



**New York City Council
Committee on Immigration
Oversight Hearing on the Impact of COVID-19 on Immigration Detention Centers in New
York
February 28, 2022**

**Written Testimony of The New York Immigrant Family Unity Project
By Brooklyn Defenders Services, The Bronx Defenders, and The Legal Aid Society**

Chair Shahana K. Hanif and Committee Members, we are immigration advocates from the New York Family Immigrant Unity Project (NYIFUP), the nation’s first public defender system for immigrants facing deportation—defined as those in removal proceedings before an immigration judge. Funded by the New York City Council since July 2014, the program provides free legal representation to almost all detained indigent immigrants facing deportation at the Varick Street Immigration Court in New York City. Since its inception, the program has been staffed and managed by Brooklyn Defender Services (“BDS”), The Bronx Defenders (“BxD”) and The Legal Aid Society (“LAS”). Thank you for your attention to these critical matters and your commitment to addressing the systemic harms that immigrant New Yorkers are navigating daily in immigrant detention. We are grateful for the opportunity to testify before you today.

INTRODUCTION

The U.S. immigration system presents itself as a structure that safely and fairly facilitates the integration of immigrants in the United States. Yet, it fails to address and acknowledge the harms that it perpetuates when it targets, surveils, and dehumanizes immigrant communities. Immigrant communities in New York City are forced to live in constant fear because the systems in place, presently and historically, have deliberately created immigration laws that are racist and xenophobic to be a tool for their oppression and capture despite it being civil in nature. Detention has been categorized as an administrative measure in the deportation process, and not a punishment, though the lived experiences of people navigating these processes demonstrate otherwise. In most cases, individuals are separated from their families, subjected to inhumane and unsafe conditions, have limited access to counsel and their loved ones, and are unable to fully participate in their hearings. Even worse, they are constantly navigating racist and xenophobic harassment by guards. They must confront these abuses while fighting their

deportation cases; ultimately fighting for the things that make life worth living like freedom, community, love, faith, and humanity. This is what is at stake today.

We call upon the City Council to ensure that immigrant New Yorkers' bodily autonomy and human rights are honored and protected by:

- Demanding that the living conditions of those inside Correctional Facilities be respected by increasing access to COVID-19 vaccines and boosters, access to medical and mental health care and support, and reliable communication to remain in contact with advocates and loved ones;
- Holding Correctional Facility officials accountable for any acts of abuse or harassment of those incarcerated in Immigration and Customs Enforcement ("ICE") detention by demanding the termination of officers involved in abuses and pressuring New York State to end all contracts with ICE;
- Passing the Preconsidered Resolution by Council Member Shahana Hanif and the Public Advocate Jumaane D. Williams calling on the New York State Legislature to pass, and the Governor to sign, The Dignity Not Detention Act ([S.7373/A.7099A](#)), which would prohibit all localities within New York State from entering into or renewing existing contracts with the federal government for the purposes of immigration detention;
- Demanding releases, not transfers, of people in ICE detention in New York State. ICE has the discretion to release people, yet routinely chooses to keep people detained locally or to transfer them to other ICE detention facilities, often in remote locations, despite knowing that releases would allow families to reunite, regain stability, prioritize their family's health needs, and retain reliable access to counsel.

In this testimony, we will detail how ICE's persecution of immigrant communities decenters humanity, pushes New York City further away from establishing and sustaining community safety and trust, and fails to care for and protect people in their custody from COVID-19 and results in other harms inherent to the caging of human beings:

- A. Lack of access to COVID-19 vaccines and boosters (including lack of education and interpretation to explain either), lack of transparency pertaining to vaccine wait times and reports of positive cases, improper use of personal protective equipment (PPE) by guards, lack of access to PPE, and limited space to quarantine outside of solitary confinement.¹
- B. Mental health conditions exacerbated during the pandemic due to excessive use of solitary confinement as "quarantine" and limited access to mental healthcare.

¹ Daniel Parra, *Attorneys, Advocates Warn of Possible COVID-19 Outbreak Among Immigrants Detained at NY Facility*, CityLimits (Jan. 26, 2022), <https://citylimits.org/2022/01/26/attorneys-advocates-warn-of-possible-covid-19-outbreak-among-immigrants-detained-at-ny-facility/>

- C. The medical neglect experienced by those being held by ICE, with conditions of incarceration increasing the risk of illness and death for disabled people or otherwise creating disabilities for those without preexisting medical complications.²
- D. Racist and xenophobic harassment of immigrant detainees by New York county officials in New York county jails that contract with ICE.
- E. Significant limitations on a detained person's access to counsel, which have been further exacerbated by the COVID-19 pandemic.
- F. The impact of immigration detention on individuals' young children, families, and communities.

In addition to our testimony, the Council will also hear from medical advocates detailing the impact of detention on people's physical and mental health, as well as from those who have survived detention and their families. These accounts reflect ICE's inability to protect those they detain and their failure to honor their dignity and humanity.

A. Lack of Access to COVID-19 Vaccines and Boosters, Lack of Transparency Pertaining to Vaccine Wait Times and Reports of Positive Cases, Improper use of PPE by guards, and Limited Space to Quarantine outside of Solitary Confinement.

