

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION

-----X

February 18, 2011

Start: 10:15 am

Recess: 12:03 pm

HELD AT: Committee Room
250 Broadway, 14th Fl.

B E F O R E:
DANIEL DROMM
Chairperson

COUNCIL MEMBERS:
Mathieu Eugene
Ydanis Rodriguez
Jumaane D. Williams

A P P E A R A N C E S (CONTINUED)

Joshua Epstein
Staff attorney
Immigrant Defense Project

Danny Jerez
Northern Manhattan Coalition for Immigrant Rights

Lili Salmeron
Advocate
Northern Manhattan Coalition for Immigrant Rights

Barbara Brandes
American Immigration Lawyers Association, New York
Chapter

Jojo Annobil
Immigration Law Unit
Legal Aid Society

Gabriela Villareal
Immigration Policy Coordinator
New York Immigration Coalition Service

Jimmy Yan
Scott Stringer
Manhattan Borough President's Office

Daniel Coates
Make the Road New York

Getachew Fikremariam
Immigration Practitioner
African Services Committee

1

[Off mic]

2

3

SERGEANT-AT-ARMS: Thank you for
your cooperation.

4

5

CHAIRPERSON DROMM: Okay. Good
morning, my name is Daniel Dromm and I am the
Chair of the New York City Council Committee on
Immigration. We're expecting a few other Council
Members shortly, hopefully they'll be here to join
us.

10

11

This morning's hearing will focus
on two resolutions that have been introduced:
Resolution number 548, calling on Governor Cuomo
to create an Immigrant Pardon Board, similar to
the one created by former Governor Patterson, and
Resolution 648, calling on the Department of
Homeland Security Secretary Janet Napolitano to
extend the Temporary Protected Status designation
of Haitis and eligible Haitians, which is
currently set to expire on July 22nd, 2011.

12

13

14

15

16

17

18

19

20

21

During Governor David Patterson's
term, he created the first of its kind an
Immigrant Pardon Panel to assist him in
determining which New Yorkers deserve to be
pardoned. This panel ensured that legal permanent

22

23

24

25

1
2 residents who paid their debt to society are now
3 productive members of society and can continue to
4 contribute to our great state.

5 Resolution number 648 introduced by
6 Council Member Ydanis Rodriguez calls on Governor
7 Andrew Cuomo to continue and expand the Immigrant
8 Pardon Panel.

9 After Haiti was struck by an
10 earthquake on January 12th, 2010, President Barack
11 Obama issued an Executive Order that granted
12 temporary protected status to Haiti and eligible
13 nationals of Haiti. Resolution number 648
14 introduced by Council Member Mathieu Eugene calls
15 upon the Secretary of the Department of Homeland
16 Security to extend the deadline of this status,
17 which is to expire this July. More than a year
18 has passed since the earthquake and Haiti has been
19 faced with an outbreak of cholera and a slow
20 recovery process which has forced Haitians to live
21 in overcrowded and unsanitary campsites.

22 A New York Times article published
23 earlier this month reported that even under these
24 harsh conditions, 27 Haitians have been deported
25 back to Haiti, which has jeopardized the life of

1
2 one of them who died from cholera-like symptoms.
3 This is certainly unacceptable and inhumane.

4 This morning we look forward to
5 hearing from immigration advocates and legal
6 service practitioners about the impact of both the
7 governor's pardon power and temporary protected
8 status have had on the communities that they serve
9 and how the continued use of these tools could
10 protect New York City's immigrant communities.

11 I'd like to thank everybody for
12 coming this morning and I'm going to call our
13 first panel. And Joshua Epstein, Danny Jerez
14 [phonetic], Lili Salmeron, and Barbara Brandes.

15 [Off mic]

16 [Long pause]

17 MALE VOICE: Here you go, sir.

18 CHAIRPERSON DROMM: Okay. Thank
19 you. Okay. Why don't we begin over here, I'm
20 sorry.

21 JOSHUA EPSTEIN: Thank you. My
22 name is Joshua Epstein--

23 [Off mic]

24 CHAIRPERSON DROMM: No, on the--
25 yeah, there you go.

1
2 JOSHUA EPSTEIN: Thank you. My
3 name is Joshua Epstein and I am a staff attorney
4 at the Immigrant Defense Project. Thank you for
5 this opportunity to present comments about calling
6 on Governor Cuomo to continue and expand Governor
7 Patterson's Immigrant Pardon Panel.

8 We believe that this panel
9 presented important opportunities for immigrant
10 New Yorkers who are at risk of deportation and
11 continuing this panel will help stop the exile of
12 immigrants from their families and communities
13 here in the United States.

14 Governor Cuomo also has the
15 opportunity to expand the breadth of this pardon
16 panel so even more New Yorkers in varying
17 immigration statuses can participate in the
18 program.

19 As you know all too well, the 1996
20 immigration laws, AEDPA and IIRAIRA, dramatically
21 increased ways in which immigrants, documented and
22 undocumented, can get deported. Among other
23 things, these laws took away immigration judges'
24 discretion and reduced forms of relief in
25 immigration court, expanded criminal grounds of

1
2 deportation, and brought in aggravated felonies,
3 changed the definitions of conviction and sentence
4 so that these terms go beyond what the criminal
5 justice system intended, made it harder to come
6 back to the United States after deportation, and
7 limited how the courts can review immigration
8 judge decisions.

9 As a result, deportations have been
10 dramatically increasing. In fact, more than 2.5
11 million immigrants have been deported since 1997.
12 They are forced to return to countries where they
13 often don't know the language, have no family
14 ties, cannot find a job, and fear for their lives.
15 Meanwhile, their loved ones are often stripped of
16 breadwinners and support systems.

17 Immigration and Customs Enforcement
18 thinks it can easily sweep these problems under
19 the rug by simply labeling many of these that are
20 deported as criminal aliens--a term that is
21 misleading, inaccurate, and offensive. But we
22 should not so easily accept the ugly propaganda.
23 As a country, state, and city, we should recognize
24 that immigrants, just like everyone else, are more
25 than the sum of their mistakes, they form the

1
2 backbone of our families, workplaces, and
3 communities. They should not face deportation as
4 a second, and often surprise, punishment after
5 paying their dues through a criminal justice
6 system that has already put them through the
7 wringer.

8 That's why we strongly applauded
9 Governor Patterson for establishing an Immigrant
10 Pardon Panel that recognized that we must take
11 steps to right the wrongs we have perpetrated
12 against immigrants and their families and
13 communities. We think the pardon panel created
14 great promise for so many who have been devastated
15 by the possibility of deportation.

16 In reviewing pardon applications,
17 Governor Patterson stated that the pardon panel
18 will examine cases of legal immigrants who have
19 shown rehabilitation and positive contributions to
20 society. It is clear that the panel did examine
21 individual facts and circumstances and how old or
22 minor a conviction is. We think looking at these
23 considerations makes all the sense in the world.
24 In fact, this inquiry has considered the
25 appropriate course of action in considering

1
2 deportation for decades before the 1996 laws got
3 rammed through Congress, and it's what immigration
4 judges, among others, have bluntly said they wish
5 they could engage in, rather than have their hands
6 tied.

7 But we also think Governor Cuomo
8 can do more for a second phase of the Immigration
9 Pardon Panel. Governor Patterson welcomed
10 applications from immigrants who, for example, had
11 convictions that were most recent or more serious.
12 In addition, although the immigration laws have
13 been interpreted to mean that gun and controlled
14 substance offenses cannot be pardoned, Governor
15 Patterson still encouraged applicants to present
16 pardons and Governor Patterson granted pardons for
17 individuals who had convictions for controlled
18 substance offenses.

19 We hope that the Immigration
20 Committee will help ensure that Governor Cuomo not
21 only continues his predecessor's Immigration
22 Pardon Panel, but also grants more pardons for New
23 Yorkers. We also urge Governor Cuomo to expand
24 the pardon panel and consider applications from
25 immigrants in other statuses who could still

1

2 benefit tremendously from a pardon.

3

4

5

6

We hope the New York City Council will help Governor Cuomo extend the pardon panel and help keep thousands upon thousands of New York families and communities united.

7

Thank you.

8

9

CHAIRPERSON DROMM: Thank you very much. Mr. Jerez?

10

[Off mic]

11

12

13

14

15

16

17

DANNY JEREZ: Good morning, my name is Danny Jerez, I am an active member of Northern Manhattan Coalition for Immigrant Rights. I am here today to support the resolution to continue and expand the governor pardon panel as an important step in dealing with the terrible effects of deportation.

18

19

20

21

22

23

24

25

When Governor Patterson announced his pardon panel last year, many of us in the community who have so few opportunities to fight deportation were so hopeful. And I believe that Governor Cuomo will continue the pardon panel because it is the right thing to do and give New Yorkers a chance to make their case on why they should be able to stay with their families and

1
2 communities. [Off mic] a legal permanent resident
3 of United States, the father of two USA citizen
4 children and I am very active member of my church.
5 I moved to New York from the Dominican Republic in
6 March 1992 when I was 20 years old and I have
7 spent close my half of my life in New York.

8 My life has not been easy for me, I
9 have struggled with depression since I was young.
10 It was during a period of deep depression that I
11 made a bad choice, I was arrested for attempt to
12 sell of small amount of drugs. For this act, I am
13 now deportable. Since then, I have worked hard to
14 [off mic] my life and be productive citizen of
15 this society. Because of this condition, I'm not
16 able to travel without taking the risk of not
17 being able to come back, I have not been able to
18 visit my mother since 1994. It has been 17 long
19 years since I have seen my mother. It is a dream
20 of mine to see her again but it is also a dream of
21 mine to be able to continue to live here in New
22 York.

23 New York is where I have built my
24 life. I am a key support for my sister, my niece,
25 and my nephews, and, of course, for my sons I feel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

very connected to the society here, to cultural diversity of the opportunities, its fill me with pride to have the goal of someday to becoming an American citizen so that I can vote and participate fully in our society. In my situation, a pardon is the only thing that will allow me to become USA citizen because I am permanently barred from citizenship due my one small attempt drug since in 1996.

Last year I applied for a pardon to ask for a second chance. I know that there are many who will say, well you are immigrant and you committed a crime, so you should be deported. It does not make sense that there is such a drastic difference in consequences because someone is not citizen, it does not make sense that most people would not even have a chance to present their case to be able to stay in USA. I received a sentence of five years probation for my condition, yet Immigration tells me that I should be deported. Well deportation is most cases an experiment in sorrow [phonetic], this is an injustice that we have to challenge and that we have to change.

Even though I was not given a

1
2 pardon, I am so glad Governor Patterson so that
3 people be given another chance. It is my deep
4 hope that Governor Cuomo will also see the people
5 like me and the thousand of other New Yorkers who
6 are caught in the middle of the [off mic] on for
7 giving immigration laws also deserve a second
8 chance.

9 Thank you.

10 CHAIRPERSON DROMM: Thank you very
11 much, thank you for your courageous story and for
12 sharing that with us, thank you.

13 I'd like to introduce other Council
14 Members who have joined us. To my left is Council
15 Member Mathieu Eugene from Brooklyn, and to my
16 right, not necessarily in literal language or
17 figurative speaking, but to my right is Council
18 Member Ydanis Rodriguez and Council Member Jumaane
19 Williams, thank you for joining us.

20 And would you like to start.

21 LILI SALMERON: Good morning, my
22 name is Lili Salmeron and I'm also speaking in
23 favor of Resolution 548. I am a community
24 advocate for the Northern Manhattan Coalition for
25 Immigrant Rights, an organization that has been

1
2 providing immigration related legal services for
3 over 25 years. We are based in the largely
4 Dominican neighborhood of Washington Heights,
5 which has been disproportionately impacted by the
6 punitive and inflexible immigration laws passed by
7 Congress in 1996.

8 These laws further expanded the
9 list of crimes that triggered mandatory
10 deportation for non-citizens and severely
11 restricted the ability for the vast majority of
12 immigrants to have a fair day in court to fight
13 their deportation. As a result, we have seen the
14 number of deportations grow rapidly. The U.S. has
15 deported over 40,000 Dominicans since 1996.

16 Hundreds of legal permanent
17 residents come to our office each year seeking
18 guidance on whether they are in danger of being
19 deported if they decide to naturalize, renew their
20 green card, or travel out of the country. Because
21 of the combination of harsh immigration laws and
22 the history of crime enforcement in our
23 communities, we unfortunately need to advise them
24 that a past criminal conviction on their record,
25 many of them minor and non-violent, would subject

1

2

them to mandatory deportation proceedings.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

When Governor Patterson announced his pardon panel, we received a tremendous amount of phone calls from past and new clients requesting help in this process. Many of the individuals who called were legal permanent residents who have U.S. citizen spouses and children who contribute positively to their communities and who are 100 % rehabilitated. A pardon would offer these individuals an opportunity that they would not have otherwise to fight their deportation case and be able to stay with their families and their communities.

We are working at NMCIR to build momentum in Congress to change the laws that so severely restrict the ability of our community members to challenge deportation orders and the permanent exiles of so many of our loved ones. The fight for an immigration system that upholds due process rights, that gives immigrants a fair day in court, and allows judges to judge is critical for our families and our communities.

Governor Patterson's pardon panel was a crucial step toward addressing the

1
2 devastating consequences of deportation. We urge
3 Governor Cuomo to continue and expand the pardon
4 panel for it will provide opportunities for New
5 Yorkers to have a fair chance to stay united with
6 their families as we continue to fight for just
7 immigration reform. Thank you.

8 CHAIRPERSON DROMM: Thank you very
9 much.

10 BARBARA BRANDES: Good morning, I'm
11 Barbara Brandes and I practiced in the area of
12 immigration law for more than 30 years and I'm
13 here also as a member of the American Immigration
14 Lawyers Association, New York Chapter. Thank you
15 for allowing me to address the New York City
16 Council regarding Resolution 548, calling on
17 Governor Cuomo to continue and expand the
18 Immigrant Pardon Board.

19 A continuation and expansion of the
20 Immigrant Pardon Board is warranted and
21 desperately needed for the following reasons:
22 One, many persons who could have benefited from
23 the Immigrant Pardon Board were unaware of its
24 existence or the deadline to file a pardon. The
25 attorneys in our office who represent many

1
2 criminal aliens only learned of the board's
3 deadline two days before it expired and,
4 therefore, we were unable to get the applications
5 in time which required a lot of supporting
6 evidence and documentation.

7 Number two, many immigration laws
8 changed subsequent to the person's pleas or
9 convictions and they're being applied
10 retroactively despite constitutional prohibitions
11 against ex post facto laws and bills of attainder.

12 Three, many criminal attorneys
13 failed to ask the immigration status of criminal
14 defendants, were unaware that lawful permanent
15 residence is subjected to immigration,
16 deportation, and removal and failed to advise or
17 misadvised defendants of the immigration
18 consequences of their convictions. If they had
19 known, if criminal attorneys had known of the
20 immigration consequences or looked into the
21 immigration consequences of their convictions,
22 everybody knows that they could have possibly pled
23 to different provisions of law, which I get
24 involved in if the immigrant doesn't have a final
25 criminal conviction.

1
2 Also, that there is a U.S. Supreme
3 Court case of Padilla v. Kentucky which came out a
4 little bit over a year ago which held that a
5 person's 6th Amendment right to counsel is
6 violated when an attorney fails to advise a
7 defendant of the immigration consequences of the
8 plea. Padilla's even stronger than that, Padilla
9 actually said if they did not advise them of the
10 definite consequences of the plea, the plea is
11 faulty. What's happening now is that the New York
12 State courts are being--New York City courts are
13 being flooded with Padilla motions, thereby
14 causing a backlog in the court system.

15 And as the people that spoke with
16 me before said, since 1996, immigration judges,
17 many of them have lost the ability to grant
18 discretionary relief to many respondents who
19 heretofore and at the time of their convictions
20 were eligible to apply for discretionary relief,
21 or even their pleas did not have immigration
22 consequences at the time.

23 So it's really onerous and many
24 convicted people, as they said before, who have
25 paid a debt to their society have become

1
2 productive members of society, have become model
3 citizens, some of whom are sole supports of their
4 family, if deported would cause significant
5 disruptions of family life which could impact on
6 our welfare of society. New York children I know,
7 there have been plenty of studies where I've been
8 the attorney representing children who have gone
9 astray because they lost their family members or
10 lost their parents and we all know what the
11 financial drain on the government could be when
12 the breadwinner of the family is deported outside
13 the United States.

14 For many persons, the Immigrant
15 Pardon Board is their only chance to remain in the
16 United States, with the exception of deferred
17 action, which doesn't happen very often when we
18 request that remedy for immigration.

19 And thank you for allowing me to
20 address this board and I'm open to answering any
21 questions you may have relating to the immigration
22 consequences of criminal convictions. Thank you.

