

**The Bronx  
Defenders**

**Redefining  
public  
defense**

**New York City Council  
Committees on Immigration and General Welfare  
Improving the living conditions for asylum seekers staying in the DHS shelter system,  
HERRCs, and Respite Centers  
June 21, 2023**

**Written Testimony of Rosa Cohen-Cruz, Director of Immigration Policy and Miriam  
Mack, Director of Family Defense Policy for The Bronx Defenders**

Chairs Hanif and Ayala and Committee Members, we are advocates at The Bronx Defenders (“BxD”). Thank you for holding this hearing today to address this critical issue. BxD is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system. Our staff of over 450 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 developed a groundbreaking, nationally recognized model of representation called holistic defense that achieves better outcomes for the people we represent. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, family regulation, 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 change at the local, state, and national levels. We take what we learn from the people we represent and communities we work with and launch innovative initiatives designed to bring about real and lasting change.

**INTRODUCTION**

There are nearly 7,000 families seeking asylum residing in shelters in New York City, with thousands more individuals as well.<sup>1</sup> For migrants fleeing violence and seeking to rebuild their lives anew, access to safe, reliable housing and shelter is essential to creating the stability necessary to thrive. However, we must do more than simply provide access to housing—we must

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<sup>1</sup> New York City Council Committee on Immigration held jointly with Committee on General Welfare, Testimony of Joslyn Carter, New York City Homeless Services Administrator, June 21, 2023.

also ensure that the housing we provide is not a funnel into policing systems that ultimately ensnare immigrant families, and put their very ability to remain together in this country at risk.

Indeed, many of the people we represent at BxD are living in shelters managed by the Department of Homeless Services (“DHS”) where they are subject to increased surveillance and policing by the New York Police Department (“NYPD”) and Administration for Children’s Services (“ACS”). For immigrant New Yorkers, contact with these agencies is terrifying, and often initiates an irrevocable process in immigration court that can destroy their opportunity to remain in this country, regardless of the outcome of a family or criminal legal system case.

### **A. Shelter System Engagement with NYPD Puts Immigrants at Risk of Deportation**

In February of this year, the New York City Council Committee on Immigration jointly with the Criminal Justice Committee held an oversight hearing on the New York City Detainer Laws in which advocates and impacted people testified at length to pervasive collaboration between city agencies and Immigrant Customs Enforcement (“ICE”).<sup>2</sup> During that hearing, emails between the Department of Corrections (“DOC”) and ICE were presented and revealed the extent to which the DOC had been knowingly violating city laws to collaborate with ICE.<sup>3</sup> Meanwhile, there is frequent policing in New York City shelters, where NYPD and ACS have seemingly open access to investigate people living in those spaces.

In our immigration practice at BxD we often identify interaction with police or ACS in the New York City shelter system as the first point of contact that funnels someone into removal proceedings. Once initiated, removal proceedings take on a life of their own, and cannot be stopped by New York City officials, even where the ICE arrest violated our laws.<sup>4</sup>

To give just one emblematic example, BxD’s immigration practice represents Ms. D, a recently arrived asylum seeker. When she entered the United States, immigration placed her on an order of supervision, requiring check-ins with ICE. Last fall, Ms. D was living in a shelter in NYC with her husband and two children. She left her children with a friend at the shelter in order to go to work. A shelter worker mistakenly believed that the children were alone, and shelter staff called the police on Ms. D who was arrested upon returning to the shelter from work. An order of protection was issued, and ACS removed the children from the family. Shortly thereafter, ACS returned the children to Ms. D even though the order of protection was in place. Days later, Ms.

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<sup>2</sup> See generally New York City Council, *Committee on Immigration Hearing Transcript on NYC Detainer Laws Transcript* (June 9, 2021)

<sup>3</sup> Arya Sundaram and Matt Katz, ‘#teamsendthemback’: Emails reveal cozy relationship, cooperation between NYC correction officers and ICE, *Gothamist* (Feb. 16, 2023), <https://gothamist.com/news/teamsendthemback-private-emails-reveal-cozy-relationship-cooperation-between-nyc-correction-officers-and-ice>.

<sup>4</sup> Correal, Annie and Shanahan, Ed, “*He Was Caught Jaywalking. He Was Almost Deported for It*”, *N.Y. Time* (March 11, 2021) <https://www.nytimes.com/2021/03/11/nyregion/daca-ice-nyc-immigration.html>.

D tried to comply with her requirement to check in with ICE. She brought her children since ACS had returned them to her and because they were also required to check in. At the check-in, an ICE officer informed Ms. D that she was being arrested and detained due to the open criminal case.

