, his wife informed the officers that he was at work and shared his location. He was then arrested outside his job at a popular Staten Island restaurant. Half a year later of immigration incarceration, he won his deportation case and is reunited with his family. But during that time his young child became suicidal and required hospitalization. The impact on him and his family

by his ICE arrest and incarceration cannot be overstated, and it is similar to the experiences of many incarcerated immigrants and their families that we represent through NYIFUP.

In another instance, on the day that he was scheduled to go to criminal court for the dismissal of his case, a 23-year-old Bronx resident was at his parents' home when several ICE officers knocked on the door, pretending to be police who were looking to arrest a different person from the neighborhood. They asked him if they could come inside to discuss. He opened the door and they arrested him instead. He is still incarcerated by ICE to this day and has celebrated three birthdays at the Bergen County Jail in ICE custody. His daughter--born while he was in ICE custody--is about to celebrate her second birthday without her father.

In the past two months, we have seen ICE escalate these types of deliberately deceptive, violent policing tactics against New York City and immigrant communities who live here. We have seen ICE issue subpoenas¹ to the New York City Department of Corrections to obtain information that is otherwise inaccessible to them due to New York City's detainer policies. We have seen ICE's Acting Director Matthew Albence say "ICE has no option but to increase enforcement" due to New York City's lack of cooperation with ICE. ICE's escalation in policing should also not surprise us when in September 2019 the ICE New York Field Office Director Thomas Decker said that "[i]f we're not able to pick them up from the jail . . . Then we're gonna look for them in the community."² Finally, we have seen that the Trump administration is deploying the SWAT team of the Border Patrol right now to assist ICE in arrests in New York City.³ This announcement came a week after ICE shot Erick Diaz Cruz in the face and hand.⁴

The Second Circuit's decision this week allowing the federal government to withhold funding to so-called "sanctuary cities" will also undoubtedly embolden the Trump administration to act even more punitively against our city and its community members.⁵ ICE and the Trump administration have made it unequivocally clear: New York City and its immigrant communities are its targets, and they will terrorize them to the fullest extent that they can.

In light of these flagrant escalations, it is critical now more than ever that the Council remain steadfast in its commitment to protect the most vulnerable New Yorkers. We urge the City

¹ *ICE issues subpoenas to obtain information refused under NY sanctuary policies*, ICE.gov (Jan. 18, 2020), <https://www.ice.gov/news/releases/ice-issues-subpoenas-obtain-information-refused-under-ny-sanctuary-policies>.

² Dean Meminger, *ICE Official: Elected Officials Lying About Latest NY Arrests*, NY1 News (Sept. 27, 2019), <https://www.ny1.com/nyc/all-boroughs/news/2019/09/27/ice--new-york-officials-lying-about-recent-arrest-spree>.

³ Caitlin Dickerson & Zolan Kanno-Youngs, *Border Patrol Will Deploy Elite Tactical Agents to Sanctuary Cities*, N.Y. Times (Feb. 14, 2020), <https://www.nytimes.com/2020/02/14/us/Border-Patrol-ICE-Sanctuary-Cities.html>.

⁴ Annie Correal & Ed Shanahan, *Shooting of Man in the Face by ICE Turns Into a Trump-New York Fight*, N.Y. Times (Feb. 11, 2020), <https://www.nytimes.com/2020/02/11/nyregion/ice-officer-shooting.html>.

⁵ *See generally State v. Dep't of Justice*, No. 19-267(L), 2020 WL 911417 (2d Cir. Feb. 26, 2020)

Council to keep asking questions of other city and state agencies about their roles in protecting immigrant New Yorkers, such as:

- How can the City Council limit ICE's practice of arresting immigrant New Yorkers with open, unresolved criminal cases?
- Which city or state agency will investigate the shooting of Erick Diaz Cruz? Has an investigation into this shooting begun, and if not, why not?
- And finally: What is the NYPD protocol that led to NYPD officers escorting ICE agents as they drove Mr. Avendaño to Hudson County Correctional Facility on February 7, 2020?

The crisis of ICE terrorizing New York immigrant communities is escalating, already resulting in a violent shooting and the hospitalization of two men. ICE is stoking fear throughout working-class immigrant families in New York City. Sadly, the fear is warranted with ICE officers luring people into arrest seemingly every day. We call upon the City Council to uphold and strengthen New York City's detainer laws to further demonstrate to immigrant New Yorkers that NYPD cannot in any way work with ICE. We encourage the City Council to draft legislation that limits data-sharing between city and federal agencies that may result in ICE arrests, such as information about pending criminal cases. Above all else, we ask the City Council to remain firm in its commitment to protecting all New York immigrants -- including those with criminal legal system contact -- as the Trump administration will only further its attacks on our city in their name.