23 CHAIRPERSON DROMM: Okay. Thank
24 you very much. And start off with some questions
25 that I have and then turn it over to some of my

1
2 colleagues. Mr. Epstein, in your testimony, I
3 think on page two, you mentioned you said that in
4 reference to our immigrants, they form the
5 backbone of our families, workplaces, communities,
6 they should not face deportation as a second, and
7 often surprise, punishment after paying their dues
8 through a criminal justice system that has already
9 put them through the wringer. Can you elaborate
10 more on that?

11 JOSHUA EPSTEIN: Absolutely. So
12 many of the immigrants, especially in the city of
13 New York, are the fundamental--to use the word
14 again--backbone of the workplace, of families, of
15 communities and have forever changed the city and
16 the neighborhoods within the city. Very often,
17 because of an unjust criminal justice system, they
18 end up arrested, in the local prisons, about 85,
19 90 % of the time those cases resolve in pleas
20 where they aren't able to fight their case, only
21 to realize later that they are going to suffer a
22 second, usually much more harsh consequence of
23 deportation, many times for crimes where there was
24 no incarceration sentence, where there was very
25 minimal probation time.

1
2 And this is extraordinarily unfair
3 to them, to their families, and to us as a city to
4 lose these members to an immigration detention and
5 deportation system.

6 BARBARA BRANDES: May I elaborate
7 on that, please?

8 CHAIRPERSON DROMM: Sure.

9 BARBARA BRANDES: All right. So we
10 have many clients that come in and say, have you
11 been convicted and they go misdemeanor and the
12 criminal attorneys advise them, it's a
13 misdemeanor, you're not doing any jail time. They
14 don't know whether they're citizens or permanent
15 residents or undocumented and those very
16 convictions, even minor, I can tell you that
17 attempts and conspiracies at one point were not
18 sanctionable under immigration law and then they
19 became sanctionable under immigration law applied
20 retroactively. We had cases where persons could
21 not be deported unless they served five years of
22 time, they retroactively changed the aggravated
23 felony laws to say, not only did you have to serve
24 the time, but if the crime for which you're
25 convicted of could have resulted in a year or more

1
2 of time, even though you didn't serve it, you're
3 convicted of an aggravated felony years after they
4 have taken a plea in their cases. It is so harsh
5 and it's unfair and I believe it's
6 unconstitutional.

7 CHAIRPERSON DROMM: So how does the
8 Padilla decision play into these instances, these
9 examples that you're giving now?

10 BARBARA BRANDES: Okay. Well I've
11 gotten a Padilla motion to reopen in Queens court
12 and what happened was in that case, even when the
13 judge on the record says you could have had
14 immigration consequences, the Padilla decision
15 specifically states that where there was
16 definitely immigration consequences--in my case, I
17 could tell you the specific facts of it, the
18 client was working a bodega three days, he had no
19 idea what he was doing, he needed a kidney
20 transplant. His attorney advised him that if he
21 didn't take the plea and he went to jail, he would
22 die in jail, okay? The judge never asked him if
23 he was under any medication and he was under all
24 of this heavy medication for his kidneys. And so
25 the plea that he took was deficient. In fact,

1
2 what he was doing--they asked him, he was working
3 as a cashier for three days, they said to him,
4 just reach for this, give that, that's busted,
5 never had a problem since, never had any criminal
6 convictions, made flowers by hand, and actually
7 had a kidney transplant and it was a very
8 sympathetic case, and I know the judge would have
9 granted our motion to reopen. What we wound up
10 doing is reopening the case and pleaing and he's
11 gladly performing 150 hours of community service
12 and he's going to be able to get and keep his
13 green card.

14 CHAIRPERSON DROMM: That's good.
15 And you're talking about, Mr. Jerez, also you had
16 mentioned in your testimony that you served, I
17 think, five years probation, am I correct, you
18 were sentenced to five years probation, did you do
19 any time in a prison system?

20 DANNY JEREZ: No, I was supposed
21 to--that was my first time, my first offense, I
22 was supposed to get out the next date and the
23 lawyer went on vacation, I was in jail for a
24 month.

25 CHAIRPERSON DROMM: At where, in

1

2 Riker's?

3

4

DANNY JEREZ: Yes, then me let go
out.

5

6

CHAIRPERSON DROMM: Prior to going
to trial.

7

DANNY JEREZ: Yes.

8

9

CHAIRPERSON DROMM: Then at
sentencing, you didn't do any time after being
sentenced.

10

11

DANNY JEREZ: Say that again?

12

13

CHAIRPERSON DROMM: You didn't do
any time after--

14

DANNY JEREZ: No.

15

CHAIRPERSON DROMM: --sentenced.

16

DANNY JEREZ: No, no, no, no.

17

18

CHAIRPERSON DROMM: And at that
time, were you advised of the consequences of what
could happen to you for pleading guilty to these
charges?

19

20

21

DANNY JEREZ: No. No.

22

23

CHAIRPERSON DROMM: Okay. I think
at this point, I'm just going to turn it over--
'cause I know a couple of the Council Members have
questions. Council Member Eugene?

24

25

1
2 COUNCIL MEMBER EUGENE: Thank you
3 very much, Mr. Chair, thank you. First and
4 foremost, let me thank you, Chair Dromm, for
5 holding this very, very important hearing. Very
6 important for all of you here, very important for
7 our friend, family members because we all know the
8 contribution of immigrant to United States is
9 unbelievable, it's remarkable, and we know that
10 the immigrant people that come to United States,
11 like everyone before, God bless you if you are
12 first [off mic] generation to get a piece of
13 American dream to have a better life for
14 themselves and their children and they did work,
15 they did give their sweat and the courage,
16 expertise, and skill to improve the quality of
17 life in the United States and to be part of the
18 fabric of this good country that we all love.

19 And myself, I am an immigrant also,
20 as you know, and I know the experience of
21 immigrant and I feel this is my moral obligation
22 to join you and to join all the fighters for
23 justice and for fairness for immigrant and to
24 ensure that the legislation, the law regarding
25 immigration be improve and enhanced.

1
2 And I want to thank each one of you
3 for coming here today and also I want to salute
4 your courage also. And, Ms. Barbara, I want to
5 thank you for everything that you have been doing.
6 And I see Jojo in the room also, and I want to
7 thank Jojo and all those wonderful organizations,
8 legal society who have been working hard to help
9 immigrant people. Thank you very much to all of
10 you.

11 So let me ask, Ms. Barbara, let me
12 ask you a question, in your testimony, you said
13 that many person who could have a benefit from the
14 Immigrant Pardon Board were unaware of its
15 existence or the deadline.

16 BARBARA BRANDES: Yes.

17 COUNCIL MEMBER EUGENE: Do you have
18 an idea how many people approximately who could
19 benefit from that or are waiting to see the
20 clemency of the governor?

21 BARBARA BRANDES: Unfortunately, I
22 do not have that data, but every day somebody
23 comes into my office that could have benefited
24 from the pardon board. I do get a lot of criminal
25 aliens coming to see me who are permanent

1

2 residents and want to know, like we said, if they
3 could travel to see their family or they would be
4 eligible for citizenship and then I said, oh,
5 there's another person that could have benefited
6 from the pardon board.

7

8 I myself did not participate in any
9 of the applications of the pardon board because I
10 heard about it but didn't really--even as an
11 immigration attorney, didn't really know who was
12 benefiting from it, and really I think the
13 publicity about it was only very big, maybe a
14 couple of days before it ended. So I don't think
15 it was a sufficient amount of time for which
16 persons got the understanding that they could
benefit from it if they made the application.

17

18 COUNCIL MEMBER EUGENE: If somebody
19 want to have the data to have an idea on how many
20 people are on the [off mic] would like to benefit
21 from that, is there any place we can go to have
the information?

22

23 BARBARA BRANDES: Maybe Immigration
ICE that could tell you how many--

24

COUNCIL MEMBER EUGENE: Okay.

25

BARBARA BRANDES: --I really don't

1

2 know and--

3 COUNCIL MEMBER EUGENE: All right.

4 BARBARA BRANDES: --you have a

5 better--maybe--

6 JOSHUA EPSTEIN: Can I--

7 [Crosstalk]

8 COUNCIL MEMBER EUGENE: Yes,

9 please.

10 JOSHUA EPSTEIN: At the Immigrant
11 Defense Project, we run a legal hotline for
12 criminal defense attorneys, immigration advocates,
13 and directly impacted people and since the
14 deadline passed until continuing on, we have
15 continuous callers that ask how do I file for a
16 pardon, what can I do, and it is unbelievably
17 distressing, as you said, to say that the pardon
18 panel, unfortunately, no longer exists. As well
19 as we perform Know Your Rights trainings at
20 Riker's Island, people continually ask, I heard of
21 a pardon panel, how do I apply, and unfortunately,
22 there's little that can be done now.

23 COUNCIL MEMBER EUGENE: Thank you
24 very much. I know that there are so many people,
25 so many people, the number may be big. Let me ask

1
2 you this last question before I turn the
3 microphone to the chair. You mentioned also that
4 many immigration laws changed subsequently to
5 conviction have been applied retroactively.

6 BARBARA BRANDES: Yes, yes, on or--
7 [Crosstalk]

8 COUNCIL MEMBER EUGENE: Now this
9 is--

10 BARBARA BRANDES: I'm sorry.

11 COUNCIL MEMBER EUGENE: --this is
12 rough. So as an attorney, could you tell us is
13 there anything that can be done, that we can do
14 all together, elected official, attorneys, members
15 of the community to prevent that to happen again
16 or to stop that or to correct that? Is there
17 anything that can do?

18 BARBARA BRANDES: It's only when
19 laws, I guess, are being proposed federally that
20 you have an opportunity to have a comment period
21 and possibly then people can get involved during
22 the comment period.

23 Even when it's not clear. There's
24 a lot of cases that they talk about--in 1996, the
25 word changed from deportation and exclusion to

1
2 removal and even though the statute talks about
3 removal, they're applying those cases
4 retroactively to deportation to before the law was
5 passed. You can't even apply civil laws, a change
6 of regulatory statutes to people before, but
7 immigrants seem to be the exception to the rule.
8 And what I really want to stress is that
9 immigrants are not only not the exception to the
10 rule, but they're being treated worse than
11 criminal defendants. All of these right always
12 apply to criminal defense and they always used to
13 say that immigrants were civil. Well now
14 immigrants, as you know, in Arizona where 95 % of
15 prisons are privately owned, they are applying the
16 immigration laws and they are incarcerating
17 immigrants and they're being held and treated in
18 worse conditions than criminals are being treated.
19 And so I think we can no longer separate, that's a
20 possibility where we can take the Padilla v.
21 Kentucky decision one step further and say not
22 only--one of the things that Padilla says is that
23 the immigration proceeding and the criminal
24 proceeding, you cannot separate the two of them.
25 So I think with that decision, we might have an

1
2 opportunity to argue in Supreme Court that that
3 immigrants should be given the same rights as
4 criminal defendants because you can no longer
5 separate and say that immigrants are being treated
6 as a civil proceeding versus criminals, that's a
7 different kind of proceeding.

8 COUNCIL MEMBER EUGENE: It is very
9 unfortunate to see that immigrants have been
10 treated worse than criminal because the only crime
11 they commit is be an immigrant, I believe. But
12 anyway, thank you very much, thank you again. Mr.
13 Chair, thanks a lot.

14 CHAIRPERSON DROMM: Okay. Thank
15 you. And Council Member Williams.

16 COUNCIL MEMBER WILLIAMS: Thank
17 you, Mr. Chair, for calling me and for having this
18 hearing, it's also been important. Thank you for
19 the panel.

20 I come from an immigrant family,
21 I'm first generation. My colleague didn't
22 mention, but he's the first Haitian elected to
23 City Council, I'm the first Grenadian-American
24 elected to the City Council, so I really do
25 understand--not as impressive though 'cause

1
2 there's many, many more people in Haiti than in
3 Grenada, but...

4 But I do feel obviously just really
5 close to this issue and it's very disheartening
6 because America wants to benefit from the skill
7 sets that immigrants bring and the taxes that they
8 bring, but then they want to act as if they're
9 indispensable and immigrants are not
10 indispensable, even illegal immigrants are not
11 indispensable to this country. And everybody's a
12 human being first and should be treated as a human
13 being, and obviously, that's not happening, and
14 it's very disconcerting to say the least. And
15 representing a district that is about 80, 90 %
16 immigrant also, obviously, affects me very big to
17 say the least.

18 I had a couple of questions. I
19 wanted to know what sort of crimes are now
20 deportable that wasn't before the change.

21 BARBARA BRANDES: Okay. Well I
22 could say that theft, okay. Before you had to
23 have to serve a year and now if the sentence could
24 be imposed for the crime was more than a year,
25 they can retroactively affect persons.

1
2 Like I said before, there were at
3 some point attempts and conspiracies were not part
4 of the law, and now attempts and conspiracies to
5 sell or even to commit a theft is sanctioned just
6 as if you committed the crime itself.

7 Those are just two examples, you
8 may have some more.

9 JOSHUA EPSTEIN: Excuse me. One of
10 the other big changes was the way the word
11 conviction is defined in the Immigration and
12 Nationality Act.

13 [Crosstalk]

14 JOSHUA EPSTEIN: That definition
15 expanded when the laws changed in 1996 to include
16 dispositions that the criminal justice system
17 never contemplated to be convictions.
18 Dispositions where someone would serve a diversion
19 program, successfully complete that diversion
20 program, have the charges dismissed. If there was
21 a plea before that diversion program, that will
22 still be considered a conviction for immigration
23 purposes. That, coupled with lack of advice by
24 Padilla, serves immigrants poorly, to say the
25 least.

1
2 And that huge change of that
3 definition is massive, right? Because there are
4 so many dispositions in the criminal context which
5 shouldn't be convictions and shouldn't have
6 collateral consequences after the criminal justice
7 system.

8 COUNCIL MEMBER WILLIAMS: So--

9 BARBARA BRANDES: [Interposing]

10 What I could add to that for one second is that if
11 you were this--let's say you were convicted of
12 possession of cocaine and you were convicted under
13 federal law, federal law has something called
14 Federal First Offender Status and if you were
15 convicted under Federal First Offender Status and
16 it's your first time possession, that's not
17 considered a conviction for immigration purposes.
18 But the courts have looked at, unless you treat it
19 exactly the same as federal law, even though it
20 winds up being dismissed, you're still deportable--
21 -

22 COUNCIL MEMBER WILLIAMS:

23 [Interposing] Wait, I don't understand what you
24 just said. It's not viewed as--say it again.

25 BARBARA BRANDES: All right, there

1
2 is a statute called Federal First Offender
3 Statute, if you're charged under federal law and
4 it's your first offense for a simple possession of
5 a controlled substance and you've given a
6 diversionary treatment under the federal laws,
7 then it's not considered a conviction--

8 COUNCIL MEMBER WILLIAMS:

9 [Interposing] It's not considered.

10 BARBARA BRANDES: It is not
11 considered conviction for immigration purposes,
12 but if you're convicted under state law and let's
13 say you have to do the plea first and then they
14 adjourn it, they have found that that's not the
15 same and it is considered a conviction for
16 immigration purposes. But recently--and I've been
17 arguing that it's the conduct, I say it's the
18 conduct, stupid, that if the same conduct should
19 yield the same result, it should not matter
20 whether New York does one thing, Texas does
21 another thing, Florida does another thing because
22 it's federal immigration law. And just recently
23 in the 9th Circuit they have held that it's the
24 conduct, not the treatment.

25 So we have some hope that we're

1

2

going to have conflicts in circuits and we'll be able to bring it to the Supreme Court to get a resolution.

4

5

6

7

COUNCIL MEMBER WILLIAMS: So when we say drug conviction, are you talking about a nickel bag of weed or what is consist?

8

9

10

11

BARBARA BRANDES: You're allowed to have possession of pot one time under 30 grams. If you have two nickel bags of pot today and tomorrow, you're out of luck. Nickel--

12

[Crosstalk]

13

14

COUNCIL MEMBER WILLIAMS: And how much does a nickel bag weigh, I don't even...?

15

BARBARA BRANDES: All right.

16

[Laughter]

17

BARBARA BRANDES: Probably--

18

19

COUNCIL MEMBER WILLIAMS: So I mean if you have a dime bag, that could be 30 grams?

20

21

BARBARA BRANDES: Under 30, you're only allowed to have possession of pot once.

22

23

24

25

JOSHUA EPSTEIN: Just to clarify that a little bit. If someone is in the United States and not a lawful permanent resident and is trying to get lawful permanent resident status,

1

2 any controlled substance--

3 [Crosstalk]

4 JOSHUA EPSTEIN: --will make them
5 inadmissible--

6 [Crosstalk]

7 COUNCIL MEMBER WILLIAMS:

8 [Interposing] Except for nicotine and alcohol.