The conditions in detention are inhumane: immigrant New Yorkers are subjected to medical neglect, abuse, harassment, and to the dangers of COVID-19. The COVID-19 pandemic has intensified the dangers of detention as correctional officers are often observed not wearing personal protective equipment (PPE) or wearing it improperly. Social distancing is impossible in carceral settings, and medical care is often delayed, inadequate or absent. Detained immigrant New Yorkers have had limited access to COVID-19 vaccines and boosters, no education or interpretation regarding the vaccines and boosters, been confined to environments where social distancing is not possible and forced into solitary confinement, which is usually used for punishment, as a method for quarantine. Subjecting New Yorkers to these conditions is cruel, torturous, and deplorable.

In late January of this year, advocates learned of at least fifty symptomatic people in one unit within Orange County Correctional Facility ("OCCF"), a county jail located in Goshen, New York, which ICE uses for immigrant detention. At the time, OCCF reported only five confirmed cases of COVID-19 in the facility.³ In the weeks and months prior to this outbreak, many of the people we represent reported difficulty accessing vaccines and boosters. OCCF told people

² Sophia Gurulé & Abdullah Shihipar, *ICE Is Detaining More Immigrants. Covid is Putting Them in Danger.*, The Nation (Jan. 25, 2022), <https://www.thenation.com/article/society/covid-ice-detention-centers/>.

³ Daniel Parra, *Attorneys, Advocates Warn of Possible COVID-19 Outbreak Among Immigrants Detained at NY Facility*, CityLimits (Jan. 26, 2022), <https://citylimits.org/2022/01/26/attorneys-advocates-warn-of-possible-covid-19-outbreak-among-immigrants-detained-at-ny-facility/>

requesting vaccines to put their names on a sign up sheet, but no one ever received a time estimate for when a vaccine would become available. When NYIFUP attorneys and managers asked ICE and OCCF for their vaccination schedule, we never received an answer. Several of the people we represent waited on the list for approximately two months. At a time when individuals at liberty in the community could walk into any pharmacy or vaccination site to seek vaccination, this was particularly appalling. In January of this year, NYIFUP managers reached out to OCCF about lack of access to vaccines and were told that vaccine access wasn't a problem, yet the people we represent remained unvaccinated. In one instance, we asked ICE officials to take one of the people we represent to a vaccination clinic in light of OCCF's inability to secure the vaccine, but the request was ignored until news outlets began reporting on the outbreak at OCCF⁴ and the person was finally vaccinated.

That OCCF significantly under-reported positive COVID-19 cases is no surprise.⁵ Once an alarming number of individuals began reporting symptoms of COVID-19 infection, some of the people we represent were told that the facility was no longer testing since it no longer had the ability to quarantine people. In fact, advocates also learned that the facility was limiting testing only to individuals with fevers, and that symptomatic clients were afraid to ask for a COVID-19 test for fear that they would be placed in solitary confinement. NYIFUP clients reported that staff had shared that the OCCF did not want to test people because the jail did not want its numbers to go up.⁶

This is all consistent with national trends regarding COVID-19 and incarceration.⁷ Prisons and jails around the country have been petri dishes for the virus, as it spreads through units and buildings, infecting incarcerated people and staff alike, while the known methods for containing the spread of the virus—such as mask-wearing, social distancing, and systematic cleaning—are difficult if not impossible to implement in these settings. It is clear that incarceration has only caused the pandemic to spread, often among the most vulnerable individuals. Decarceration has

⁴ News 12 Staff, *Orange County Jail experiences outbreak of COVID-19 cases*, New 12 Long Island (Jan 5, 2022), <https://longisland.news12.com/orange-county-jail-experiences-outbreak-of-covid-19-cases>; Daniel Parra, *Attorneys, Advocates Warn of Possible COVID-19 Outbreak Among Immigrants Detained at NY Facility*, CityLimits (Jan. 26, 2022), <https://citylimits.org/2022/01/26/attorneys-advocates-warn-of-possible-covid-19-outbreak-among-immigrants-detained-at-ny-facility/>

⁵ OCCF reports only 28 confirmed cases of COVID-19 since the start of the pandemic. See *ICE Guidance on COVID-19* <https://www.ice.gov/coronavirus#quotations>

⁶ Daniel Parra, *Attorneys, Advocates Warn of Possible COVID-19 Outbreak Among Immigrants Detained at NY Facility*, CityLimits (Jan. 26, 2022) <https://citylimits.org/2022/01/26/attorneys-advocates-warn-of-possible-covid-19-outbreak-among-immigrants-detained-at-ny-facility/>

⁷ Neal Marquez, Joshua Manson, *New Report Shows Decarceration Necessary to Prevent Continued COVID-19 Outbreaks in ICE Detention*, UCLA Law Covid: Behind Bars Data Project (June 27, 2021), <https://uclacovidbehindbars.org/blog/new-report-shows-decarceration-necessary-to-prevent-continued-covid-19-outbreaks-in-ice-detention>

always been a necessary component to combatting the pandemic in New York State and nationwide.

B. Mental Health Conditions Exacerbated during the Pandemic due to Excessive use of Solitary Confinement as “Quarantine” and Limited Access to Mental Healthcare.