NYPD's access to the shelter system fuels distrust and makes this form of housing a less safe option for everyone, but especially immigrants. NYPD regularly colludes with ICE to funnel people into immigrant detention.<sup>5</sup> ICE conspires with the NYPD to target immigrant New Yorkers and make arrests for a purely civil immigration matter, NYPD and ICE are effectuating arrests together in the community,<sup>6</sup> and ICE similarly supplies NYPD protection in the community.<sup>7</sup>

Although not the subject of this hearing, central to making public housing and shelter options safer for immigrant new yorkers is eliminating policing and surveillance and tightening our city's laws that disentangle New York City from furthering ICE's racist and xenophobic agenda. That's why we again urge the City Council to pass three bills that would severely restrict, and in many cases outright prevent, law enforcement collaboration with ICE. In the streets of New York, where Black, Latine, and other marginalized people are under constant threat, the New York City Council must take immediate corrective action by:

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<sup>5</sup> As we testified to in February of this year, NYPD, like DOC, wrongfully cooperates with ICE to enforce immigration laws in our city. In May 2020, a BxD client was woken up by loud knocking on his door. The three officers at his door began yelling, "If you don't open the door, we're going to knock it down and arrest everyone." They yelled threats and said they would knock the door down without asking someone to open it first. No one in the apartment opened the door because they were terrified. As a result, the officers continued banging so hard that they damaged the door, later requiring its replacement. BxD obtained the apartment building's video footage of this incident, which showed NYPD officers with ICE officers attempting to enter our client's apartment by force. # When our client went to the local precinct to find out more information he was told there was no record of the NYPD being at his apartment that morning.

<sup>6</sup> During the June 2020 George Floyd protests, ICE provided protection for NYPD precincts and NYPD also worked with ICE to arrest and detain a protester who was Puerto Rican and a U.S. citizen. See Matt Katz, *ICE Helped To Protect NYPD Station Houses During Protests*, WNYC (June 9, 2020), <https://www.wnyc.org/story/ice-helped-protect-nypd-station-houses-during-protests/>; see also Mazin Sidahmed, *Video Shows ICE Agents Arresting a Protestor in NYC*, Documented (June 5, 2020), <https://documentedny.com/2020/06/05/video-shows-ice-agents-arresting-a-protestor-in-nyc/>.

<sup>7</sup> In February 2020, ICE hospitalized Gaspar Avendano-Hernandez after tasing him more than six times. In that same interaction, ICE tasered and shot Eric Diaz-Cruz in the hand and face, also resulting in his hospitalization. # NYPD then escorted ICE officers as they transferred Mr. Avendano-Hernandez to ICE detention after he was discharged from the hospital. See Wes Parnell, Rocco Parascandola, Thomas Tracy and Larry McShane, *ICE agents, while arresting undocumented Mexican immigrant, wind up shooting second man in wild Brooklyn street brawl*, NY Daily News (Feb. 6, 2020), <https://www.nydailynews.com/new-york/nyc-crime/ny-ice-agent-shoots-man-in-face-in-brooklyn-20200206-7db5cmlbqff2hflbs5pnssipuu-story.html>.

- Passing Intro 184, which ensures that NYPD cannot communicate with ICE without a judicial warrant, with proposed amendments incorporated;<sup>8</sup>
- Passing Intro 185, which ensures that DOC & DOP cannot communicate with ICE without a judicial warrant, with proposed amendments incorporated;<sup>9</sup> and
- Passing Intro 158, which creates a private right of action for violations of the detainer laws.

On the State level, New York must pass the New York for All Act (S. 987 Gounardes /A. 5686 Reyes) and end State and local agencies sharing information with and otherwise colluding with ICE. This is particularly important as the New York City shelter system continues to bus people to other counties that do not all have prohibitions against information sharing by state actors. This legislation is critical to ensure immigrants feel safe seeking shelter, or otherwise engaging with officials, and living their daily lives without fear that it will funnel them into ICE custody.

### **B. Shelter System Reliance on ACS to Surveil, Control, and Police Family Residents threatens Family Unity and Risks Deportation**

Similarly, the existence of ACS in the shelter system undermines families' ability to remain intact and feel safe. In our work as public defenders representing parents and caretakers facing investigation and prosecution by ACS for allegations of child maltreatment, we see how shelters managed by DHS use the threat of ACS as a means to enforce shelter rules and control shelter residents. For example, we have represented clients facing ACS investigations and indeed neglect prosecutions for things including, but not limited to:

- violating shelter curfew rules;
- seeking babysitting support from and/or providing babysitting support to other shelter residents in moments of need;
- being improperly logged out of the shelter; and
- “inappropriate” living conditions, that are in fact often the realities of living in shelter housing, including cleanliness issues, broken furniture and necessities, and clutter due to a lack of storage space.