9 JOSHUA EPSTEIN: That's correct.

10 BARBARA BRANDES: Right.

11 COUNCIL MEMBER WILLIAMS: What if
12 any of these crimes committed, you committed and
13 was minors but you're not here legally, what
14 happens then, can the same things happen?15 BARBARA BRANDES: If you were
16 judged youthful offender, that's analogous to the
17 Federal First Offender. So it depends, if you got
18 youthful, youthful offender status is not
19 considered a conviction for immigration purposes.

20 COUNCIL MEMBER WILLIAMS: Okay.

21 BARBARA BRANDES: And by the way,
22 what I want to add to this is we've been
23 successful in getting cases when people come to me
24 with convictions, we've been successful on the
25 other side, on the criminal side of getting them

1

2 reopened and getting those convictions to go away.

3

4 Now I want to add one other thing
5 is that convictions prior to 1996, even if they
6 were for possession or drugs or selling, if you
7 didn't serve five years there is a remedy if you
8 were a lawful permanent resident called 212(c)
9 where you can bring yourself before immigration
10 and get, you know, discretionary relief. But for
11 cases after 1996, those same benefits don't apply
12 unless you're a permanent resident and it's not
13 considered an aggravated felony, which is a whole
14 other story.

15

16 COUNCIL MEMBER WILLIAMS: Just a
17 couple more questions. I mean, it's scary 'cause
18 growing up in Brooklyn New York City and going to
19 college, you find yourself in a lot of funky
20 situations and to think that I could have been
21 deported for some things is a very, very scary
22 thing and I'm lucky I'm a U.S. citizen, but a lot
23 of my friends and family are not. And we're
24 supposed to be a country of second chances and
25 we're supposed to root for the underdog. People
make mistakes, all of us here have, it's just part
of growing up and until you're about 21, 22, 24,

1

2

then you start figuring out, but to get deported for some of these things, it's very disappointing. That's the least that it is, actually.

4

5

6

7

8

9

10

Some of the things that you said like being retroactively applied and being advised wrong, are there any cases going to Supreme Court or anything about it being unconstitutional right now? Are there any class action suits for people who weren't advised properly in particular?

11

12

13

14

15

BARBARA BRANDES: Well you have the Padilla case, which just came from the Supreme Court which said that defendant's 6th Amendment right to counsel was violated when the attorney misrepresented and you can get them reopened.

16

17

And the retroactive application, I'm not aware of.

18

19

20

21

22

JOSHUA EPSTEIN: Unfortunately, the immigration laws, there have been challenges to retroactivity and the courts have found that most, if not all, immigration laws can be applied retroactively.

23

24

25

COUNCIL MEMBER WILLIAMS: But anybody who was deported, they wouldn't fall under the Padilla case even if they realized that they

1

2 were deported wrong?

3 JOSHUA EPSTEIN: I mean, that--I'm
4 sorry, go ahead.

5 BARBARA BRANDES: Go ahead, go
6 ahead, go ahead.

7 JOSHUA EPSTEIN: That's a great
8 question. For many people that have been deported
9 and then have realized, now after Padilla, right,
10 so if they got bad advice from their criminal
11 defense attorneys about immigration consequences
12 and they've been deported, it can be
13 extraordinarily difficult to bring cases, to
14 vacate those cases especially in New York State
15 courts because many judges will want those people
16 to appear in front of the court. If people have
17 been deported most of the time, it's very
18 difficult if not impossible--

19 COUNCIL MEMBER WILLIAMS:
20 [Interposing] So we got to sneak them back in so
21 they can appear in court basically.

22 BARBARA BRANDES: If you do that
23 then you're barred--there's another provision of
24 law--

25 [Crosstalk]

1

COUNCIL MEMBER WILLIAMS:

2

[Interposing] Well there used to be--

3

BARBARA BRANDES: --C that--

4

[Crosstalk]

5

COUNCIL MEMBER WILLIAMS: --turn

6

'em loose, Bruce, they would fine the prostitutes

7

and then they would have to let them out so they

8

can go get money, come back and pay the fine. So

9

this kind of reminds me of that. You need them to

10

be here, but they can't be here legally so....

11

And last question, is there

12

anything or anything you see illegally, I know it

13

was mentioned a little before, but anything on a

14

city level, any small laws that can be adjusted to

15

make life easier for our immigrant population?

16

BARBARA BRANDES: Well I think more

17

and more we used to have the unwritten rule that

18

the police don't turn the immigrants over to

19

Immigration, but I think they are these days.

20

Maybe we can go back to enforcing that mandate

21

that we had from that let the criminals stay as

22

criminal and Immigration and never the twain shall

23

meet, but....

24

COUNCIL MEMBER WILLIAMS: Is that a

25

1

2 legal statute that we had that's being ignored
3 or...?

4

5

BARBARA BRANDES: Well we [off
mic].

6

7

8

9

10

11

12

13

14

15

16

JOSHUA EPSTEIN: I think you're
absolutely right of sort of decoupling the
collaboration between local law enforcement and
Immigration and Customs Enforcement, whether it's
with the police or the Department of Corrections,
and making sure that Immigration and Customs
Enforcement doesn't have contact with people that
are detained in Department of Correction
facilities, so that at the end of their criminal
custody they get to go home to their families and
communities and--

17

18

19

20

COUNCIL MEMBER WILLIAMS:
[Interposing] I know we're trying to do some of
that on a state, do we have jurisdiction to do on
the city level is what I'm--

21

22

23

24

25

JOSHUA EPSTEIN: Yes.

[Off mic]

COUNCIL MEMBER WILLIAMS: With the
police department.

JOSHUA EPSTEIN: Yes, and the

1

2 Department of Corrections.

2

3

4 COUNCIL MEMBER WILLIAMS: I'd love
5 to work--if somebody can contact my office to see
6 how specifically we could do that.

4

5

6

7 JOSHUA EPSTEIN: Definitely,
8 someone will definitely contact your office.

7

8

9 COUNCIL MEMBER WILLIAMS: Thank
10 you.

9

10

11 CHAIRPERSON DROMM: Thank you,
12 Council Member Williams. And just to pick up on a
13 point that you were talking about, I recently read
14 a report that said that arrests for marijuana in
15 New York City had risen from 29,000 and I think in
16 2009 to over 50,000 in 2010--it could be the prior
17 years, I'm not exactly sure--and 80 % of those
18 arrests were among youth of color, black, and
19 Latino. I do not say specifically whether they
20 were immigrant or not, but from the information
21 that you're giving us some of that would then
22 translate into being deportable offenses.

11

12

13

14

15

16

17

18

19

20

21

22

23 BARBARA BRANDES: Sure.

23

24 JOSHUA EPSTEIN: Absolutely.

24

25

25 BARBARA BRANDES: I've even had
clients out drinking an open beer bottle in the

1
2 street, never being arrested, never being
3 sanctioned, but turned over to Immigration for
4 [off mic] they didn't know, maybe in their
5 country, you can. In New Orleans, you can so....

6 COUNCIL MEMBER WILLIAMS: Mr.
7 Chair, can I say one thing?

8 CHAIRPERSON DROMM: Sure.

9 COUNCIL MEMBER WILLIAMS: I'm
10 sorry, just with the stat which is probably true,
11 I just want to make sure, I believe that if the
12 police were as apt to stop people who are not of
13 color, they might have had more--a higher
14 statistics on that level as well.

15 CHAIRPERSON DROMM: Yes,
16 absolutely, I didn't mean to infer anything
17 otherwise, I was just trying to bring up the
18 statistic that--what's the word--
19 disproportionately affects youth of color and on
20 minor marijuana charges where these arrests are
21 happening. And to me, it was shocking that it
22 went from 29,000 to 50,000 in a year, you know,
23 that's a huge jump.

24 [Crosstalk]

25 CHAIRPERSON DROMM: Well exactly,

1
2 exactly. All right, thank you. And now we have
3 Council Member Rodriguez, thank you.

4 COUNCIL MEMBER RODRIGUEZ: Thank
5 you. Thank you to all my colleagues, especially
6 our Chair Dromm, who has been a leader on
7 defending immigrants' right and the Speaker also,
8 who couple of months ago when we hold a hearing, I
9 think that she brought the tone on how we will be
10 responsible, as we've been, also in defending the
11 immigrants' right. Especially at this moment when
12 we're being on the attack nationwide.

13 I have a couple of things to say
14 about Reso 548, but first I had a question in
15 regard to yesterday, one of the local channel, the
16 Spanish one, Channel 47, dedicated half an hour on
17 immigration and there's no doubt that there's a
18 right-wing that as a result those hate year that
19 was promoted by the Bush and Cheney and his [off
20 mic] group has been trying to promote a number of
21 legislation against our immigrants. And in
22 yesterday's program they went over like most of
23 the state has many cases where a number of
24 legislator has come on from putting many bills
25 against immigrant, not only the Arizona bill, but

1
2 others. Have you noticed on any particular right-
3 wing in the state that has been trying to promote
4 any bill against immigrants in New York state?

5 BARBARA BRANDES: I wouldn't know
6 about that, but I just want to correct the record
7 for one minute. I am a Democrat, okay, I am a
8 staunch Democrat, but our President Barack Obama
9 has enforced and deported more immigrants and
10 criminal aliens than Bush and Cheney
11 Administration ever did. That's one thing, I just
12 wanted to put that on the record.

13 Now, while the president is pro-
14 immigration, and I think President Bush was pro-
15 immigration also, there is certainly a right-wing
16 element that is definitely anti-immigration. And
17 with my understanding about the Arizona situation
18 is that 95% of the prisons in Arizona are
19 privately run, so it's a business of why they're
20 putting immigrants in prison. And so I just want
21 to set that record straight.

22 Also, as far as right-wing in this
23 state, and I'm not aware of--

24 [Crosstalk]

25 BARBARA BRANDES: --anything in

1

2

particular.

3

4

Is there something in Westchester who had something?

5

LILI SALMERON: Well Secure

6

7

8

Communities went live in three counties in upstate New York, two of which are Putnam and Rockland and I forget the third one.

9

10

11

12

13

14

15

So this program is going to funnel immigrants into the detention system because at the point of arrests their fingerprints are going to be sent to Immigration and if they have a deportable offense in their background, then ICE will issue a hold. So we already have the situation in these places in New York State.

16

17

18

19

20

21

22

And then to add to her point, I read two days ago that in--it was in the Washington Post that the Obama Administration is allocating an extra \$1.4 billion to the programs like SCOM that are designed to deport criminal aliens. So his administration is ratcheting up this deportation regime.

23

24

I don't know if Josh, you wanted [off mic].

25

COUNCIL MEMBER RODRIGUEZ: So

1
2 again, but my question is that, as far as you
3 know, there is not any bill at the state level
4 that anyone has been promoting similar to the--is
5 it 71070? [Off mic] The one in Arizona and the
6 one that--another bill that has been promoted in
7 different state anti-immigrant bill. So as far as
8 you know, there's not anyone in the state right
9 now. Great. Has the governor approached the
10 different groups that you represent or any other
11 immigrants advocate group in regards to starting a
12 conversation on where he is right now regards to
13 the pardon panel?

14 JOSHUA EPSTEIN: So we, Immigrant
15 Defense Project along Northern Manhattan Coalition
16 for Immigrant Rights, worked with Governor
17 Paterson a lot about this pardon panel, along with
18 the Secure Communities, and also explaining other
19 issues of how the state and local law enforcement
20 works with Immigration and Customs Enforcement to
21 try and put the pardon panel, to try and expand
22 the pardon panel, and then with Secure Communities
23 to try and have the memorandum of agreement
24 rescinded.

25 And then we are starting

1
2 conversations now with Governor Cuomo's office on
3 both of those topics as well. I hope that answers
4 your question.

5 COUNCIL MEMBER RODRIGUEZ: And I
6 just want to end saying that Reso 548 is a Reso
7 that we hope will get the support of the immigrant
8 advocate group and we hope that the Mayor also
9 will come on board. I think it was a good moment
10 for the Mayor, especially for the immigration
11 commissioner to send someone to be here also to
12 share where they are because I think that I can
13 say that we can give a lot of credit for the Mayor
14 for a lot of good things and also some time for
15 the tone that he has nationwide on immigration,
16 but then when we look at the local level, there's
17 a lot of things that we have a lot of concern.
18 Like, the only reason why we have ICE in Riker's
19 Island is because the Mayor's signed, the Mayor
20 gave the authority for that to happen.

21 And we cannot go preaching about
22 nation and national immigrants agenda and then
23 looking at how ICE is going after a number of
24 people. Secure community is not supposed to be
25 applied, however, we had a case where Mr. Lehió

1
2 Valerio [phonetic] last year, a taxi driver that
3 he has a case in 1983 and all he did in 1983, was
4 he had a gun in a grocery store and he was on
5 probation, his probation was reduced. Suddenly he
6 was driving his taxis, ICE went to his apartment,
7 he was not detained, they went directly to his
8 apartment and he was taken to the immigration
9 center and if Lechio's daughter would not be
10 working as a paralegal in a law firm and she would
11 have the first legal support and then we came on
12 board to support, most likely Mr. Lechio would not
13 be in the United States, he would be deported back
14 there.

15 So we hope is that with Reso 548 at
16 least we can alleviate the situation where
17 thousands of New Yorkers that has been paying
18 their taxes, that has been contributing for so
19 many years. And that's of concern also when it
20 comes to--New Yorkers that we have in Riker's
21 Island, most of them, they have made mistake, they
22 should pay for their mistake, but it is not fair
23 that when they are asked to have meeting with ICE
24 inside Riker's Island that they don't have legal
25 representation.

1
2 So there's a lot of things that we
3 have to correct. And I believe that also I hope,
4 first of all, one, that our new governor who when
5 he went to speak to the [off mic] La Prensa before
6 being elected, he said to the [off mic] La Prensa
7 editorial board that he will revise Secure
8 Community if he will be elected. So he was
9 elected, and we hope that he will definitely
10 follow his word and really revising Secure
11 Community and reinstate the pardon panel that
12 Governor Paterson established, I believe, in May
13 3r, 2010. Thank you.

14 And I would like to stay for the
15 whole hearing, but I have to go back to my
16 district, I have an important event back there, so
17 I apologize for not being to the complete hearing.
18 Thank you.

19 CHAIRPERSON DROMM: Okay. Thank
20 you very much. And just before we let the panel
21 leave, because I know when we get to vote on it
22 there's going to be some question from my
23 colleagues, but the resolution does state that
24 it's to ensure that legal permanent residents who
25 have paid their debts to, and are now productive

1
2 members of society, can continue to contribute to
3 our great state, and I wanted to reiterate that
4 point so as to clarify so that when it comes to
5 the floor of the Council that they understand that
6 this is what we are talking about.

7 And I just wanted to thank all the
8 panel members for coming in today. Thank you
9 very, very much.

10 [Crosstalk]

11 CHAIRPERSON DROMM: Okay. And now
12 the next panel--is it Jojo? Jojo Annobil from
13 Legal Aid Society, Gabriela Villaneal, Villareal,
14 and Jimmy Yan from Borough President Stringer's
15 office.

16 SERGEANT-AT-ARMS: Do you have any
17 statements?

18 CHAIRPERSON DROMM: Daniel Costas--

19 FEMALE VOICE: Coates.

20 CHAIRPERSON DROMM: --Coates.

21 DANIEL COATES: Coates.

22 CHAIRPERSON DROMM: Coates, I'm
23 sorry, from Make the Road New York, and Getachew
24 Fikremariam.

25 [Off mic]

1
2 CHAIRPERSON DROMM: Okay. And I
3 just want to apologize, we're going to have five
4 people on the panel, it's the last panel, so I
5 apologize for the seating arrangement.

6 JOJO ANNOBIL: We'll make it work.

7 CHAIRPERSON DROMM: You'll make it
8 work, it's what we have to do sometimes. I hope
9 eventually they'll get us back into City Hall as
10 well, then we can have better room than this. All
11 right, thank you, would you like to start?

12 JOJO ANNOBIL: Good morning, Chair
13 Dromm, my name is Jojo Annobil, I am the attorney
14 in charge of the Immigration Law Unit at the Legal
15 Aid Society. I submit this testimony on behalf of
16 the legal aid society today and want to thank the
17 Committee on Immigration for taking the initiative
18 to pass Resolutions 548 and 648.

19 The Legal Aid Society
20 enthusiastically supports the New York City
21 Council's proposed resolutions. The New York City
22 has always been cognizant of the needs of its
23 vibrant but vulnerable immigrant population.
24 Immigrants add to the creativity and the social
25 and economic fabric of the city and the society is

1
2 pleased that the City Council is seeking to
3 protect Haitian nationals who find themselves in
4 the U.S. and are unable to return to their [off
5 mic] island and also urging the continuation of
6 the immigration panel board.

7 With the permission of the chair, I
8 would like to address both issues and resolutions.

9 CHAIRPERSON DROMM: Your testimony
10 is a little long, so if you could just summarize
11 parts of it for us, I'd appreciate it.