Each of the NYIFUP providers has a team of social workers on staff to support the people we represent in their deportation cases. Our social workers help to identify resources to address various client needs, with a focus on connecting the people we serve to services and providing support while they navigate the harsh and punishing immigration system. Many of the people we represent have serious mental health needs that are exacerbated by their detention, particularly during COVID-19. NYIFUP social workers observe a growing need for resources for people who are detained but those services are inaccessible to them as a result of their detention.

Licensed psychiatrists, psychologists, neuropsychologists and licensed clinical social workers have found that detention exacerbates the mental health needs of many of the people we represent, and particularly those with severe mental illness. One client, SD⁸, for whom such a determination was made, had a history of hospitalizations due to his mental illness prior to his immigration detention. SD has spent almost a year and a half detained by ICE, preceded by 8 months at Rikers, without the necessary services to address his mental health symptoms, become more autonomous, and process immensely traumatic moments in his life such as the death of his mother who cared for him and his father who passed away shortly before his mother. SD was deemed to not be competent for the purposes of his removal proceedings, but both ICE and the immigration judge still insisted that he remain in proceedings. He continues to deteriorate as he hears the voices of his deceased mother and others calling him from inside OCCF, all while unable to maintain a steady understanding of the legal case ICE has brought against him.

Another NYIFUP client, BS, has been struggling with depression and anxiety since he first arrived at OCCF. BS attempted suicide in the past and has been increasingly talking about hurting himself while detained at OCCF. BS was seen by medical staff at OCCF only after making about 4 or 5 requests to be seen by a doctor. OCCF noted in BS’ medical record that he had attempted suicide 9 years prior, that he is taking medication, that he is having audio and visual hallucinations, has a history of psychological and emotional abuse and victimization as a child, has concerns about being able to cope while incarcerated, and was observed to be anxious agitated and fearful of his safety. Despite these findings, OCCF medical staff recommended no services.

NYIFUP social workers face continuous barriers when attempting to communicate with OCCF about the needs of the people we serve. NYIFUP social workers often contact OCCF mental

⁸ The people referenced in this section are NYIFUP clients who agreed to share their stories but wish to be identified only by their initials.

health staff to request an appropriate evaluation of the people we serve because they have access to, and are charged with the responsibility to care for the people who are incarcerated there. NYIFUP social workers report a lack of sufficient resources for appropriate mental health treatment at OCCF and are concerned about the dilemmas detained people face trying to access healthcare during a mental health crisis. Requests for evaluation and support for clients experiencing mental health crises have been inadequately addressed. When NYIFUP social workers have reached out to OCCF mental health staff,⁹ they have generally been told that OCCF mental health staff are not allowed to speak with social workers and have been instructed to speak instead directly with ICE. One social worker who attempted to contact mental health staff at OCCF when our client was in crisis was, at times, told that the OCCF mental health staff were not allowed to speak to the social worker despite the fact that the social worker had a signed HIPAA form on file for the client. Each time the social worker attempted to contact OCCF about our client, the mental health staff instructed that the social worker was to speak directly with ICE. When NYIFUP social workers have been able to speak directly with OCCF mental health staff, they learn that OCCF does not appear to conduct proper assessments of our client's mental health needs after NYIFUP social workers alert them about a client's mental health crisis. Moreover, when OCCF mental health staff conduct any assessments, they are frequently conducted in English even when we alert OCCF about a client's other language needs.

One NYIFUP social worker who has been working with a NYIFUP client L since April 2021 while he has been detained at OCCF has continuously faced barriers when seeking to communicate concerns to OCCF about L's mental health crises. In one instance, the OCCF staff expressed to the NYIFUP social worker that they "had no idea what to do with [the] information" the social worker provided when reporting that L was experiencing suicidal ideations. OCCF placed L in solitary confinement, which they refer to as "1:1 suicide watch," after their initial assessment due to suicidal ideations expressed by L. L has been diagnosed with Post-Traumatic Stress Disorder, Major Depressive Disorder-Severe with Psychotic Features, and Borderline Intellectual Functioning by outside experts. He experiences auditory command hallucinations that often instruct him to harm himself or commit suicide. In contrast, OCCF's mental health staff have diagnosed L with Post-Traumatic Stress Disorder and Anxiety Disorder, unspecified. Even after our social worker shared diagnostic information with OCCF's mental health contractor, Wellpath, Wellpath refuses to acknowledge L's major depressive disorder with psychotic features and borderline intellectual functioning diagnoses – and therefore fails to provide treatment that is responsive to his needs. OCCF places L on 1:1 suicide watch each time we report concerns, sometimes without conducting a proper assessment. NYIFUP social workers are concerned about the extreme nature of 1:1 suicide watch at OCCF. L has described prior experiences with 1:1 suicide watch, which have involved solitary confinement, as highly traumatic.

⁹ Medical and mental health services at OCCF are provided by Wellpath.

Many individuals navigating these conditions are also survivors of serious trauma and the experience of detention brings horrible past experiences into their present lives. One NYIFUP client, JL, was held against his will and subject to forced labor by traffickers during his journey to the United States. JL has shared with his social workers that his current experience of detention in NYS, being detained in a small dark cell, reminds him of when he was held against his will in a small dark room by traffickers. JL frequently has nightmares about his captors. He has expressed relief upon waking up only to remember to his horror that he is detained. Like many others surviving detention, JL has been diagnosed with Post Traumatic Stress Disorder. A Ph.D Clinical Psychologist found that detention itself acts as a new stressor which worsens JL's prior trauma of being forcefully detained.