Instead of providing support for families who are already navigating tremendously difficult and stressful circumstances, too often parents and caretakers are met with threats and forced family separation. Accordingly, this reliance on ACS by the shelter system to surveil, control, and coerce compliance from low-income families of color, most especially Black, Latine, and

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<sup>8</sup> The Bronx Defenders supports amendments to the current bill that would eliminate reference to certain criminal convictions.

<sup>9</sup> The Bronx Defenders supports amendments to the current bill that would eliminate reference to certain criminal convictions.

immigrant families under the guise of keeping children safe, is a major driver of fear of distrust in the shelter system.

As Ms. D's story illustrates, contact with the NYPD and/or ACS is often an entrypoint into deportation proceedings or ICE detention for the people we represent. In our experience, immigration judges will take unsubstantiated allegations from both family and criminal court proceedings at face value, and use them to justify negative determinations in immigration cases, including denying release from ICE detention or an application to remain in the United States. Additionally, orders of protection stemming from family or criminal court cases, if violated, can lead to automatic bars for certain forms of relief from deportation.

An important way to begin meaningfully addressing ACS's harmful family policing practices that undermine the safety of New York City's most marginalized communities, most especially families living in the shelter system, is to provide families with basic information about their existing rights at the start of an ACS investigation. To understand the critical importance of parents and caretakers knowing their rights, it is imperative to understand what families face during ACS investigations.

Most families first become aware of a pending ACS investigation when an ACS worker knocks on their door to inform them that a report of suspected child abuse or maltreatment was made to the Statewide Central Register of Child Abuse and Maltreatment (SCR). To be clear, ACS investigations are not "social work." Time and again, parents impacted by ACS have made clear that they do not experience these interactions as benign or "social work." Rather, the interaction with ACS—an agency that has the power to remove children and separate families—are coercive, manipulative and frightening.<sup>10</sup> Among other things, investigations include, far-reaching inquiries into parents' mental health, medical, sexual, and romantic histories, forced disclosure of deeply private health information, and home searches that include opening cabinets, drawers, closets, and beyond.

Beyond witnessing ACS police their parents and invade their homes, children also experience the trauma of ACS investigations directly. Children are interviewed separately from their parents, often taken from school in front of their teachers and friends, and routinely asked about a host of

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<sup>10</sup> See *New York's Family Policing System Fails to Inform Families of their Rights*, Law & Disorder Podcast, May 30, 2023, <https://kpfa.org/player/?audio=401870> (at 38:40); see also *Why a Child Welfare 'Miranda Rights' Law Is Essential*; A Q&A with Advocate and Organizer Joyce McMillan, Center for NYC Affairs June 2, 2021), <http://www.centernyc.org/urban-matters-2/2021/6/2/why-a-child-welfare-miranda-rights-law-is-essential-a-qampa-w> ith-advocate-and-organizer-joyce-mcmillan; and see Megan Conn, *Pressure Builds to Reduce Racial Disproportionality in New York's Child Welfare System*, The Imprint (Jan. 19, 2021 5:30 p.m.), <https://imprintnews.org/child-welfare-2/new-york-calls-grow-address-racism-child-welfare/51073>; *Do we Need to Abolish Child Protective Services*, Mother Jones (Dec. 10, 2020), <https://www.motherjones.com/politics/2020/12/do-we-need-to-abolish-child-protective-services/>.

mature topics not yet introduced to them by their parents. Even in cases that do not involve allegations of abuse, children are often asked to show their bodies to strangers. Investigations cause terror and trauma that is disproportionately borne by Black and Latine children who comprise 61.3% of the total New York City population, but constitute 87.8% of the children enduring investigations.

Despite the acute and long lasting traumatic impacts of ACS investigations, at no point do parents receive any explanation of their basic rights, which include, among other things, the right to decline ACS entry into their home, the right to decline to participate in an ACS investigation, the right to deny consent for intrusive ACS interviews and strip searches of their children, and the right to decline to provide information to ACS that could be used against them in court. Because families are not, as a general matter, connected to legal representation until a case comes to family court, families are regularly interrogated and subjected to intrusive searches and investigation without having *any* access to advice about how that information could be used against them in court and ultimately impact their familial integrity and safety.

The *Family Miranda* bills (Int. 294-22 (Ung), Int. 865-22 (Rivera), with proposed amendments (attached as [Appendix A](#)), and A1980 (Walker) / S901 (Brisport) help to address these harms by requiring ACS, and family regulation agencies state-wide, to do what other law enforcement agencies, such as NYPD, are required to do when they have identified someone against which they may pursue prosecution—advise them of their rights, including the right to contact an attorney. The criminal court example is instructive here—decades after police and criminal prosecutors began reading criminal suspects their *Miranda* rights, we know that criminal investigations have not been hamstrung by respecting dignity and due process rights. Injecting transparency and respect into the investigation process would even further serve all players in the family court—which purports to be a rehabilitative, non-punitive court—by facilitating rapport and respecting the dignity and due process of all community members from the outset of the case.