12 JOJO ANNOBIL: Basically, we are
13 uniquely qualified to speak on both issues because
14 the Legal Aid Society has had Immigration Law Unit
15 for decades and we represent a lot of immigrants
16 who are facing removal and also help immigrants
17 who are applying for lawful status.

18 Talking about Immigration Panel
19 Board, I know for a fact that it is undeniable
20 that the immigration laws of this country are
21 flawed. Congress acknowledges this fact, yet does
22 not seem to want to assume the task of repairing
23 the system's problems. The inherent flaws of the
24 1996 laws continue to impact the lives of long
25 time, lawful permanent residents. These laws

1
2 inflict draconian consequences on non-citizens
3 with criminal convictions.

4 The impact of these punitive laws
5 has been devastating. Immigrants have been
6 deported for minor and even insignificant criminal
7 convictions even if they have U.S. citizen
8 children, are longtime residents of the U.S., have
9 serious health concerns, or would be subject to
10 harm in their home countries. Children usually
11 are left unsupervised and without father figures
12 often tending to truancy and, many times,
13 delinquency. Families that ordinarily would not
14 access public benefits are being forced to apply
15 for state and city aid, adding to the financial
16 burdens on the city.

17 The statistics are staggering, 20
18 years ago, approximately 5,500 people were
19 detained on an average day by immigration
20 authorities, and approximately 1,900 were deported
21 annually because of criminal convictions. As of
22 early 2010, approximately 30,000 non-citizens were
23 detained on any given day. And in 2009, 380,000
24 individuals were detained over the course of a
25 year. In 2009, [off mic] record 393,000 non-

1
2 citizens were removed, 128,000 of these
3 individuals were deported because of criminal
4 convictions.

5 Despite the complexity of
6 immigration laws and of the removal process
7 itself, non-citizens facing removal have a right
8 to obtain counsel, but not at government expense.
9 Since access to free immigration counsel is very
10 limited, many non-citizens facing deportation are
11 unrepresented, unprotected, and uninformed
12 throughout the immigration proceedings.

13 Of the immigrants whose proceedings
14 were completed in 2009, 52 % did not have counsel.
15 Within the group of those who were detained, more
16 than 84 % were not represented in their removal
17 proceedings.

18 Legal representation makes a
19 tremendous difference in whether a non-citizen is
20 able to avoid deportation. The continuation of
21 the pardon board would impose a sense of fairness
22 on the particularly inflexible and harsh federal
23 immigration laws that subject immigrants to
24 mandatory detention and deportation for a wide
25 range of often minor and nonviolent offenses, many

1

2

of which occurred decades ago.

3

4

5

6

7

Current law ties immigration judges' hands and requires deportation in many complex cases that deserve a careful weighing of the individual facts by an independent adjudicator.

8

9

10

11

12

13

14

15

16

17

Now talking about TPS for Haitians. Extending Haitian TPS is not only humane, but a continuation of the United States government's pledged commitment to assist the Haitian people recover from last year's devastating earthquake. During the last year or past year when the registration period was going on, the Society helped thousands of immigrants who are Haitian nationals with eligibility for TPS and also to apply for TPS.

18

19

20

21

22

23

24

25

The designation of Haiti for TPS has tremendously benefited Haiti and the Haitian people. It's allowed for record numbers of remittances back to the island. If the government decides not to extend TPS designation for Haitians, it will result in human tragedy. Haiti simply is not safe for the return of thousands of Haitians, with or without TPS status. The

1
2 requirements for designating a country for TPS
3 still applies to Haiti. The crisis culminating
4 from the earthquake is ongoing, it is still unsafe
5 for Haitians to return to their homeland.

6 Thousands of Haitians are still homeless and
7 living in makeshift tents where rape and violence
8 are rampant.

9 While the Legal Aid Society
10 commends the City Council for Resolution 648, we
11 respectfully recommend the following additions to
12 the Council's resolution: Please suspend
13 deportations to Haiti. Soon after the earthquake,
14 the Secretary of the Department of Homeland
15 Security announced the suspension of deportation
16 to Haiti. However, the Society was dismayed to
17 learn that on January 20th, 2011, 27 Haitians were
18 sent back to earthquake-ravaged Haiti. Deportees
19 were jailed in the local penitentiary described as
20 reminiscent of a slave ship upon arrival in Port-
21 au-Prince. Within days one such deportee died of
22 cholera-like symptoms and a second individual was
23 utterly on the brink of death.

24 Deportation to Haiti under current
25 conditions is absolutely inhuman and

1
2 unconscionable and can be tantamount to a death
3 sentence. It is contrary to the papers of TPS
4 designation to return nationals to an unsafe
5 country. Deporting Haitian nationals to Haiti and
6 condemning them to suffer there amounts to cruel
7 and inhuman treatment. The City Council should
8 send a strong message to DHS to suspend
9 deportations to Haiti indefinitely.

10 The second point we also wanted to
11 make was that, after the earthquake, parents of
12 U.S. citizens, adult relatives of U.S. citizens
13 were allowed to board U.S. planes with U.S.
14 citizen children help evacuate them back here.
15 Most of them came with tourist visas, some of
16 those visas have expired. USCS at some point had
17 mentioned that they would grant deferred action,
18 which is a [off mic] of discretion, to allow most
19 of these people at least to be able to work,
20 deferred action would grant them an opportunity to
21 work. Initially, they approved a couple of them
22 but have stopped approving them.

23 So you have parents who are
24 basically living off their U.S. citizen children's
25 food stamps and other support services. Parents

1
2 who have no other source of income, and it would
3 be a tremendous help if the City Council would
4 also add that piece to its resolution.

5 Thank you very much for having us
6 and I'm prepared to take questions. Thank you.

7 CHAIRPERSON DROMM: Thank you.

8 Next, please.

9 GABRIELA VILLAREAL: My name is
10 Gabriela Villareal, I'm with the New York
11 Immigration Coalition Service, an immigration
12 advocacy policy coordinator, and if I may, today,
13 I'd like to combine my testimony in support of
14 both hearings that are before the Council--the
15 Resolution number 548, as well as Resolution 648.

16 America's immigration system is
17 broken and is a national shame. Immigrant workers
18 and families are under siege. Workers are being
19 exploited and families are being divided.
20 Immigrants feel unsafe and vulnerable in their own
21 homes and workplaces.

22 Last year alone, nearly 400,000
23 immigrants were deported. The government [off
24 mic] Mayor Cuomo's quotas limiting how many
25 immigrants to come to America lawfully and the

1
2 result is an estimated 11 million undocumented
3 immigrants living in the shadows with minimal
4 protection.

5 The immigration system as it now
6 stands is simply out of step with the nation's
7 needs and values, which makes a continued emphasis
8 over the past many years on enforcement an
9 exercise in futility, cruelty, and squandered
10 resources. Current immigration enforcement
11 policies create fear among immigrants and non-
12 immigrant communities alike and are ineffectual,
13 as they are attempting to implement a system that
14 is simply unworkable.

15 We can no longer afford the human
16 and financial costs of taking an enforcement only
17 approach. The U.S. government has wasted
18 resources on ineffective and failed attempts at
19 enforcing dysfunctional immigration laws.

20 While the resolutions being
21 addressed today are directed towards the federal
22 and state governments, we appreciate the New York
23 City Council's efforts to be at the forefront of
24 protecting immigrant populations in considering
25 the following decrees. We also support at the New

1
2 York Immigration Coalition the continuation and
3 expansion of the work of the Immigrant Pardon
4 Board and the governor's office to prevent the
5 deportation of legal permanent residents with
6 minor criminal records from the past.

7 We support the continued work for
8 those who have served their time and has since
9 made positive contributions to the community.

10 Federal immigration law has greatly
11 expanded categories of legal immigrants subject to
12 mandatory deportation. With increasing
13 immigration enforcement, more individuals are
14 facing removal proceedings despite contributing to
15 New York's economies and being productive members
16 of our society.

17 Such a state policy to grant
18 pardons to legal permanent residents for minor
19 criminal convictions would be an innovative effort
20 to prevent them from being deported and warrants
21 continuation, as well as expansion. In order for
22 this policy to demonstrate the most impact, there
23 must be clear guidelines accompanied by an open
24 review process. The Immigrant Pardon Board should
25 function at a higher capacity to process

1
2 legitimate applications and would greatly benefit
3 from a coordinated outreach strategy to educate
4 the community and immigrant legal service
5 providers around New York State about the granting
6 of such pardons.

7 The New York Immigration Coalition
8 has included the expansion and continuation of the
9 pardon board on its Top 10 New York State advocacy
10 agenda and we welcome the adoption of this
11 resolution by the City Council as a concerted
12 effort to make sure that this policy stays in
13 place.

14 Next I'd like to talk about the
15 important resolution calling upon the Secretary of
16 the Department of Homeland Security to extend
17 Temporary Protected Status to Haiti and eligible
18 Haitians. By not extending the Temporary
19 Protected Status designation of Haiti and eligible
20 Haitians, the U.S. Department of Homeland Security
21 may be putting immigrants at risk for deportation
22 to a devastated country. This is not the message
23 to send to the Haitian people, both here in the
24 United States and in their home country. The
25 widespread destruction from the earthquake, the

1
2 cholera pandemic, and the upheaval and violence
3 after the presidential elections demonstrates the
4 need for this extension.

5 A Department of Homeland Security
6 decision to designate Haiti for extended
7 protection under TPS will help Haitian nationals
8 reside and work legally in the United States and
9 to send much-needed remittances back home to their
10 families and loved ones in Haiti.

11 And if I may respond to a question
12 that Council Member Rodriguez had posed to the
13 earlier panel, at this time, we do not know of any
14 anti-immigrant bills that have been introduced or
15 are planned to be introduced before the New York
16 State legislature. Thank you.

17 CHAIRPERSON DROMM: Thank you.

18 Next, please.

19 JIMMY YAN: Thank you. My name is
20 Jimmy Yan, I'm the general counsel for Manhattan
21 Borough President Scott Stringer and I'm here to
22 testify for Borough President Stringer. We
23 submitted extensive written testimony to you and
24 also since we share the views of the previous
25 statements by advocates, we will condense our

1

2

statement as much as possible.

3

4

5

6

7

8

9

10

11

I want to thank Chairman Dromm and the Immigration committee for holding this hearing on this vital topic. Borough President Stringer supports the two resolutions on TPS for Haitians and continuing the Immigrant Pardon Board. Want to thank and commend Council Member Rodriguez for introducing the pardon board resolution, and Council Member Eugene for the important resolution on Haitian TPS.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Allowing TPS to expire for Haitian nationals now in the face of all the facts we know about their current needs and the conditions would be a tragic mistake. Borough President Stringer also strongly supports the positions taken by Senator Gillibrand and Congresswoman Clarke in their bicameral efforts to bring 35,000 Haitians with currently pending U.S. government approved family immigrant petitions to the U.S. This initiative will allow spouses and children of U.S. citizens and permanent residents to avoid the visa backlogs that are keeping them in Haiti, allowing them to come to the U.S. and work and live with their families.

1
2 And of course with the Immigrant
3 Pardon Board, the process [off mic] this board is
4 invaluable, it allows for the governor's office to
5 avoid the arbitrary application and review that's
6 harmed many of our state's permanent residents in
7 the past.

8 In addition, in terms of what
9 additional local efforts that can happen to
10 protect immigrant communities from deportation,
11 want to address three different things. One, in
12 March of 2010, as you know, the U.S. Supreme Court
13 decided Padilla, which recognized the 6th
14 Amendment rights to immigration counsel for non-
15 citizens in criminal proceedings. The city must
16 formalize and clarify requirements in its
17 contracts for criminal defense services and should
18 take two important steps to achieve the goals set
19 forth in Padilla.

20 First, the city should require each
21 contracting defender organization to have a
22 written immigration plan to outline how it will
23 fulfill its responsibilities under Padilla.

24 Second, the city should ensure an
25 appropriate amount of funding as necessary to

1
2 ensure that that immigration plans can be
3 effectively implemented.

4 Borough President Stringer
5 testified before the Mayor's Office last year to
6 support these proposals. We understand the
7 criminal justice coordinator has had a strong
8 commitment to these requirements, we hope they can
9 further strengthen these requirements with their
10 criminal defense contracts.

11 Another issue is the Secure
12 Communities program. This program requires local
13 law enforcement to provide fingerprints of all
14 arrestees to federal immigration authorities to
15 identify immigrants eligible for deportation.
16 Recent studies have shown that a vast majority of
17 people deported due to SCOM, 80 % of them are non-
18 criminals or people who were picked up for lower
19 level offenses, so people who are being unfairly
20 targeted for this action. This also raises
21 concern that SCOM may be facilitating racial and
22 ethnic profiling by local law enforcement.

23 Also, ICE has made clear that
24 states and localities will bear any additional
25 costs associated with the program, including

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

liability for challenged police actions.

It's vital that we send the memorandum of agreement between New York State and DHS authorizing SCOM. In December of last year, I, along with Chairman Dromm, Council Member Rodriguez, and numbers of other elected officials in the city, state, and federal government, sent a letter to Governor Paterson asking him to rescind the memorandum of agreement.

Also, the city's participation in the criminal alien program at Riker's Island has to end. The Department of Corrections' voluntary cooperation with Ice through the program has led to the annual transfer of 3 to 4,000 New Yorkers into inhumane immigration detention conditions and eventual deportation.

The current practice of collaborating with ICE and allowing them expansive access to Riker's is a wasteful expenditure of our city's already strained resources. Our city cannot afford to be involved in a system lacking accountability and transparency. It's critical that the city separate ICE operations from Riker's to ensure that our local police will not be in the

1

2

business of immigration enforcement.

3

4

5

Thank you again for allowing me to testify and we look forward to working with the Council on these issues.

6

7

CHAIRPERSON DROMM: Thank you very [pause].

8

9

10

DANIEL COATES: Morning, my name is Daniel Coates, and I'll also summarize some of my remarks.

11

12

13

14

15

16

17

18

Hi, my name is Daniel Coates, thanks again for the opportunity to testify, Chairman Dromm, Council Member Williams and Eugene. I work with Make the Road New York. I am here to voice support for--or I'm here representing the organization and to voice support for Resolution 548, the expansion of the pardon board.

19

20

21

22

23

24

25

But we think that the pardon board must be considered while keeping a clear vision of the backdrop in which the pardon board is operating. It's well understood that the current deportation system is broken and the effects of the broken immigration system are felt in a city like New York with 40 % residents are foreign-

1
2 born, 7 % of children nationally, and certainly
3 more in New York, have at least one undocumented
4 immigrant parent, although, 75 % of such children
5 are themselves citizens.

6 Even children with lawful
7 immigrants, green cardholders are at risk of
8 losing a parent to deportation as Immigration and
9 Customs Enforcement deported the lawful permanent
10 resident mother or father of approximately 90,000
11 children over the last decade, 86 % of such
12 children being United States citizens.

13 So we commend your committee today
14 for holding this hearing calling on Governor Cuomo
15 to expand the pardon board to help protect more
16 immigrants from arbitrary efforts by federal
17 officials to banish them from this country,
18 however, we believe that New York City has the
19 power to do more to protect our immigrant
20 communities than the pardon board ever could.

21 I'll pick up on a little bit on
22 what Mr. Yan was saying. Currently 3,500 New
23 Yorkers are funneled into ICE custody each year
24 through New York City Department of Corrections.
25 The New York City Department of Corrections

1
2 facilitates ICE's civil immigration enforcement
3 efforts, even though it has no legal obligation to
4 do so and despite the cost to the city of this
5 collaboration that is estimated at tens of
6 millions of dollars per year.

7 The Department of Corrections
8 participates in ICE investigations by identifying
9 all foreign-born New Yorkers in DOC custody for
10 ICE and providing them special access to DOC
11 databases. ICE issues immigration detainers for
12 any of these individuals who it thinks it can
13 deport.

14 And as a quick side note, although
15 the rhetoric is about deporting criminal aliens,
16 we believe that the vast majority of the people
17 caught up in the system are folks who either have
18 no criminal record or have been guilty for a very,
19 very, very minor offenses, similar to a lot of the
20 sort of discussions been going on in the previous
21 panel.

22 Detainers are requests, not legal
23 obligation, something ICE has repeatedly
24 confirmed. Once these individuals are taken into
25 ICE custody, sent far away to detention centers in

1
2 Texas, Louisiana, Arizona, where it is incredibly
3 difficult, as has been discussed, to obtain legal
4 representation. Again, includes New Yorkers with
5 no criminal record, asylum seekers, victims in
6 human trafficking, long-term permanent residents,
7 juveniles, and people seeking protection under the
8 Violence Against Women Act.