The mere act of detention often separates people from the supportive care they had been receiving while at liberty. Another NYIFUP client had faced abduction and confinement in his home country. In his daily life while in the community, he was able to cope with his trauma but his confinement in detention retriggered his trauma, leading to flashbacks and suicidal thoughts. OCCF's intervention was to place him on suicide watch where he was held in solitary confinement. This transformed a very difficult mental health crisis into unnecessary psychological hardship.

All these traumatic experiences are compounded by witnessing the mistreatment of other detained peoples who are in distress. It sends a message that speaking up leads to further harsh treatment. This also creates a barrier for our NYIFUP social workers to do their jobs adequately as some clients are fearful of telling them what they are experiencing after seeing the mistreatment from OCCF.

Lack of language access coupled with detention also presents a serious barrier to meeting the mental health needs of those we serve. This has only worsened during the pandemic as more people are experiencing anxiety, stress, loss of loved ones, and are in mental health crisis. Recently, one NYIFUP social worker was working with a client, EM, who lost his mother to COVID-19. EM was in severe distress, having not seen his mother since he left his country, and told a social worker that he had requested to speak with a therapist at OCCF, where he is detained. EM was told by OCCF officials that they did not have a Spanish speaking therapist for him. Similarly, another NYIFUP client, WG, lost family to gang violence in his native country. When he arrived in New York, his wife contracted COVID-19 and died. Soon after, ICE detained WG in front of his 7 year old daughter. WG has requested to see a therapist at OCCF to help process the severe trauma he experienced, however he has also been told that there are no Spanish speaking therapists available. OCCF does not provide access to psychotherapy, which is one of the reasons why NYIFUP social workers are critical to deportation defense work. While they are not therapists, NYIFUP social workers provide support, regular mental health check-ins, and advocate for clients' access to medical and mental health treatment.

Many NYIFUP clients rely on their social workers to get a modicum of the supportive care they need, particularly those who cannot access therapeutic services in the facility. Yet, our social workers often face challenges accessing their clients, which can be particularly detrimental when they are responding to people in crisis. Recently, OCCF removed one social worker's professional status for visitations, and the social worker was unable to communicate with a severely mentally ill client for over a week. When the social worker contacted OCCF, the facility told her they did not have her credentials on file, despite the fact that she had been to the facility in person the previous week and provided all the necessary documentation. NYIFUP social workers routinely experience disruptions like this to client communication, where the consistency and availability of their support is crucial to the health and safety of the people we represent.

The NYIFUP providers advocate for clients by providing comprehensive release plans detailing concrete plans for temporary and permanent housing, allocations to a case manager, ongoing work with NYIFUP social workers, family support, psychiatric and mental health outpatient resources, and other details for life outside of incarceration. Despite these plans, ICE refuses to release people and claims that the facility is meeting their mental health needs. When the facility does release people, it often does so without coordinating with social workers or attorneys. More than once, OCCF and other ICE detention facilities have released our seriously mentally and/or physically ill clients into the streets without giving our offices an opportunity to coordinate safe transportation for them from the facility.¹⁰ At times, we have lost track of clients surreptitiously released by ICE until we discovered they had faced near death experiences by being released onto the street in the middle of winter and needing to be hospitalized. Clearly, OCCF and other NYS detention facilities are not capable of meeting the mental health needs of the people in their custody. There is a failure to prioritize the mental health needs of people detained at OCCF. As a result, detention, particularly during the pandemic, causes extreme harm and mental anguish to those who are incarcerated.¹¹ Therefore, it is essential that healthcare in jails, prisons and detention centers be compassionate, accessible, and responsive to the needs of the individuals in their care.

¹⁰ *Charles v. Orange Cty.*, 925 F.3d 73 (2d Cir. 2019); See also Colby Hamilton, *ICE Negligence Suit Allowed to Proceed in Manhattan Federal Court*, New York Law Journal, March 29, 2019, <https://www.nylpi.org/nylpi-achieves-milestone-court-ruling-on-ice-discharge-planning/>

¹¹ von Werthern, M., Robjant, K., Chui, Z., Schon, R., Ottisova, L., Mason, C., & Katona, C. (2018). *The impact of immigration detention on mental health: a systematic review*. *TBMC psychiatry*, 18(1), 382, <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>

C. The Medical Neglect Experienced by Those Being Held by ICE; Conditions of Incarceration Increasing The Risk of Illness and Death for Disabled People or Otherwise Creating Disabilities for Those Without Preexisting Medical Complications

As NYIFUP attorneys, social workers, and advocates, we have often witnessed people's physical health rapidly deteriorate while they are detained by ICE. We have represented people who enter ICE detention with pre-existing medical conditions, and we have seen immediate exacerbation of their medical conditions due to medical neglect within the detention facilities. People no longer have access to family support systems that help them attend their regularly scheduled doctors appointments and monitor prescription intake, and who help loved ones with assistive walking devices or other medical needs. For those who do not have pre-existing conditions prior to their ICE arrest, we have witnessed ICE's medical neglect create new physical health conditions and disabilities that remain with them for years after their release.