## **CONCLUSION**

As New York City continues to expand options to house and provide shelter to people seeking asylum, it is critical that we do not allow these shelters to become mechanisms that further deportation and family separation. In addition to conducting oversight and implementing standards in the shelter system, New York City Council should also consider the other bills mentioned in this testimony as critical to supporting asylum seekers in our city.

# Appendix A

**Int. No. 294-22**  
**With Proposed Amendments**

By Council Members Ung, Hanif, Hudson, Sanchez, Yeger, Stevens, Velázquez, Williams, Joseph, Ayala, Restler, Abreu, Nurse, Brewer, Narcisse, Cabán, Rivera, Krishnan, Brooks-Powers, Avilés and Schulman

A Local Law to amend the administrative code of the city of New York, in relation to requiring the administration for children’s services to provide a multilingual disclosure form to parents or guardians during a child protective investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-922 to read as follows:

§ 21-922 Multilingual Disclosure Form. a. Definitions. For purposes of this section, the following terms have the following meanings:

Designated citywide languages. The term “designated citywide languages” has the meaning ascribed to such term in section 23-1101.

Designated organization. The term “designated organization” means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

b. At the initial point of contact with a parent or caretaker who is the subject of a child protective investigation, ACS shall provide to the parent or caretaker a multilingual disclosure form in plain language available in the designated citywide languages, and shall document in the case record that one has been provided. Such form shall be posted on the ACS website and shall include, but need not be limited to, the following information:

1. The parent or caretaker is not required to permit the ACS representative to enter the residence of the parent or caretaker unless presented with a court order authorizing entry into the residence.

2. The parent or caretaker is not required to speak with the ACS representative. Any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding.

3. The parent or caretaker is entitled to be informed of the allegations being investigated.

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney or a member of the attorney's legal team chosen by the attorney present when the parent or caretaker is questioned by an ACS representative.

5. The parent or caretaker is not required to allow an ACS representative to interview or examine a child unless presented with a court order to do so.

6. The parent or caretaker is not required to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test, unless presented with a court order to do so.

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation, including legal services from designated organizations, and any phone numbers or hotlines available to parents and caretakers who are the subject of a child protective investigation.

§ 2. This local law takes effect 90 days after it becomes law.

**Int. No. 865-22**  
**With Proposed Amendments**

By Council Members Rivera, Ayala, Stevens, Krishnan, Hudson, Louis, Joseph, Hanif, Ung, Avilés, Williams, Abreu, Cabán, Ossé, Sanchez, Restler, Schulman, Narcisse and Richardson Jordan

A Local Law to amend the administrative code of the city of New York, in relation to requiring child protective specialists to orally disseminate information to parents or caretakers about their rights during initial contact at the start of an ACS investigation

Be it enacted by the Council as follows:

Section 1. Chapter 9 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-919 to read as follows:

§ 21-919 Information regarding the rights of parents and guardians. a. Definitions. For purposes of this section, the term “designated organization” means a not-for-profit organization or association that has the capacity to provide free legal services to parents or caretakers.

b. At the initial point of contact with a parent or caretaker who is the subject of a child protective investigation, ACS shall orally disseminate in plain language to the parent or caretaker information regarding their rights during the investigation, and shall document in the case record that the information has been so provided. Such information shall include, but need not be limited to:

1. The parent or caretaker is not required to permit the ACS representative to enter the residence of the parent or caretaker unless presented with a court order authorizing entry into the residence.

2. The parent or caretaker is not required to speak with the ACS representative. Any statement made by the parent, caretaker or other family member may be used against the parent or caretaker in an administrative or court proceeding.

3. The parent or caretaker is entitled to be informed of the allegations being investigated.

4. The parent or caretaker is entitled to seek the advice of an attorney and to have an attorney or a member of the attorney's legal team chosen by the attorney present when the parent or caretaker is questioned by an ACS representative.

5. The parent or caretaker is not required to allow an ACS representative to interview or examine a child unless presented with a court order to do so.

6. The parent or caretaker is not required to agree to any requests made by an ACS representative, including, but not limited to, requests to sign a release of information or to take a drug or alcohol test, unless presented with a court order to do so.

7. Contact information for resources which may be available to parents and caretakers during a child protective investigation, including legal services from designated organizations, and any phone numbers or hotlines available to parents and caretakers who are the subject of a child protective investigation.

§ 2. This local law takes effect 90 days after it becomes law.