9 This destructive DOC practice can
10 be felt in three main ways. Firstly, the effect
11 on families. In addition to the emotional costs,
12 many people become rely on some form of public
13 assistance, as in many cases it is the primary
14 breadwinner who is no longer there.

15 Secondly, undermining public safety
16 by weakening the city's policing efforts, making
17 immigrants more fearful of talking to the police.
18 Forces victims, especially those in domestic
19 violence situations, to suffer in silence because
20 they fear that contacting the police is a direct
21 pipeline to deportation for themselves or the
22 person who they're reporting.

23 Finally, as previously mentioned,
24 the city is spending tens of millions of dollars
25 to accommodate ICE.

1

2

It does not have to be this way.

3

The solution to the problem is for the Department

4

of Corrections to exercise its discretion to

5

decide which detainers it will honor. We believe

6

that New York City has the legal authority to

7

decide when and if it wants to hold people at

8

taxpayer's expense on immigration detainers. ICE,

9

and its parent agency, the DHS, have made it

10

crystal clear time and again that detainers are

11

requests and do not impose any obligation on

12

localities such as New York. It's time for New

13

York to stop being a gateway into the immigration

14

detention at New York City taxpayers' own expense.

15

So we support, again, the Council's

16

resolution to expand the immigration board--the

17

pardon board's authority and the resolution

18

regarding Haitian TPS, however, we also urge the

19

Council to take action it can and use the power

20

that it has to make New York City a city that

21

stands by its community and a national leader in

22

the fight for a more just society. Thanks a lot.

23

CHAIRPERSON DROMM: Just one

24

comment before we go to the next speaker. I

25

believe when Commissioner Schriro was here, she

1
2 admitted that the relationship between ICE and the
3 city is voluntary, if I'm not mistaken, and I'm
4 just asking my counsel to go get me some
5 statistics as well to support some of the numbers
6 that you were giving before and I'm going to
7 comment on that a little bit later on.

8 DANIEL COATES: Yeah.

9 CHAIRPERSON DROMM: Thank you.

10 Yes, sir.

11 GETACHEW FIKREMARIAM: Good

12 morning.

13 MALE VOICE: Good morning.

14 GETACHEW FIKREMARIAM: Thank you

15 for--

16 [Crosstalk]

17 GETACHEW FIKREMARIAM: --thank you,

18 Chairman Dromm, and thank you, Council Members,

19 for inviting us to testify on behalf of

20 immigrants. I am speaking in favor of both

21 resolutions.

22 And first I would like to state how
23 the immigration job our agency is doing is
24 severely restricted and how that also affects
25 protecting immigrants from deportation or from the

1
2 job [off mic] protecting immigrants from
3 deportation.

4 For more than 25 years African
5 Services Committee--I'm sorry, my name is Getachew
6 Fikremariam, and I'm Immigration Board certified
7 immigration practitioner [off mic] accredited
8 representative and I work with African Services
9 Committee.

10 For more than 25 years, African
11 Services Committee has focused its work on
12 promoting the health and self-sufficiency of
13 African [off mic] in New York City. African
14 immigrants have the fastest growing segment of the
15 black population in the United States and they
16 have the fastest growing immigrant community in
17 New York City.

18 When we first opened our doors, our
19 first efforts were targeted towards Ethiopian and
20 other refugees who are newly entering the country
21 and needed a helping hand. Over time, our focus
22 shifted to Francophone West Africans, then to the
23 rest of Africa, and now our program included
24 Caribbean immigrants as well.

25 Our Harlem-based office provides a

1
2 number of services to committee members, including
3 English classes and medical interpretation for
4 [off mic] HIV and other STD, testing, case
5 management, and housing assistance for HIV
6 individuals and a range of civil legal services,
7 both for HIV individuals and for community members
8 as a whole.

9 The greatest demand for our service
10 comes in the area of immigration. Almost every
11 single client walks in the door whether they come
12 to English classes or for case management or for
13 our women support group also needs immigration
14 assistance. This, in addition to the large number
15 of individuals who contact us exclusively for
16 immigration assistance. We provide clients with
17 immigration legal consultation, educating
18 individuals about immigration law and procedure,
19 and assist them in getting released from
20 detention, help them with obtaining immigration
21 benefits by filing for asylum, permanent residence
22 and naturalization about what sort of petitions
23 and temporary status like TPS and extension of
24 non-immigrant status. Clients also receive
25 representation during U.S. ICE interviews, and

1

2 before immigration judges.

3

4

5

6

7

8

In the past, we took and succeeded in winning a good number of asylum cases on behalf of our clients from Guinea, Ivory Coast, Sierra Leone, Ethiopia. At the moment, most of our clients have--at the moment, most of these clients have become taxpaying good citizens.

9

10

11

12

13

14

15

16

17

18

19

Most recently we have focused on [off mic] asylum claims and [off mic] petitions, in addition to the political asylum cases we took on behalf of clients from [off mic] Zimbabwe, Congo, Camerone, Gambia, and [off mic]. Our statistics in winning these cases on behalf of our clients has been very high. This is in addition to the large number of marriage and family-based adjustment cases we have handled and enabled our clients to obtain lawful permanent resident status over the years.

20

21

22

23

24

25

The considerable demand for immigration services creates two related challenge for us. First is our limited capacity to take on cases. The majority of our funding is restricted to non-immigration civil services who have a small stream of funding towards immigration work.

1
2 However, there are few agencies to whom we can
3 refer our clients, both because our agencies are
4 similarly tapped for resources, and also there are
5 no agencies in New York that are able to provide a
6 comparable level of linguistic and culturally
7 appropriate services.

8 Many immigrants who we turn down
9 either because we cannot have the space for them
10 or because they do not have options for [off mic]
11 their status unwittingly hire deceptive immigrant
12 consultants who promise to get their papers and
13 charge a lot of money. We find that a number of
14 our clients actually lose their money and are
15 actually put at increased risk of deportation due
16 to the [off mic] careless work of immigration
17 consultants or sometimes [off mic] who prey upon
18 immigrant communities.

19 Now next continuing and expanding
20 the Immigration Pardon Board, Resolution number
21 548, would be a blessing for a number of our
22 clients. One good example is a client from Haiti
23 who came as a child with an immigrant visa. He
24 came to our agency to seek immigration legal
25 advice to see if it was wise to proceed with his

1
2 U.S. Citizenship application. However, because of
3 the crimes he committed as a [off mic] and angry
4 young man he would have faced deportation if he
5 had applied for citizenship. At this stage in his
6 life, he has completed his college education and
7 has rehabilitated himself beyond imagination. He
8 has become such a mature, decent professional with
9 all his emotions under control, he has completely
10 changed. So pardon by the board will be a renewal
11 of his immigrant life.

12 Federal immigration law enacted in
13 1996 greatly expanded the categories of legal
14 immigrants subject to mandatory detention as
15 aggravated [off mic] including people who have
16 pleaded guilty to misdemeanor drug possession. So
17 many legal permanent residents are being arrested
18 and detained based on trivial convictions,
19 immigrants being deported for swiping a metro card
20 when they fell on hard times or immigrants who
21 shoplifted in a moment of weakness. Many
22 immigrants plead guilty to criminal charges in
23 exchange for a probation or no jail time without
24 having been advised about their rights and the
25 plea makes them subject to deportation.

1
2 Now because of the stepped up
3 immigration enforcement, they are facing
4 deportation for all the convictions. Only a
5 governor pardon can prevent such deportation in
6 such cases.

7 Finally, [off mic] Resolution 648,
8 the TPS status gives a number of Haitians here in
9 the U.S. a temporary immigration status and allows
10 them to get employment to transition and become
11 productive taxpaying members of their community
12 here in America. It also protects them from being
13 forced to go back to Haiti and face the
14 devastating conditions created by the recent
15 earthquake in their home country. The devastation
16 is so real and so sad, we learned a lot about this
17 devastating condition when we were attempting to
18 expedite the visa processing of one of our
19 client's children who's priority date were not
20 current. As a result of the devastating 7.0
21 earthquake, the household, the client and her
22 family was destroyed.

23 Since that date, the family has no
24 place to live and no prospect of rebuilding their
25 home and their lives. There is a lot of violence

1
2 in Haiti, there is a lot of kidnapping and robbery
3 that puts their lives in danger. In fact, just
4 recently her daughter called her mother from Haiti
5 and told her that she was attacked by robbers.
6 This is a sad situation in Haiti and TPS saves a
7 number of Haitians from facing this harsh reality.

8 Further, some of our HIV Haitian
9 clients, HIV-positive Haitian clients who are
10 critically ill, TPS allows them to access medical
11 and other benefits to sustain their lives and take
12 care of themselves. Hence, we truly support
13 Resolution 648 which calls upon the Secretary of
14 Department of Homeland Security to extend the
15 Temporary Protected Status designation of Haiti
16 and eligible Haitians beyond July 22, 2011, expiry
17 date.

18 Thank you.

19 CHAIRPERSON DROMM: Okay. Thank
20 you very much. I got some of these facts and
21 figures and I just wanted to comment on it,
22 although it's a little bit separate from what
23 we're talking about here today, ICE, I couldn't
24 resist the opportunity to share some of the
25 feedback that we got from Commissioner Schriro in

1

2 terms of the numbers, which I want some of the
3 advocates to know and are pretty shocking
4 actually.

5

6 We asked her a question and we
7 asked for follow up on the number of people who
8 ICE removed from city jails in calendar year 2009
9 and this year to date who had no prior
10 convictions, and 49.3 % and 49.5 % respectively
11 are the inmates who were discharged to ICE had no
12 prior convictions. Which then begs the next
13 question is, what were those people at Riker's for
14 in the first place and under what circumstances
15 were they sent--was ICE able to put the retainer
16 on them.

17

18 So I have a lot more information, I
19 just didn't want to elaborate on that, but it was
20 kind of what you had mentioned, Mr. Coates, in
21 your testimony, and I just wanted to have an
22 opportunity to read that into the record as well.

23

24 And also in terms of--sorry, just
25 looking for your name--Mr. Annobil's testimony as
well, 19 Council members did sign on to a letter
supporting the ending of all deportations to
Haiti. And I'm going to share that with you and

1
2 take your suggestions about adding that into the
3 resolution and discuss it with the sponsors as
4 well. And by the way, the people who signed on to
5 this letter--and I'll share that with anybody who
6 wants it, I have copies here--were Council Member
7 Eugene and Council Member Williams as well. So I
8 just wanted people to know that.

9 And with that, I'm going to turn
10 over the questioning to Council Member Williams.
11 You're on.

12 COUNCIL MEMBER WILLIAMS: Thank
13 you, Mr. Chair. Thank you so much for the
14 testimony. This is one of my favorite
15 letterheads, this one right here, this is very
16 good.

17 [Crosstalk]

18 MALE VOICE: Thank you.

19 COUNCIL MEMBER WILLIAMS: So along
20 with Council Member Eugene, we represent the
21 largest concentration of Haitians outside of Haiti
22 and outside of Florida and Miami, so this really
23 hits home for us, and as we mentioned, I'm sure
24 he's going to speak, it's his bill, and he's the
25 first Haitian elected to the City Council. I do

1

2 have a lot of Haitians in my district as well.

3

4 I also signed on to a letter with
5 Public Advocate Bill de Blasio to Obama asking for
6 them to suspend--to extend, sorry, TPS.

6

7 I did have a question, I don't know
8 if it's backed up by numbers, but I always feel
9 like--and I'm glad to hear you can answer--but I
10 always feel like the darker the nation, the less
11 likely they'll be able to avail themselves of some
12 of the immigration that other people might. I
13 believe if Haiti were Nicaragua or Cuba, an
14 Eastern Europe country, we wouldn't dare send
15 Haitians--or that country's people back there at a
16 time like this. I'm happy for my brothers and
17 sisters in Cuba and Nicaragua and other nations,
18 but I'm disappointed that we wouldn't even think
19 of doing that. Is that backed up by any kind of
20 numbers or facts or is that a figment of my
21 imagination?

21

DANIEL COATES: You mean...

22

COUNCIL MEMBER WILLIAMS: So

23

24

25

African nations and nations that have more [off
mic] in them skin or black, are they less likely
to avail themselves of things like asylum or--I

1
2 don't know what it's called, if there's an
3 emergency like an earthquake, are they less likely
4 to be allowed to come here for those reasons,
5 let's say for TPS had no--Cuba had it, Nicaragua
6 have it, Haitians have a problem keeping it, or
7 you don't know?

8 GETACHEW FIKREMARIAM: Well in
9 fact, because of the language barriers also, most
10 of our clients are Francophone African speaking
11 clients, so there is the language barrier also and
12 sometime there aren't many organization who [off
13 mic] provides services for this particular kinds
14 of community so they are--really they have a hard
15 time coming out and also seeking for assistance.

16 COUNCIL MEMBER WILLIAMS: Does
17 anybody have numbers that say whether that's true
18 or not?

19 JIMMY YAN: This is completely
20 anecdotal, but I know that in Staten Island
21 there's also a large Liberian community that year
22 after year faces incredible difficulties renewing
23 TPS status, so...

24 JOJO ANNOBIL: Well I know
25 Liberians were granted TPS years back, and even

1
2 after the government decided not to grant them TPS
3 any longer, the President by his active power was
4 able to give them something called Deferred
5 Enforce Departure, which is DED very similar to--
6 sorry, very similar to TPS. And I also know, for
7 example, that Sudanese nationals also have TPS,
8 currently have TPS. But I don't know in terms of
9 numbers how many people benefit from TPS.

10 COUNCIL MEMBER WILLIAMS: Well it'd
11 just be something I would be interested to note
12 comparing countries percentage wise but--

13 [Crosstalk]

14 JOJO ANNOBIL: --might be able to
15 furnish you with that information.

16 COUNCIL MEMBER WILLIAMS: I would
17 love to see that.

18 JOJO ANNOBIL: Sure.

19 COUNCIL MEMBER WILLIAMS: So I can
20 speak from knowledge, as opposed to--

21 JOJO ANNOBIL: Sure.

22 [Crosstalk]

23 COUNCIL MEMBER WILLIAMS: --I
24 think. Also, so obviously this should be extended
25 and there's no reason why it shouldn't. I have

1
2 two questions. Is there any cost to the federal
3 government to expand this? And then one of the
4 biggest reasons I heard as we were doing this,
5 people just weren't availing themselves of TPS,
6 which doesn't mean that it should be ended because
7 it should be made available when more people feel
8 comfortable. But that was one of biggest reasons,
9 but they're saying they extended it one time and
10 we didn't have the turnout that we wanted it to
11 be. And so I wanted to know if there was any cost
12 to extending it to the federal government.

13 JOJO ANNOBIL: I don't think we can
14 look at it in terms of costs because, if you look
15 at countries that are presently designated for
16 TPS, some of them have been on the list for
17 probably 11 years now--El Salvador, Nicaragua--and
18 so I don't think it's in terms of cost. I think
19 it's in terms of the fact that the Haitian
20 population believe that they've always been
21 singled out and not been given the benefits they
22 deserve.

23 I believe even before the
24 government decided to grant TPS [off mic] to
25 Haitians, those who were against it were

1
2 indicating that if the government granted to TPS,
3 Haitians will take boats and come, arrive on the
4 shores in Florida. That didn't happen because, in
5 essence, what it actually did was that it allowed
6 people to work legally for the first time and to
7 be able to send money back home, keeping people
8 back home where they are comfortable rather than
9 bringing them here--somebody talked about language
10 barriers, sometimes there are huge language
11 barriers that people have to overcome in
12 uncomfortable situations.

13 So I think in terms of cost, I
14 don't think the federal government can use cost to
15 indicate that they would not grant TPS to Haitian
16 nationals. Currently, I believe only 54,000
17 applications were granted. The estimate in the
18 beginning was nearly 200,000. Why we didn't
19 arrive at that figure, a lot of people have given
20 different reasons, some of them being that
21 Haitians or immigrants are still fearful of the
22 federal government and don't believe that--or
23 believe that this is just a way of getting them
24 out of the shadows and probably deporting them.

25 And so we still have a lot of work

1
2 to do to get people out if Haiti is designated for
3 TPS again. I hope that answers your question.

4 COUNCIL MEMBER WILLIAMS: Yes, I
5 think Haitians were right to believe that they
6 were singled out and not getting what they should
7 have gotten. In terms of some of the other
8 countries--Nicaragua, El Salvador--who have had it
9 for 11 years, what are the numbers, are there
10 still Nicaraguans and El Salvadors by applying now
11 or have they been increased, like is there any
12 comparison that can say, we did it for them and
13 not for Haiti?

14 JOJO ANNOBIL: The way the TPS
15 program runs is that when the government decides
16 to redesignate the country, it's only those who
17 previously applied for the status who are now
18 eligible for re-registration or someone who did
19 not apply for registration in the beginning only
20 because the person was in some kind of lawful
21 status. And so even though the person was still
22 eligible for TPS, the person did not apply for it,
23 so the numbers don't usually increase.