As direct legal service providers, NYIFUP providers have not only observed the impact of medical neglect on detained people because we work closely with them to prepare for trial, but also because we have been tasked with ensuring that ICE faithfully complies with various court orders in *Fraihat v. U.S. Immigration and Customs Enforcement, et al.*, a federal lawsuit that challenged conditions of detainment for medically vulnerable people in ICE custody nationwide. *Fraihat* court orders have required ICE to monitor a person's medical conditions for the majority of the COVID-19 pandemic and to reassess their custody determinations accordingly. Oftentimes ICE failed to meaningfully comply with court orders by failing to identify "*Fraihat* factors", which include diagnoses of high blood pressure, diabetes, auto-immune diseases, chronic health conditions including cardiovascular disease, as well as HIV/AIDS.¹² This failure by ICE is particularly egregious when *Fraihat* aimed to ensure medically vulnerable people would not contract COVID-19 and die.

To challenge ICE's lack of *Fraihat* compliance, NYIFUP advocates have often had to identify *pro bono* medical service providers, with the help of the New York Lawyers for the Public Interest (NYLPI),¹³ to evaluate ICE detention medical records. In one instance, two volunteer physicians reviewed the ICE detention medical records of a NYIFUP client, AGN, and identified (based on ICE's own medical records) five *Fraihat* factors and chronic health conditions that made him susceptible to contracting COVID-19 and dying: gout, osteoarthritis, Major Depressive Disorder, obesity and most critically, undiagnosed and therefore untreated hypertension. Previously, ICE officers had identified only two of these conditions and denied his

¹² Notice of Court Order Requiring Custody Re-Determinations of Individuals With Risk Factors for COVID-19, SPLC (April 20, 2020), https://www.splcenter.org/sites/default/files/dkt_136_notice_eng.pdf

¹³ NYLPI provides critical services to our detained clients by identifying *pro bono* physicians who are willing to review ICE detention medical records. NYLPI and its volunteer doctors will separately provide testimony for this hearing.

Fraihat release from ICE detention. In another instance, ICE failed to provide updated medical records to NYIFUP counsel after LR's hospitalization, despite LR being at heightened risk of COVID-19 hospitalization and death as he was diagnosed with an Intellectual Disability, Major Neurocognitive Disorder, Hypertension, Type II Diabetes Mellitus, and Anxiety Disorder Due To Another Medical Condition by a neuropsychologist and ICE's own medical records. In both cases, ICE and jail officials also failed to provide both clients with an assistive walking device – a cane – as AGN and LR's ability to walk had significantly declined during their several months in ICE detention. Indeed, for people who enter ICE detention with pre-existing medical conditions, their health often rapidly deteriorates within a matter of weeks of their arrest. Yet, often ICE will not release such medically vulnerable people unless the person is so ill that the facility fears a potential wrongful death lawsuit given their egregious medical neglect, lack of transparency, and obvious mishaps in identifying chronic care conditions¹⁴.

For clients who do not have pre-existing medical conditions prior to their arrest and detention by ICE, many people leave ICE detention with new chronic physical and mental health conditions that impact them for the rest of their lives. In one instance, a NYIFUP client entered OCCF without any medical problems but, after months of ICE detention, he developed high blood pressure and requires medication and physical therapy. In another instance, a NYIFUP client's eyesight dramatically worsened over the course of years in ICE detention due to the facility's incessant overhead fluorescent lighting. He now requires glasses and regular eye care. Other clients have developed Posttraumatic Stress Disorder and continue to deal with recurring, intrusive posttraumatic reactions and symptoms including nightmares, flashbacks, and upsetting memories that are easily triggered by current events.

No person should be on the brink of death or permanent disability for exercising their right to challenge their deportation. Yet that is the reality of most people in ICE detention. There is no disability justice or rights for people who are incarcerated by ICE; ICE detention is by itself a death-making and disability-making institution.¹⁵

¹⁴ ACLU. *The Survivors: Stories of People Released From ICE Detention During the COVID-19 Pandemic*. New York: ACLU, 2021. https://www.aclu.org/sites/default/files/field_document/20210512-ice-detention-report.pdf

¹⁵ See generally Talila "TL" Lewis, *Disability Justice Is an Essential Part of Abolishing Police and Prisons*, Abolition for The People: The Movement for A Future Without Policing & Prisons, (Oct. 7, 2020), <https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730>; see also Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, The New Yorker (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition> ("I am looking to abolish what I consider to be death-making institutions, which are policing, imprisonment, sentencing, and surveillance. And what I want is to basically build up another world that is rooted in collective wellness, safety, and investment in the things that would actually bring those things about.") (quoting Mariame Kaba).

D. Racist and Xenophobic Harassment of Immigrant Detainees by New York County Officials in New York County Jails that Contract with ICE.

The people we represent have also reported mistreatment by OCCF guards. OCCF employees have known ties to white supremacist groups.¹⁶ People held by ICE and in the custody and “care” of New York county officials are subjected to discrimination and harassment rooted in white supremacy, racism, Islamophobia, and xenophobia. People who are detained by ICE therefore experience dehumanization and ridicule for being Black, Spanish-speaking, Muslim, and not being born in the United States. This is unacceptable.