24 What we had hoped was that USCS has
25 an interpretation of who can change status in the

1
2 United States and that if you came here without
3 status, meaning you came with someone else's
4 passport or just walked across the border--Mexico
5 or Canada--you can't change your status. We are
6 advocating that TPS gives you some form of a
7 lawful status and that should be counted as an
8 admission. We should allow these--

9 COUNCIL MEMBER WILLIAMS:

10 [Interposing] I'm sorry, 'cause I just want to be
11 clear.

12 JOJO ANNOBIL: Sure.

13 COUNCIL MEMBER WILLIAMS: So if the
14 TPS is extended, you're saying new people can't
15 apply?

16 JOJO ANNOBIL: Well you have to
17 have been illegible for TPS--

18 COUNCIL MEMBER WILLIAMS: Yes.

19 JOJO ANNOBIL: --you must have
20 been--

21 COUNCIL MEMBER WILLIAMS: Eligible.

22 JOJO ANNOBIL: --eligible prior to-

23 -

24 COUNCIL MEMBER WILLIAMS: January
25 12--

1

2 JOJO ANNOBIL: Yes.

2

3

COUNCIL MEMBER WILLIAMS: --yeah.

4

5

JOJO ANNOBIL: So when there's a
redesignation, those people who currently have

6

TPS--

7

COUNCIL MEMBER WILLIAMS: Yeah.

8

JOJO ANNOBIL: --can re-register.

9

COUNCIL MEMBER WILLIAMS: Okay.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JOJO ANNOBIL: The other people who
were here and were eligible for TPS, but for some
reason, let's say the person had some form of
status, let's say the person was a lawful
permanent resident and has since lost that status
either because, for example, the person was
married to a U.S. citizen spouse, but was not able
to lift the conditions on the conditional lawful
permanent resident, that person, if TPS is
redesignated for Haiti, can apply for TPS.

They're not someone who basically wasn't here and
because it's redesignated, things that they can
apply, it's only for people who were here lawfully
and for some reason weren't able to do it plus
people who have TPS currently.

COUNCIL MEMBER WILLIAMS: But if I

1
2 applied and I have it and they don't re-extend it,
3 I still have it.

4 JOJO ANNOBIL: No.

5 COUNCIL MEMBER WILLIAMS: It's
6 done.

7 JOJO ANNOBIL: Well at the end of--
8 on July 20th, if the federal government decides
9 not to extend TPS, then the employment
10 authorization document they have is basically up
11 to July 20th, it's gone and so you are not
12 eligible to work without authorization and you
13 could be deported, which is what TPS prevents,
14 deportation.

15 COUNCIL MEMBER WILLIAMS: If it
16 wasn't extended, is there anything else the
17 federal government could do to help?

18 JOJO ANNOBIL: If the Secretary of
19 the Department of Homeland Security decides not to
20 extend it, then the next thing that you'd be
21 looking at is similar to what the Liberians have,
22 Deferred Enforce Departure, which is also very
23 similar to TPS, also allows them to work and also
24 prevents them from being deported, but that is the
25 only other thing.

1
2 COUNCIL MEMBER WILLIAMS: I am just
3 flabbergasted that the United States would even
4 consider sending anybody back to a country that's
5 been devastated. One, that has been devastated,
6 and, two, in many aspects because of our country
7 they be devastated. So it's just an amazing thing
8 for me, so I really hope that it does get extended
9 and I thank you for clarifying for some things
10 that I didn't know.

11 And I personally helped a friend of
12 mine and his mom after living here for 17 years or
13 so, they got picked up and sent to a deportation
14 center and was about to be sent out. They were
15 able to make some phone calls. He was here, they
16 got duped by a lawyer who is now in jail, so it's
17 a bunch of stuff screwed up, he was married to a
18 citizen, they had some problems trying to make it
19 happen. And I just can only imagine if he didn't
20 know someone like me or people didn't have
21 connections, what would've happened. This is a
22 terrible, terrible situation.

23 But thank you all for the
24 testimony. I apologize that I'm going to have to
25 leave myself.

1
2 CHAIRPERSON DROMM: Thank you,
3 Council Member Williams. Council Member Eugene.

4 COUNCIL MEMBER EUGENE: Thank you
5 very much, Mr. Chair. So let me first thank you
6 again, each one of you for coming to support these
7 two legislation, Resolution 548 and Resolution
8 568. And I want to thank again, Mr. Chair, for
9 holding these very, very, very important hearing.

10 I believe that it is not fair, it
11 is not fair, not good for United States, not good
12 for those family whose members have been deported.
13 Just imagine people have been living in the United
14 States for so long, being part of the fabric of
15 this country, having children, having families,
16 when you deport those people, who are they? They
17 are fathers, they are mothers, they are children.
18 This is breaking families, and we in the United
19 States, we stand for family values.

20 If we are talking about family
21 values, we have to remember, we have to know that
22 we have to keep the families together and when you
23 deport the mothers, the fathers, you are
24 traumatizing the children. The children, who are
25 going to raise them? And we know [off mic]. When

1

2

3

4

5

children don't have fathers and mothers and mothers in the house, those children, they are prone to go to any negative situation, to go to negative [off mic].

6

7

8

9

10

11

My opinion is we shouldn't deport people from United States, give them the opportunity like those who came for the first generation, second generation, for those who came before us, give them also the opportunity to have the piece of the American dream.

12

13

14

15

16

17

18

19

20

21

22

With respect to the Haitian situation, I would be remiss if I don't take the opportunity to thank each one of you here, the chairman and each one of you here, for everything that you did to alleviate the suffering of my Haitian brothers in Haiti. We all know that on January 12 what happened, the horrific earthquake that devastated Port-au-Prince, the largest part of Haiti, and after the earthquake we have the outbreak of cholera, and now the political crisis. As we speak, Haiti is not completely stable.

23

24

25

I was in a communication yesterday with my contact in Haiti and also people from both candidates for presidency, we are trying to figure

1

2 out how to bring Haiti in a stable situation.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

On January 6, I believe, I'm not sure about the date, I had the opportunity to participate in a meeting in the White House with Vice President Joe Biden, Homeland Security, State Department, and U.S. [off mic]. Vice President Joe Biden said that the interest of United States and interests of Haiti are linked together. It is in the interest of United States to do everything to help Haiti get back on track. And when we mention, for example, one of my questions was why they are deporting Haitian to Haiti right now, because they say that they are deporting Haitian to Haiti to protect the safety of United States. How we can protect the safety United States if we don't protect the safety of Haiti, if we say that the interests of those countries are linked together?

And I went to Haiti myself recently, up to now, there are people who are still living under the tents in the same condition, like in the aftermath of the earthquake, in need of basic necessity--clean water, access to medicine. When you see, for

1
2 example, eight or nine people sleeping under a
3 tent--I'm talking about children, pregnant women,
4 seniors, sick people all together--and you know
5 the outpouring of support that have been sent to
6 Haiti, and I think that you are right, Jojo, when
7 you said that Haitian people believe that they
8 have been singled out, undermined, and [off mic].
9 This is exactly the true feeling of the Haitian
10 community. And we said that to the Vice
11 President.

12 And I think today it is very
13 important that we come together again to ensure
14 that the TPS be [off mic]. It is very important.
15 Haiti is not safe for people to get back. Haiti
16 is still struggling to even to remove the [off
17 mic] in Haiti. It is not done yet, there are
18 still people under [off mic], they're still,
19 nothing has been done. And this is the reason I
20 think that it is very important that we come
21 together and we keep the momentum going.

22 Another thing that I want to
23 mention, the other nation that's been receiving
24 TPS for many years. It is fair enough, what we
25 are asking, we are asking for justice for

1
2 fairness. This should be [off mic] TPS for
3 Haitian people. We know that Haitian people have
4 not been treated the same way. When we go to
5 Miami, we know that there is what they call the
6 wets food and dry food. When people come from
7 other countries, when they get to the land, they
8 get everything, but if they are Haitian, they go
9 to jail.

10 And I think that it is an
11 opportunity for all of us--for the elected
12 official, the State Department--to do the right
13 thing and to stand for the American philosophy,
14 American ideal: access to everyone, equal
15 opportunities to everyone.

16 And again, I want to thank you from
17 the bottom of my heart and I think that the chair
18 and I and the members, we're going to review the
19 [off mic] the resolution and see if we can include
20 also the suggestion that you made for our bill. I
21 know that the chair is going to [off mic] also the
22 situation of ICE trying to separate to [off mic]
23 resolution to separate the duty of the police
24 officers and the immigration officers, I think
25 this is a very wonderful suggestion, but we have

1

2

to work on that, and I know that the chair is
going to take the lead on that.

3

4

5

6

7

And again, to all of you, thank you
very much. I don't have any questions, but again,
I commend you, I congratulate you. Thank you so
much.

8

9

10

11

12

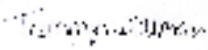
13

CHAIRPERSON DROMM: Thank you,
Council Member Eugene, for your beautiful plea for
Haiti, thank you. And thank you to the panel, and
I don't think we have any more--no, and with that,
we are going to adjourn, thank you.

MALE VOICE: Thank you.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date March 14, 2011

CITY COUNCIL
CITY OF NEW YORK

-----X

TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON IMMIGRATION

-----X

February 18, 2011

Start: 10:15 am

Recess: 12:03 pm

HELD AT: Committee Room
250 Broadway, 14th Fl.

B E F O R E:
DANIEL DROMM
Chairperson

COUNCIL MEMBERS:
Mathieu Eugene
Ydanis Rodriguez
Jumaane D. Williams

A P P E A R A N C E S (CONTINUED)

Joshua Epstein
Staff attorney
Immigrant Defense Project

Danny Jerez
Northern Manhattan Coalition for Immigrant Rights

Lili Salmeron
Advocate
Northern Manhattan Coalition for Immigrant Rights

Barbara Brandes
American Immigration Lawyers Association, New York
Chapter

Jojo Annobil
Immigration Law Unit
Legal Aid Society

Gabriela Villareal
Immigration Policy Coordinator
New York Immigration Coalition Service

Jimmy Yan
Scott Stringer
Manhattan Borough President's Office

Daniel Coates
Make the Road New York

Getachew Fikremariam
Immigration Practitioner
African Services Committee

1

[Off mic]

2

3

SERGEANT-AT-ARMS: Thank you for
your cooperation.

4

5

CHAIRPERSON DROMM: Okay. Good
morning, my name is Daniel Dromm and I am the
Chair of the New York City Council Committee on
Immigration. We're expecting a few other Council
Members shortly, hopefully they'll be here to join
us.

10

11

This morning's hearing will focus
on two resolutions that have been introduced:
Resolution number 548, calling on Governor Cuomo
to create an Immigrant Pardon Board, similar to
the one created by former Governor Patterson, and
Resolution 648, calling on the Department of
Homeland Security Secretary Janet Napolitano to
extend the Temporary Protected Status designation
of Haitis and eligible Haitians, which is
currently set to expire on July 22nd, 2011.

12

13

14

15

16

17

18

19

20

21

During Governor David Patterson's
term, he created the first of its kind an
Immigrant Pardon Panel to assist him in
determining which New Yorkers deserve to be
pardoned. This panel ensured that legal permanent

22

23

24

25

1
2 residents who paid their debt to society are now
3 productive members of society and can continue to
4 contribute to our great state.

5 Resolution number 648 introduced by
6 Council Member Ydanis Rodriguez calls on Governor
7 Andrew Cuomo to continue and expand the Immigrant
8 Pardon Panel.

9 After Haiti was struck by an
10 earthquake on January 12th, 2010, President Barack
11 Obama issued an Executive Order that granted
12 temporary protected status to Haiti and eligible
13 nationals of Haiti. Resolution number 648
14 introduced by Council Member Mathieu Eugene calls
15 upon the Secretary of the Department of Homeland
16 Security to extend the deadline of this status,
17 which is to expire this July. More than a year
18 has passed since the earthquake and Haiti has been
19 faced with an outbreak of cholera and a slow
20 recovery process which has forced Haitians to live
21 in overcrowded and unsanitary campsites.

22 A New York Times article published
23 earlier this month reported that even under these
24 harsh conditions, 27 Haitians have been deported
25 back to Haiti, which has jeopardized the life of

1
2 one of them who died from cholera-like symptoms.
3 This is certainly unacceptable and inhumane.

4 This morning we look forward to
5 hearing from immigration advocates and legal
6 service practitioners about the impact of both the
7 governor's pardon power and temporary protected
8 status have had on the communities that they serve
9 and how the continued use of these tools could
10 protect New York City's immigrant communities.

11 I'd like to thank everybody for
12 coming this morning and I'm going to call our
13 first panel. And Joshua Epstein, Danny Jerez
14 [phonetic], Lili Salmeron, and Barbara Brandes.

15 [Off mic]

16 [Long pause]

17 MALE VOICE: Here you go, sir.

18 CHAIRPERSON DROMM: Okay. Thank
19 you. Okay. Why don't we begin over here, I'm
20 sorry.

21 JOSHUA EPSTEIN: Thank you. My
22 name is Joshua Epstein--

23 [Off mic]

24 CHAIRPERSON DROMM: No, on the--
25 yeah, there you go.

1
2 JOSHUA EPSTEIN: Thank you. My
3 name is Joshua Epstein and I am a staff attorney
4 at the Immigrant Defense Project. Thank you for
5 this opportunity to present comments about calling
6 on Governor Cuomo to continue and expand Governor
7 Patterson's Immigrant Pardon Panel.

8 We believe that this panel
9 presented important opportunities for immigrant
10 New Yorkers who are at risk of deportation and
11 continuing this panel will help stop the exile of
12 immigrants from their families and communities
13 here in the United States.

14 Governor Cuomo also has the
15 opportunity to expand the breadth of this pardon
16 panel so even more New Yorkers in varying
17 immigration statuses can participate in the
18 program.

19 As you know all too well, the 1996
20 immigration laws, AEDPA and IIRAIRA, dramatically
21 increased ways in which immigrants, documented and
22 undocumented, can get deported. Among other
23 things, these laws took away immigration judges'
24 discretion and reduced forms of relief in
25 immigration court, expanded criminal grounds of

1
2 deportation, and brought in aggravated felonies,
3 changed the definitions of conviction and sentence
4 so that these terms go beyond what the criminal
5 justice system intended, made it harder to come
6 back to the United States after deportation, and
7 limited how the courts can review immigration
8 judge decisions.

9 As a result, deportations have been
10 dramatically increasing. In fact, more than 2.5
11 million immigrants have been deported since 1997.
12 They are forced to return to countries where they
13 often don't know the language, have no family
14 ties, cannot find a job, and fear for their lives.
15 Meanwhile, their loved ones are often stripped of
16 breadwinners and support systems.

17 Immigration and Customs Enforcement
18 thinks it can easily sweep these problems under
19 the rug by simply labeling many of these that are
20 deported as criminal aliens--a term that is
21 misleading, inaccurate, and offensive. But we
22 should not so easily accept the ugly propaganda.
23 As a country, state, and city, we should recognize
24 that immigrants, just like everyone else, are more
25 than the sum of their mistakes, they form the

1
2 backbone of our families, workplaces, and
3 communities. They should not face deportation as
4 a second, and often surprise, punishment after
5 paying their dues through a criminal justice
6 system that has already put them through the
7 wringer.

8 That's why we strongly applauded
9 Governor Patterson for establishing an Immigrant
10 Pardon Panel that recognized that we must take
11 steps to right the wrongs we have perpetrated
12 against immigrants and their families and
13 communities. We think the pardon panel created
14 great promise for so many who have been devastated
15 by the possibility of deportation.

16 In reviewing pardon applications,
17 Governor Patterson stated that the pardon panel
18 will examine cases of legal immigrants who have
19 shown rehabilitation and positive contributions to
20 society. It is clear that the panel did examine
21 individual facts and circumstances and how old or
22 minor a conviction is. We think looking at these
23 considerations makes all the sense in the world.
24 In fact, this inquiry has considered the
25 appropriate course of action in considering

1
2 deportation for decades before the 1996 laws got
3 rammed through Congress, and it's what immigration
4 judges, among others, have bluntly said they wish
5 they could engage in, rather than have their hands
6 tied.

7 But we also think Governor Cuomo
8 can do more for a second phase of the Immigration
9 Pardon Panel. Governor Patterson welcomed
10 applications from immigrants who, for example, had
11 convictions that were most recent or more serious.
12 In addition, although the immigration laws have
13 been interpreted to mean that gun and controlled
14 substance offenses cannot be pardoned, Governor
15 Patterson still encouraged applicants to present
16 pardons and Governor Patterson granted pardons for
17 individuals who had convictions for controlled
18 substance offenses.

19 We hope that the Immigration
20 Committee will help ensure that Governor Cuomo not
21 only continues his predecessor's Immigration
22 Pardon Panel, but also grants more pardons for New
23 Yorkers. We also urge Governor Cuomo to expand
24 the pardon panel and consider applications from
25 immigrants in other statuses who could still

1

2 benefit tremendously from a pardon.

3

4

5

6

7

Thank you.

8

9

CHAIRPERSON DROMM: Thank you very much. Mr. Jerez?

10

[Off mic]

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

We hope the New York City Council will help Governor Cuomo extend the pardon panel and help keep thousands upon thousands of New York families and communities united.

DANNY JEREZ: Good morning, my name is Danny Jerez, I am an active member of Northern Manhattan Coalition for Immigrant Rights. I am here today to support the resolution to continue and expand the governor pardon panel as an important step in dealing with the terrible effects of deportation.

When Governor Patterson announced his pardon panel last year, many of us in the community who have so few opportunities to fight deportation were so hopeful. And I believe that Governor Cuomo will continue the pardon panel because it is the right thing to do and give New Yorkers a chance to make their case on why they should be able to stay with their families and

1
2 communities. [Off mic] a legal permanent resident
3 of United States, the father of two USA citizen
4 children and I am very active member of my church.
5 I moved to New York from the Dominican Republic in
6 March 1992 when I was 20 years old and I have
7 spent close my half of my life in New York.

8 My life has not been easy for me, I
9 have struggled with depression since I was young.
10 It was during a period of deep depression that I
11 made a bad choice, I was arrested for attempt to
12 sell of small amount of drugs. For this act, I am
13 now deportable. Since then, I have worked hard to
14 [off mic] my life and be productive citizen of
15 this society. Because of this condition, I'm not
16 able to travel without taking the risk of not
17 being able to come back, I have not been able to
18 visit my mother since 1994. It has been 17 long
19 years since I have seen my mother. It is a dream
20 of mine to see her again but it is also a dream of
21 mine to be able to continue to live here in New
22 York.

23 New York is where I have built my
24 life. I am a key support for my sister, my niece,
25 and my nephews, and, of course, for my sons I feel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

very connected to the society here, to cultural diversity of the opportunities, its fill me with pride to have the goal of someday to becoming an American citizen so that I can vote and participate fully in our society. In my situation, a pardon is the only thing that will allow me to become USA citizen because I am permanently barred from citizenship due my one small attempt drug since in 1996.

Last year I applied for a pardon to ask for a second chance. I know that there are many who will say, well you are immigrant and you committed a crime, so you should be deported. It does not make sense that there is such a drastic difference in consequences because someone is not citizen, it does not make sense that most people would not even have a chance to present their case to be able to stay in USA. I received a sentence of five years probation for my condition, yet Immigration tells me that I should be deported. Well deportation is most cases an experiment in sorrow [phonetic], this is an injustice that we have to challenge and that we have to change.

Even though I was not given a

1
2 pardon, I am so glad Governor Patterson so that
3 people be given another chance. It is my deep
4 hope that Governor Cuomo will also see the people
5 like me and the thousand of other New Yorkers who
6 are caught in the middle of the [off mic] on for
7 giving immigration laws also deserve a second
8 chance.

9 Thank you.

10 CHAIRPERSON DROMM: Thank you very
11 much, thank you for your courageous story and for
12 sharing that with us, thank you.

13 I'd like to introduce other Council
14 Members who have joined us. To my left is Council
15 Member Mathieu Eugene from Brooklyn, and to my
16 right, not necessarily in literal language or
17 figurative speaking, but to my right is Council
18 Member Ydanis Rodriguez and Council Member Jumaane
19 Williams, thank you for joining us.

20 And would you like to start.

21 LILI SALMERON: Good morning, my
22 name is Lili Salmeron and I'm also speaking in
23 favor of Resolution 548. I am a community
24 advocate for the Northern Manhattan Coalition for
25 Immigrant Rights, an organization that has been

1
2 providing immigration related legal services for
3 over 25 years. We are based in the largely
4 Dominican neighborhood of Washington Heights,
5 which has been disproportionately impacted by the
6 punitive and inflexible immigration laws passed by
7 Congress in 1996.

8 These laws further expanded the
9 list of crimes that triggered mandatory
10 deportation for non-citizens and severely
11 restricted the ability for the vast majority of
12 immigrants to have a fair day in court to fight
13 their deportation. As a result, we have seen the
14 number of deportations grow rapidly. The U.S. has
15 deported over 40,000 Dominicans since 1996.

16 Hundreds of legal permanent
17 residents come to our office each year seeking
18 guidance on whether they are in danger of being
19 deported if they decide to naturalize, renew their
20 green card, or travel out of the country. Because
21 of the combination of harsh immigration laws and
22 the history of crime enforcement in our
23 communities, we unfortunately need to advise them
24 that a past criminal conviction on their record,
25 many of them minor and non-violent, would subject

1

2

them to mandatory deportation proceedings.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

When Governor Patterson announced his pardon panel, we received a tremendous amount of phone calls from past and new clients requesting help in this process. Many of the individuals who called were legal permanent residents who have U.S. citizen spouses and children who contribute positively to their communities and who are 100 % rehabilitated. A pardon would offer these individuals an opportunity that they would not have otherwise to fight their deportation case and be able to stay with their families and their communities.

We are working at NMCIR to build momentum in Congress to change the laws that so severely restrict the ability of our community members to challenge deportation orders and the permanent exiles of so many of our loved ones. The fight for an immigration system that upholds due process rights, that gives immigrants a fair day in court, and allows judges to judge is critical for our families and our communities.

Governor Patterson's pardon panel was a crucial step toward addressing the

1
2 devastating consequences of deportation. We urge
3 Governor Cuomo to continue and expand the pardon
4 panel for it will provide opportunities for New
5 Yorkers to have a fair chance to stay united with
6 their families as we continue to fight for just
7 immigration reform. Thank you.

8 CHAIRPERSON DROMM: Thank you very
9 much.

10 BARBARA BRANDES: Good morning, I'm
11 Barbara Brandes and I practiced in the area of
12 immigration law for more than 30 years and I'm
13 here also as a member of the American Immigration
14 Lawyers Association, New York Chapter. Thank you
15 for allowing me to address the New York City
16 Council regarding Resolution 548, calling on
17 Governor Cuomo to continue and expand the
18 Immigrant Pardon Board.

19 A continuation and expansion of the
20 Immigrant Pardon Board is warranted and
21 desperately needed for the following reasons:
22 One, many persons who could have benefited from
23 the Immigrant Pardon Board were unaware of its
24 existence or the deadline to file a pardon. The
25 attorneys in our office who represent many

1
2 criminal aliens only learned of the board's
3 deadline two days before it expired and,
4 therefore, we were unable to get the applications
5 in time which required a lot of supporting
6 evidence and documentation.

7 Number two, many immigration laws
8 changed subsequent to the person's pleas or
9 convictions and they're being applied
10 retroactively despite constitutional prohibitions
11 against ex post facto laws and bills of attainder.

12 Three, many criminal attorneys
13 failed to ask the immigration status of criminal
14 defendants, were unaware that lawful permanent
15 residence is subjected to immigration,
16 deportation, and removal and failed to advise or
17 misadvised defendants of the immigration
18 consequences of their convictions. If they had
19 known, if criminal attorneys had known of the
20 immigration consequences or looked into the
21 immigration consequences of their convictions,
22 everybody knows that they could have possibly pled
23 to different provisions of law, which I get
24 involved in if the immigrant doesn't have a final
25 criminal conviction.

1
2 Also, that there is a U.S. Supreme
3 Court case of Padilla v. Kentucky which came out a
4 little bit over a year ago which held that a
5 person's 6th Amendment right to counsel is
6 violated when an attorney fails to advise a
7 defendant of the immigration consequences of the
8 plea. Padilla's even stronger than that, Padilla
9 actually said if they did not advise them of the
10 definite consequences of the plea, the plea is
11 faulty. What's happening now is that the New York
12 State courts are being--New York City courts are
13 being flooded with Padilla motions, thereby
14 causing a backlog in the court system.

15 And as the people that spoke with
16 me before said, since 1996, immigration judges,
17 many of them have lost the ability to grant
18 discretionary relief to many respondents who
19 heretofore and at the time of their convictions
20 were eligible to apply for discretionary relief,
21 or even their pleas did not have immigration
22 consequences at the time.

23 So it's really onerous and many
24 convicted people, as they said before, who have
25 paid a debt to their society have become

1
2 productive members of society, have become model
3 citizens, some of whom are sole supports of their
4 family, if deported would cause significant
5 disruptions of family life which could impact on
6 our welfare of society. New York children I know,
7 there have been plenty of studies where I've been
8 the attorney representing children who have gone
9 astray because they lost their family members or
10 lost their parents and we all know what the
11 financial drain on the government could be when
12 the breadwinner of the family is deported outside
13 the United States.

14 For many persons, the Immigrant
15 Pardon Board is their only chance to remain in the
16 United States, with the exception of deferred
17 action, which doesn't happen very often when we
18 request that remedy for immigration.

19 And thank you for allowing me to
20 address this board and I'm open to answering any
21 questions you may have relating to the immigration
22 consequences of criminal convictions. Thank you.

23 CHAIRPERSON DROMM: Okay. Thank
24 you very much. And start off with some questions
25 that I have and then turn it over to some of my

1
2 colleagues. Mr. Epstein, in your testimony, I
3 think on page two, you mentioned you said that in
4 reference to our immigrants, they form the
5 backbone of our families, workplaces, communities,
6 they should not face deportation as a second, and
7 often surprise, punishment after paying their dues
8 through a criminal justice system that has already
9 put them through the wringer. Can you elaborate
10 more on that?

11 JOSHUA EPSTEIN: Absolutely. So
12 many of the immigrants, especially in the city of
13 New York, are the fundamental--to use the word
14 again--backbone of the workplace, of families, of
15 communities and have forever changed the city and
16 the neighborhoods within the city. Very often,
17 because of an unjust criminal justice system, they
18 end up arrested, in the local prisons, about 85,
19 90 % of the time those cases resolve in pleas
20 where they aren't able to fight their case, only
21 to realize later that they are going to suffer a
22 second, usually much more harsh consequence of
23 deportation, many times for crimes where there was
24 no incarceration sentence, where there was very
25 minimal probation time.

1
2 And this is extraordinarily unfair
3 to them, to their families, and to us as a city to
4 lose these members to an immigration detention and
5 deportation system.

6 BARBARA BRANDES: May I elaborate
7 on that, please?

8 CHAIRPERSON DROMM: Sure.

9 BARBARA BRANDES: All right. So we
10 have many clients that come in and say, have you
11 been convicted and they go misdemeanor and the
12 criminal attorneys advise them, it's a
13 misdemeanor, you're not doing any jail time. They
14 don't know whether they're citizens or permanent
15 residents or undocumented and those very
16 convictions, even minor, I can tell you that
17 attempts and conspiracies at one point were not
18 sanctionable under immigration law and then they
19 became sanctionable under immigration law applied
20 retroactively. We had cases where persons could
21 not be deported unless they served five years of
22 time, they retroactively changed the aggravated
23 felony laws to say, not only did you have to serve
24 the time, but if the crime for which you're
25 convicted of could have resulted in a year or more

1
2 of time, even though you didn't serve it, you're
3 convicted of an aggravated felony years after they
4 have taken a plea in their cases. It is so harsh
5 and it's unfair and I believe it's
6 unconstitutional.

7 CHAIRPERSON DROMM: So how does the
8 Padilla decision play into these instances, these
9 examples that you're giving now?

10 BARBARA BRANDES: Okay. Well I've
11 gotten a Padilla motion to reopen in Queens court
12 and what happened was in that case, even when the
13 judge on the record says you could have had
14 immigration consequences, the Padilla decision
15 specifically states that where there was
16 definitely immigration consequences--in my case, I
17 could tell you the specific facts of it, the
18 client was working a bodega three days, he had no
19 idea what he was doing, he needed a kidney
20 transplant. His attorney advised him that if he
21 didn't take the plea and he went to jail, he would
22 die in jail, okay? The judge never asked him if
23 he was under any medication and he was under all
24 of this heavy medication for his kidneys. And so
25 the plea that he took was deficient. In fact,

1
2 what he was doing--they asked him, he was working
3 as a cashier for three days, they said to him,
4 just reach for this, give that, that's busted,
5 never had a problem since, never had any criminal
6 convictions, made flowers by hand, and actually
7 had a kidney transplant and it was a very
8 sympathetic case, and I know the judge would have
9 granted our motion to reopen. What we wound up
10 doing is reopening the case and pleaing and he's
11 gladly performing 150 hours of community service
12 and he's going to be able to get and keep his
13 green card.

14 CHAIRPERSON DROMM: That's good.
15 And you're talking about, Mr. Jerez, also you had
16 mentioned in your testimony that you served, I
17 think, five years probation, am I correct, you
18 were sentenced to five years probation, did you do
19 any time in a prison system?

20 DANNY JEREZ: No, I was supposed
21 to--that was my first time, my first offense, I
22 was supposed to get out the next date and the
23 lawyer went on vacation, I was in jail for a
24 month.

25 CHAIRPERSON DROMM: At where, in

1

2 Riker's?

3 DANNY JEREZ: Yes, then me let go
4 out.5 CHAIRPERSON DROMM: Prior to going
6 to trial.

7 DANNY JEREZ: Yes.

8 CHAIRPERSON DROMM: Then at
9 sentencing, you didn't do any time after being
10 sentenced.

11 DANNY JEREZ: Say that again?

12 CHAIRPERSON DROMM: You didn't do
13 any time after--

14 DANNY JEREZ: No.

15 CHAIRPERSON DROMM: --sentenced.

16 DANNY JEREZ: No, no, no, no.

17 CHAIRPERSON DROMM: And at that
18 time, were you advised of the consequences of what
19 could happen to you for pleading guilty to these
20 charges?

21 DANNY JEREZ: No. No.

22 CHAIRPERSON DROMM: Okay. I think
23 at this point, I'm just going to turn it over--
24 'cause I know a couple of the Council Members have
25 questions. Council Member Eugene?

1
2 COUNCIL MEMBER EUGENE: Thank you
3 very much, Mr. Chair, thank you. First and
4 foremost, let me thank you, Chair Dromm, for
5 holding this very, very important hearing. Very
6 important for all of you here, very important for
7 our friend, family members because we all know the
8 contribution of immigrant to United States is
9 unbelievable, it's remarkable, and we know that
10 the immigrant people that come to United States,
11 like everyone before, God bless you if you are
12 first [off mic] generation to get a piece of
13 American dream to have a better life for
14 themselves and their children and they did work,
15 they did give their sweat and the courage,
16 expertise, and skill to improve the quality of
17 life in the United States and to be part of the
18 fabric of this good country that we all love.

19 And myself, I am an immigrant also,
20 as you know, and I know the experience of
21 immigrant and I feel this is my moral obligation
22 to join you and to join all the fighters for
23 justice and for fairness for immigrant and to
24 ensure that the legislation, the law regarding
25 immigration be improve and enhanced.

1
2 And I want to thank each one of you
3 for coming here today and also I want to salute
4 your courage also. And, Ms. Barbara, I want to
5 thank you for everything that you have been doing.
6 And I see Jojo in the room also, and I want to
7 thank Jojo and all those wonderful organizations,
8 legal society who have been working hard to help
9 immigrant people. Thank you very much to all of
10 you.

11 So let me ask, Ms. Barbara, let me
12 ask you a question, in your testimony, you said
13 that many person who could have a benefit from the
14 Immigrant Pardon Board were unaware of its
15 existence or the deadline.

16 BARBARA BRANDES: Yes.

17 COUNCIL MEMBER EUGENE: Do you have
18 an idea how many people approximately who could
19 benefit from that or are waiting to see the
20 clemency of the governor?

21 BARBARA BRANDES: Unfortunately, I
22 do not have that data, but every day somebody
23 comes into my office that could have benefited
24 from the pardon board. I do get a lot of criminal
25 aliens coming to see me who are permanent

1

2 residents and want to know, like we said, if they
3 could travel to see their family or they would be
4 eligible for citizenship and then I said, oh,
5 there's another person that could have benefited
6 from the pardon board.

7

8 I myself did not participate in any
9 of the applications of the pardon board because I
10 heard about it but didn't really--even as an
11 immigration attorney, didn't really know who was
12 benefiting from it, and really I think the
13 publicity about it was only very big, maybe a
14 couple of days before it ended. So I don't think
15 it was a sufficient amount of time for which
16 persons got the understanding that they could
17 benefit from it if they made the application.

17

18 COUNCIL MEMBER EUGENE: If somebody
19 want to have the data to have an idea on how many
20 people are on the [off mic] would like to benefit
21 from that, is there any place we can go to have
22 the information?

22

23 BARBARA BRANDES: Maybe Immigration
24 ICE that could tell you how many--

24

COUNCIL MEMBER EUGENE: Okay.