For example, we have heard from BS, mentioned earlier, that Officer Bloise,¹⁷ consistently harassed people in one unit. Officer Bloise changed the TV from Spanish to English channels, disconnected the tablets for people in detention, taunted them and told them that they needed to speak English. Eventually, this officer was removed from the unit after over 20 detainees got together and protested his behavior. BS also described how Officer Figueroa yelled at him because he did not have his inmate ID on him, changed the temperature on the air conditioner to intentionally make him freeze, and has gotten extremely confrontational with BS, even yelling directly in front of BS’ face, in an attempt to provoke him to violence.

As a result of ongoing harassment, costs of commissary and spoiling food, many of the people incarcerated at OCCF initiated a hunger strike On February 16th of this year to protest these abuses¹⁸. Since starting their hunger strike, our detained clients have reported that OCCF responded with retaliation, including disciplinary action for exercising their First Amendment rights and bodily autonomy, subjected hunger strikers to solitary confinement, confiscated their tablets, and restricted their access to commissary. Notably, confiscation of tablets and restricting access to commissary funds limits a person’s ability to communicate with their attorneys, families, and outside community.

¹⁶ Becca Tucker, Orange County Oath Keepers Had Roots in Sheriff’s Office, W. MILFORD MESSENGER (Feb. 15, 2021), <http://www.westmilfordmessenger.com/news/local-news/orange-county-oath-keepers-had-roots-in-sheriff-s-office-FK1518654> (reporting that the undersheriff of Orange County, New York, was a member of the Oath Keepers in 2013 and 2014); see also Heather Yakin & Chris McKenna, *Oath Keepers Militia Group at Center of Capitol Riot Cases Had Big NY Following Until Rift Emerged*, REC. ONLINE (Apr. 18, 2021, 11:44 P.M.), <https://www.recordonline.com/in-depth/news/2021/04/18/militia-oathkeepers-capitol-riot-cases-large-ny-presence/7187192002/>.

¹⁷ Notably, Officer Bloise is among the guards named in the recent complaint filed against OCCF officials alleging widespread harassment and abuse by guards against people in detention. See CRCL Complaint filed by six organizations on behalf of immigrants detained at Orange County Correctional Facility, February 17, 2022, https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf

¹⁸ Graham Rayman, *Hunger strike among ICE detainees in upstate jail over conditions; jail officials dispute allegations*, New York Daily News (Feb 17, 2022), <https://www.nydailynews.com/new-york/nyc-crime/ny-hunger-strike-immigration-detainees-orange-county-20220217-whmeeubocfanzhatnih5e7ubci-story.html>

People who are forced to navigate harassment and discriminatory treatment while detained become more anxious, unsettled, and afraid. Over time, this impacts a person's resilience in continuing to fight their case. These interactions pressure people to give up their substantive and procedural due process rights to challenge their deportation. New York should not be in the business of exploiting vulnerable communities and should not be financing OCCF officials with past ties to white supremacist groups or who otherwise openly espouse white nationalist views so they then may inflict white supremacist violence on the people in their "custody and care."¹⁹ Supporting immigrant New Yorkers means giving everyone a just and equitable opportunity to defend their deportation cases while at liberty, instead of relying on detention to humiliate and torture people as a way to exhaust them to give up or ultimately lead them to their death.

E. Significant Limitations on a Detained Person's Access to Counsel, which Have Been Further Exacerbated by the COVID-19 Pandemic.

As NYIFUP providers, we are tasked with providing free universal representation to eligible noncitizens who are detained and facing deportation at the Varick Street Immigration Court in lower Manhattan. Our ability to adequately represent clients is significantly hampered by their detention. For years we have had issues communicating with clients behind bars, but these challenges have only been exacerbated by the COVID-19 pandemic. There is no justification for the cruelty of detention or limiting someone's due process rights. The excuse that detention is needed to ensure people appear in immigration court is particularly meaningless in places where access to counsel is readily available, as studies show 98% of people released from ICE detention continue to appear for court.²⁰

Immigrant detention undermines the access to counsel program that the City Council so generously funds. In order to communicate with clients we must either arrange to visit them in person at the facility where they are held, or we must communicate with them remotely through video or legal phone calls. Both methods of communication are insufficient and have only become more difficult as a result of the COVID-19 pandemic.

¹⁹ See CRCL Complaint filed by six organizations on behalf of immigrants detained at Orange County Correctional Facility, February 17, 2022 https://www.law.nyu.edu/sites/default/files/OCCF%20Multi-Organization%20DHS%20CRCL%20Complaint%20and%20Index_2%2017%202022.pdf

²⁰ Nina Siulc and Noelle Smart, *Fact Sheet: Evidence Shows That Most Immigrants Appear for Immigration Court Hearings*, October 2020, <https://www.vera.org/downloads/publications/immigrant-court-appearance-fact-sheet.pdf> A Vera Institute of Justice Report released in October 2020 found that during the first three years of Vera's Safety and Fairness for Everyone (SAFE) Initiative, which provides free representation through a universal access model in 21 jurisdictions across the country, 98 percent of clients released from custody continued to appear for their scheduled court hearings. Vera's evaluation of NYIFUP similarly found that fewer than 2 percent of clients released on bond had received orders of removal in absentia for failing to appear in court.

I. In Person Visits

The people we represent have been denied access to in-person, confidential visits throughout the pandemic. The space in OCCF that is set aside for in-person visits, sometimes referred to as the “glass house,” is a room divided by a glass wall with a phone for communication. There is usually at least one correctional officer within earshot and frequently there are also other detained people meeting with their advocates. This makes it extremely difficult to have confidential conversations about past trauma, fear of gangs, or to dive into the personal details that an attorney must know to properly advise their clients and prepare them for trial. Some of the people we represent understandably refuse to meet with us in person given the confidentiality concerns. Although NYIFUP providers have repeatedly requested access to the existing meeting rooms for private meetings at the facility, OCCF leadership and ICE have consistently denied our requests.

In-person visits have become less reliable during the pandemic, but even when we are able to meet with clients at the facility, there are still significant barriers to our representation. OCCF, for example, can only guarantee that an in-person visit will last for 30 minutes, and generally the in-person visit is limited to an hour and 15 minutes, after which time the attorney is required to leave. Preparing a client to testify in the final hearing that will determine whether they may lawfully remain in this country takes significantly longer than the time allotted by the facility. Such limitations on in-person attorney visits are particularly problematic because the burden of proof lies with the person facing deportation rather than the government, which initiates deportation cases. Unlike criminal proceedings, in which the government must establish a person’s alleged criminal activity beyond a reasonable doubt, here, the person facing permanent exile from the United States bears the burden to successfully challenge their deportation. This requires significant preparation.

In-person visits at OCCF present language access issues when attorneys and clients do not speak a common language. The “glass house” telephones—the only mechanism by which an attorney and detained person may effectively communicate—makes it nearly impossible for attorneys to communicate with their clients where they do not speak the same language. The only way to do so is to bring an interpreter in-person with the attorney, which has been made more complicated by the COVID-19 pandemic. In a stakeholder meeting on January 27th of this year, ICE/ERO Field Office Director Thomas Decker noted that under Centers for Disease Control and Prevention guidelines, attorneys cannot not bring interpreters (or other individuals) with them on legal visits to OCCF due to COVID-19 restrictions.

Since the start of the pandemic, in-person visits were often impossible, if not seriously impaired. As a result, we have relied more on remote communication and sometimes must prepare for court proceedings through video conferences and regular mail. Throughout the pandemic, there

have been countless hurdles to scheduling these critical video conferences, often severely impeding our ability to speak with clients other than through short confidential phone calls arranged by ICE and subject to Correctional Officers' availability.

Additionally, OCCF officials have unlawfully surveilled attorney-client mail. At the January 27th stakeholder meeting, ICE/ERO Field Office Director Thomas Decker confirmed that OCCF jail officials open and copy all mail to detained people, including legal mail, citing NYS Commission of Correction Variance # 20-V-24, a variance that has clearly expired and had never allowed for legal mail to be opened and copied.²¹

II. Remote Communication

There have been periods of time during the COVID-19 pandemic when we could not arrange to safely visit the people we represent. In these moments, it was more important than ever for them to have access to reliable remote methods of communication that would not jeopardize their own safety.

However, since at least December of 2020, the video conference services have repeatedly failed, often with technical malfunctions where one party cannot hear the other, or the call fails to connect altogether. Efforts to correct these issues are sometimes resolved by individual officers, but often are not. Sometimes attorneys must wait weeks to be able to speak with their clients, even with pending trials looming on the horizon.

As a result of the constant and ongoing issues with technologies, NYIFUP attorneys have at times had to prepare clients for their trial testimony using video technology where the audio portion was non-functional. Attorneys resorted to using dry-erase boards to communicate messages to their clients visually and to prepare them for their final hearings which would determine whether they would be deported or permitted to remain in this country with loved ones.

The explanations for the inability to schedule video calls have varied, ranging from possible issues with OCCF's video technology to a lack of staff available to facilitate the call. Officials at OCCF have consistently failed to respond to requests for assistance in restoring a reliable system of communication. ICE has at times allowed for 15-20 minute "legal phone calls," which are appropriate to convey a brief message or a rescheduled court date at most, and woefully insufficient for people preparing testimony for their multi-hour trials, where a judge will determine whether or not they can remain in this country and ultimately their freedom.

²¹ See Memorandum to Commission Members from Brian Callahan (Counsel), New York State Commission of Correction (December 15, 2020), <https://www.criminaljustice.ny.gov/pio/SCOC%20Commission%20Meeting%20Agenda-Final-2020-12-15.pdf>, at pages 50-53 (detailing Variance 20-V-24 as applied to the Orange County Sheriff's Office at the Orange County Jail).

Developing the necessary attorney-client communication and trust is impossible by 15-20 minute calls. Recently, ICE has stopped facilitating even these brief calls.

Video calls are also extremely difficult to schedule. On any given day, there are only 14 timeslots longer than 25 minutes available for an entire housing unit which can house more than 40 people, and three of those time slots are after 7:00PM. Once a time slot is filled, it is no longer available for anyone in the unit to use. When considering the number of NYIFUP advocates, private attorneys, and other representatives attempting to schedule a call, and the approximately 185 people currently incarcerated by ICE at OCCF²², this is clearly insufficient to meet the needs of the demand of representation.

As a result of the limitations on access to counsel, we often must communicate through calls made with new video tablets provided by OCCF. Tablets are often left uncharged or are taken away in retaliation for a perceived infraction or for speaking out against conditions of confinement. Sometimes clients are not informed that communicating with counsel through tablets is an option. Relying on tablets often jeopardizes confidentiality as the people we represent are forced to communicate with us in open spaces where other people are nearby, once again rendering our conversations non-confidential and hindering the free flow of often sensitive information that is necessary for us to provide effective legal representation.

A recent experience of an attorney preparing a client for their deportation trial illustrates the typical challenges when attempting to communicate. Earlier this month, a NYIFUP attorney preparing with a client for a trial on a Thursday visited OCCF on Tuesday of the same week, in person, after making an appointment to do so. Her visit was limited to one hour, which was not enough to complete the necessary preparation. On her way out, she attempted to schedule an in-person visit for the next day. She was told it was not possible to visit in-person on that Wednesday and was told to schedule a video call instead. She explained that she had previously tried to make a video call appointment but the only time slot available was for 8:00 p.m, and that they needed to talk for more than just the two hours available at 8:00 p.m. She was told to call OCCF at noon on Wednesday and she would be able to have a private phone call as an alternative option. When she did call at noon the next day, an officer told her that absolutely no phone calls were allowed and it was “not going to happen.” She was advised to sign up for the program to be able to communicate with clients via tablet. Technical difficulties meant this took more than an hour to do. After successfully downloading the program on her phone, she called OCCF again, as she had been advised to do, and asked that they notify the person she represented that they could contact her through the video tablet. He never contacted her, so she called OCCF again and asked if the officer could contact him. The officer hung up on her. The client later told her that no one ever told him that his attorney was available and waiting for him to call her via the tablet.

²² Division of Criminal Justice Services, *Jail Population in New York State Average Daily Cases by Month* (January 1, 2022) https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf

This is not an anomaly but the norm. OCCF, and other ICE detention facilities in New York State, have limited detained people's access to representation, making it less likely that they will be prepared for their trials, and thus more likely that they will be deported. Detention alone, particularly during the pandemic, has become an access to counsel and due process issue by impeding detained people's ability to adequately prepare and gather evidence for their defense. The NYIFUP program, which New York City funds, is undermined by the prevalence of immigrant detention in New York State, and is one of the many reasons that the NYIFUP coalition supports the Dignity Not Detention Act (S7373/A7099A) and ending ICE detention in New York and nationwide.

F. The Impact of Immigration Detention on Young Children, Families, and Communities.

ICE detention makes it significantly harder for people facing deportation to fully participate in their court hearings by limiting their ability to gather critical evidence in their defense, including letters of support as well as medical, employment, tax, school, and court records. Such evidence is crucial in challenging deportation in court, both in establishing positive equities in cases where judges must exercise their discretion in determining whether a person "merits" lawful residency in the United States, as well as in corroborating fear-based claims in asylum, withholding of removal, and protection under the Convention Against Torture cases. Positive equities can include strong community ties, demonstrated through letters of support from loved ones and community members; documentation of residence of long duration in the United States, especially when a person arrived in this country at an early age; documentation of employment history, businesses and/or property ties; documentation of tax history; documentation of any rehabilitation programming and/or education; and documentation of potential and/or current hardship experienced by detention and deportation. Demonstrating positive equities is one of the few opportunities people have to humanize themselves in a court system that otherwise justifies their deportation through dehumanization and criminalization.

There is also overwhelming evidence that forced family separation by incarceration, including ICE detention, impacts the overall stability of families, the emotional well being of children, and the economic progress of entire communities. Children, as young as 8 years old, are active participants in their fight to reunite their family and stop their loved one's deportation. Children, many of whom are U.S. citizens, are forced to relive their own traumas when they submit letters of support on behalf of their loved one, show up to court hearings to testify, and even share their mental health and school records to show hardship. Oftentimes such hardship arises the moment they are separated from their loved one by ICE, so the hardship remains ongoing and deepening

the longer the person is incarcerated by ICE. Studies have shown that high stress in early childhood can lead to lifelong mental health concerns.²³

CONCLUSION AND DEMANDS

As a society, we must all reflect upon the legacy we are creating every time we choose to invest in oppressive and violent institutions.

The Council should pass Res. [DND], calling on the New York State Legislature to pass The Dignity Not Detention Act (S.7373/A.7099A), prohibiting all localities within New York State from entering into or renewing existing contracts with the federal government for the purposes of immigration detention. Ending ICE detention in New York State would allow us to join a nationwide effort to decarcerate and end ICE detention in this country. Similar legislation was successfully passed and signed into law in New Jersey (S3361, A5207), California (SB 29, AB 103), Washington (SB 5497, HB1090), Maryland (SB478), and Illinois (SB0667).

The Council should also put pressure on ICE to release detained immigrant New Yorkers so they can reunite with their families, have access to adequate medical and mental healthcare care, and reliable access to their attorneys and advocates. The Council should also put pressure on local jails to stop profiting from detaining community members on ICE's behalf, improve living conditions, increase access to COVID-19 vaccines and boosters and overall healthcare, and should demand transparency from OCCF pertaining to vaccine and booster wait times.

²³ Nelson, C. A., Bhutta, Z. A., Harris, N. B., Danese, A., & Samara, M. (2020). Adversity in childhood is linked to mental and physical health throughout life. *bmj*, 371 <https://www.bmj.com/content/371/bmj.m3048>