25

BARBARA BRANDES: --I really don't

1

2 know and--

3 COUNCIL MEMBER EUGENE: All right.

4 BARBARA BRANDES: --you have a

5 better--maybe--

6 JOSHUA EPSTEIN: Can I--

7 [Crosstalk]

8 COUNCIL MEMBER EUGENE: Yes,

9 please.

10 JOSHUA EPSTEIN: At the Immigrant
11 Defense Project, we run a legal hotline for
12 criminal defense attorneys, immigration advocates,
13 and directly impacted people and since the
14 deadline passed until continuing on, we have
15 continuous callers that ask how do I file for a
16 pardon, what can I do, and it is unbelievably
17 distressing, as you said, to say that the pardon
18 panel, unfortunately, no longer exists. As well
19 as we perform Know Your Rights trainings at
20 Riker's Island, people continually ask, I heard of
21 a pardon panel, how do I apply, and unfortunately,
22 there's little that can be done now.

23 COUNCIL MEMBER EUGENE: Thank you
24 very much. I know that there are so many people,
25 so many people, the number may be big. Let me ask

1
2 you this last question before I turn the
3 microphone to the chair. You mentioned also that
4 many immigration laws changed subsequently to
5 conviction have been applied retroactively.

6 BARBARA BRANDES: Yes, yes, on or--
7 [Crosstalk]

8 COUNCIL MEMBER EUGENE: Now this
9 is--

10 BARBARA BRANDES: I'm sorry.

11 COUNCIL MEMBER EUGENE: --this is
12 rough. So as an attorney, could you tell us is
13 there anything that can be done, that we can do
14 all together, elected official, attorneys, members
15 of the community to prevent that to happen again
16 or to stop that or to correct that? Is there
17 anything that can do?

18 BARBARA BRANDES: It's only when
19 laws, I guess, are being proposed federally that
20 you have an opportunity to have a comment period
21 and possibly then people can get involved during
22 the comment period.

23 Even when it's not clear. There's
24 a lot of cases that they talk about--in 1996, the
25 word changed from deportation and exclusion to

1
2 removal and even though the statute talks about
3 removal, they're applying those cases
4 retroactively to deportation to before the law was
5 passed. You can't even apply civil laws, a change
6 of regulatory statutes to people before, but
7 immigrants seem to be the exception to the rule.
8 And what I really want to stress is that
9 immigrants are not only not the exception to the
10 rule, but they're being treated worse than
11 criminal defendants. All of these right always
12 apply to criminal defense and they always used to
13 say that immigrants were civil. Well now
14 immigrants, as you know, in Arizona where 95 % of
15 prisons are privately owned, they are applying the
16 immigration laws and they are incarcerating
17 immigrants and they're being held and treated in
18 worse conditions than criminals are being treated.
19 And so I think we can no longer separate, that's a
20 possibility where we can take the Padilla v.
21 Kentucky decision one step further and say not
22 only--one of the things that Padilla says is that
23 the immigration proceeding and the criminal
24 proceeding, you cannot separate the two of them.
25 So I think with that decision, we might have an

1
2 opportunity to argue in Supreme Court that that
3 immigrants should be given the same rights as
4 criminal defendants because you can no longer
5 separate and say that immigrants are being treated
6 as a civil proceeding versus criminals, that's a
7 different kind of proceeding.

8 COUNCIL MEMBER EUGENE: It is very
9 unfortunate to see that immigrants have been
10 treated worse than criminal because the only crime
11 they commit is be an immigrant, I believe. But
12 anyway, thank you very much, thank you again. Mr.
13 Chair, thanks a lot.

14 CHAIRPERSON DROMM: Okay. Thank
15 you. And Council Member Williams.

16 COUNCIL MEMBER WILLIAMS: Thank
17 you, Mr. Chair, for calling me and for having this
18 hearing, it's also been important. Thank you for
19 the panel.

20 I come from an immigrant family,
21 I'm first generation. My colleague didn't
22 mention, but he's the first Haitian elected to
23 City Council, I'm the first Grenadian-American
24 elected to the City Council, so I really do
25 understand--not as impressive though 'cause

1
2 there's many, many more people in Haiti than in
3 Grenada, but...

4 But I do feel obviously just really
5 close to this issue and it's very disheartening
6 because America wants to benefit from the skill
7 sets that immigrants bring and the taxes that they
8 bring, but then they want to act as if they're
9 indispensable and immigrants are not
10 indispensable, even illegal immigrants are not
11 indispensable to this country. And everybody's a
12 human being first and should be treated as a human
13 being, and obviously, that's not happening, and
14 it's very disconcerting to say the least. And
15 representing a district that is about 80, 90 %
16 immigrant also, obviously, affects me very big to
17 say the least.

18 I had a couple of questions. I
19 wanted to know what sort of crimes are now
20 deportable that wasn't before the change.

21 BARBARA BRANDES: Okay. Well I
22 could say that theft, okay. Before you had to
23 have to serve a year and now if the sentence could
24 be imposed for the crime was more than a year,
25 they can retroactively affect persons.

1
2 Like I said before, there were at
3 some point attempts and conspiracies were not part
4 of the law, and now attempts and conspiracies to
5 sell or even to commit a theft is sanctioned just
6 as if you committed the crime itself.

7 Those are just two examples, you
8 may have some more.

9 JOSHUA EPSTEIN: Excuse me. One of
10 the other big changes was the way the word
11 conviction is defined in the Immigration and
12 Nationality Act.

13 [Crosstalk]

14 JOSHUA EPSTEIN: That definition
15 expanded when the laws changed in 1996 to include
16 dispositions that the criminal justice system
17 never contemplated to be convictions.
18 Dispositions where someone would serve a diversion
19 program, successfully complete that diversion
20 program, have the charges dismissed. If there was
21 a plea before that diversion program, that will
22 still be considered a conviction for immigration
23 purposes. That, coupled with lack of advice by
24 Padilla, serves immigrants poorly, to say the
25 least.

1
2 And that huge change of that
3 definition is massive, right? Because there are
4 so many dispositions in the criminal context which
5 shouldn't be convictions and shouldn't have
6 collateral consequences after the criminal justice
7 system.

8 COUNCIL MEMBER WILLIAMS: So--

9 BARBARA BRANDES: [Interposing]

10 What I could add to that for one second is that if
11 you were this--let's say you were convicted of
12 possession of cocaine and you were convicted under
13 federal law, federal law has something called
14 Federal First Offender Status and if you were
15 convicted under Federal First Offender Status and
16 it's your first time possession, that's not
17 considered a conviction for immigration purposes.
18 But the courts have looked at, unless you treat it
19 exactly the same as federal law, even though it
20 winds up being dismissed, you're still deportable--
21 -

22 COUNCIL MEMBER WILLIAMS:

23 [Interposing] Wait, I don't understand what you
24 just said. It's not viewed as--say it again.

25 BARBARA BRANDES: All right, there

1
2 is a statute called Federal First Offender
3 Statute, if you're charged under federal law and
4 it's your first offense for a simple possession of
5 a controlled substance and you've given a
6 diversionary treatment under the federal laws,
7 then it's not considered a conviction--

8 COUNCIL MEMBER WILLIAMS:

9 [Interposing] It's not considered.

10 BARBARA BRANDES: It is not
11 considered conviction for immigration purposes,
12 but if you're convicted under state law and let's
13 say you have to do the plea first and then they
14 adjourn it, they have found that that's not the
15 same and it is considered a conviction for
16 immigration purposes. But recently--and I've been
17 arguing that it's the conduct, I say it's the
18 conduct, stupid, that if the same conduct should
19 yield the same result, it should not matter
20 whether New York does one thing, Texas does
21 another thing, Florida does another thing because
22 it's federal immigration law. And just recently
23 in the 9th Circuit they have held that it's the
24 conduct, not the treatment.

25 So we have some hope that we're

1

2

going to have conflicts in circuits and we'll be able to bring it to the Supreme Court to get a resolution.

4

5

6

7

COUNCIL MEMBER WILLIAMS: So when we say drug conviction, are you talking about a nickel bag of weed or what is consist?

8

9

10

11

BARBARA BRANDES: You're allowed to have possession of pot one time under 30 grams. If you have two nickel bags of pot today and tomorrow, you're out of luck. Nickel--

12

[Crosstalk]

13

14

COUNCIL MEMBER WILLIAMS: And how much does a nickel bag weigh, I don't even...?

15

BARBARA BRANDES: All right.

16

[Laughter]

17

BARBARA BRANDES: Probably--

18

19

COUNCIL MEMBER WILLIAMS: So I mean if you have a dime bag, that could be 30 grams?

20

21

BARBARA BRANDES: Under 30, you're only allowed to have possession of pot once.

22

23

24

25

JOSHUA EPSTEIN: Just to clarify that a little bit. If someone is in the United States and not a lawful permanent resident and is trying to get lawful permanent resident status,

1

2 any controlled substance--

3 [Crosstalk]

4 JOSHUA EPSTEIN: --will make them
5 inadmissible--

6 [Crosstalk]

7 COUNCIL MEMBER WILLIAMS:

8 [Interposing] Except for nicotine and alcohol.

9 JOSHUA EPSTEIN: That's correct.

10 BARBARA BRANDES: Right.

11 COUNCIL MEMBER WILLIAMS: What if
12 any of these crimes committed, you committed and
13 was minors but you're not here legally, what
14 happens then, can the same things happen?15 BARBARA BRANDES: If you were
16 judged youthful offender, that's analogous to the
17 Federal First Offender. So it depends, if you got
18 youthful, youthful offender status is not
19 considered a conviction for immigration purposes.

20 COUNCIL MEMBER WILLIAMS: Okay.

21 BARBARA BRANDES: And by the way,
22 what I want to add to this is we've been
23 successful in getting cases when people come to me
24 with convictions, we've been successful on the
25 other side, on the criminal side of getting them

1

2 reopened and getting those convictions to go away.

3

4 Now I want to add one other thing
5 is that convictions prior to 1996, even if they
6 were for possession or drugs or selling, if you
7 didn't serve five years there is a remedy if you
8 were a lawful permanent resident called 212(c)
9 where you can bring yourself before immigration
10 and get, you know, discretionary relief. But for
11 cases after 1996, those same benefits don't apply
12 unless you're a permanent resident and it's not
13 considered an aggravated felony, which is a whole
14 other story.

15

16 COUNCIL MEMBER WILLIAMS: Just a
17 couple more questions. I mean, it's scary 'cause
18 growing up in Brooklyn New York City and going to
19 college, you find yourself in a lot of funky
20 situations and to think that I could have been
21 deported for some things is a very, very scary
22 thing and I'm lucky I'm a U.S. citizen, but a lot
23 of my friends and family are not. And we're
24 supposed to be a country of second chances and
25 we're supposed to root for the underdog. People
make mistakes, all of us here have, it's just part
of growing up and until you're about 21, 22, 24,

1

2 then you start figuring out, but to get deported
3 for some of these things, it's very disappointing.
4 That's the least that it is, actually.

5

6 Some of the things that you said
7 like being retroactively applied and being advised
8 wrong, are there any cases going to Supreme Court
9 or anything about it being unconstitutional right
10 now? Are there any class action suits for people
11 who weren't advised properly in particular?

12

13 BARBARA BRANDES: Well you have the
14 Padilla case, which just came from the Supreme
15 Court which said that defendant's 6th Amendment
16 right to counsel was violated when the attorney
17 misrepresented and you can get them reopened.

18

19 And the retroactive application,
20 I'm not aware of.

21

22 JOSHUA EPSTEIN: Unfortunately, the
23 immigration laws, there have been challenges to
24 retroactivity and the courts have found that most,
25 if not all, immigration laws can be applied
retroactively.

26

27 COUNCIL MEMBER WILLIAMS: But
28 anybody who was deported, they wouldn't fall under
29 the Padilla case even if they realized that they

30

1

2 were deported wrong?

3 JOSHUA EPSTEIN: I mean, that--I'm
4 sorry, go ahead.

5 BARBARA BRANDES: Go ahead, go
6 ahead, go ahead.

7 JOSHUA EPSTEIN: That's a great
8 question. For many people that have been deported
9 and then have realized, now after Padilla, right,
10 so if they got bad advice from their criminal
11 defense attorneys about immigration consequences
12 and they've been deported, it can be
13 extraordinarily difficult to bring cases, to
14 vacate those cases especially in New York State
15 courts because many judges will want those people
16 to appear in front of the court. If people have
17 been deported most of the time, it's very
18 difficult if not impossible--

19 COUNCIL MEMBER WILLIAMS:
20 [Interposing] So we got to sneak them back in so
21 they can appear in court basically.

22 BARBARA BRANDES: If you do that
23 then you're barred--there's another provision of
24 law--

25 [Crosstalk]

1

COUNCIL MEMBER WILLIAMS:

2

[Interposing] Well there used to be--

3

BARBARA BRANDES: --C that--

4

[Crosstalk]

5

COUNCIL MEMBER WILLIAMS: --turn

6

'em loose, Bruce, they would fine the prostitutes

7

and then they would have to let them out so they

8

can go get money, come back and pay the fine. So

9

this kind of reminds me of that. You need them to

10

be here, but they can't be here legally so....

11

And last question, is there

12

anything or anything you see illegally, I know it

13

was mentioned a little before, but anything on a

14

city level, any small laws that can be adjusted to

15

make life easier for our immigrant population?

16

BARBARA BRANDES: Well I think more

17

and more we used to have the unwritten rule that

18

the police don't turn the immigrants over to

19

Immigration, but I think they are these days.

20

Maybe we can go back to enforcing that mandate

21

that we had from that let the criminals stay as

22

criminal and Immigration and never the twain shall

23

meet, but....

24

COUNCIL MEMBER WILLIAMS: Is that a

25

1

2 legal statute that we had that's being ignored
3 or...?

4

5 mic].

6

7 JOSHUA EPSTEIN: I think you're
8 absolutely right of sort of decoupling the
9 collaboration between local law enforcement and
10 Immigration and Customs Enforcement, whether it's
11 with the police or the Department of Corrections,
12 and making sure that Immigration and Customs
13 Enforcement doesn't have contact with people that
14 are detained in Department of Correction
15 facilities, so that at the end of their criminal
16 custody they get to go home to their families and
17 communities and--

18

19 COUNCIL MEMBER WILLIAMS:

20 [Interposing] I know we're trying to do some of
21 that on a state, do we have jurisdiction to do on
22 the city level is what I'm--

23

24 JOSHUA EPSTEIN: Yes.

25

[Off mic]

26

27 COUNCIL MEMBER WILLIAMS: With the
28 police department.

29

30 JOSHUA EPSTEIN: Yes, and the

1

2 Department of Corrections.

3

4

5

COUNCIL MEMBER WILLIAMS: I'd love to work--if somebody can contact my office to see how specifically we could do that.

6

7

JOSHUA EPSTEIN: Definitely, someone will definitely contact your office.

8

9

COUNCIL MEMBER WILLIAMS: Thank you.

10

11

12

13

14

15

16

17

18

19

20

21

CHAIRPERSON DROMM: Thank you, Council Member Williams. And just to pick up on a point that you were talking about, I recently read a report that said that arrests for marijuana in New York City had risen from 29,000 and I think in 2009 to over 50,000 in 2010--it could be the prior years, I'm not exactly sure--and 80 % of those arrests were among youth of color, black, and Latino. I do not say specifically whether they were immigrant or not, but from the information that you're giving us some of that would then translate into being deportable offenses.

22

BARBARA BRANDES: Sure.

23

JOSHUA EPSTEIN: Absolutely.

24

25

BARBARA BRANDES: I've even had clients out drinking an open beer bottle in the

1
2 street, never being arrested, never being
3 sanctioned, but turned over to Immigration for
4 [off mic] they didn't know, maybe in their
5 country, you can. In New Orleans, you can so....

6 COUNCIL MEMBER WILLIAMS: Mr.
7 Chair, can I say one thing?

8 CHAIRPERSON DROMM: Sure.

9 COUNCIL MEMBER WILLIAMS: I'm
10 sorry, just with the stat which is probably true,
11 I just want to make sure, I believe that if the
12 police were as apt to stop people who are not of
13 color, they might have had more--a higher
14 statistics on that level as well.

15 CHAIRPERSON DROMM: Yes,
16 absolutely, I didn't mean to infer anything
17 otherwise, I was just trying to bring up the
18 statistic that--what's the word--
19 disproportionately affects youth of color and on
20 minor marijuana charges where these arrests are
21 happening. And to me, it was shocking that it
22 went from 29,000 to 50,000 in a year, you know,
23 that's a huge jump.

24 [Crosstalk]

25 CHAIRPERSON DROMM: Well exactly,

1
2 exactly. All right, thank you. And now we have
3 Council Member Rodriguez, thank you.

4 COUNCIL MEMBER RODRIGUEZ: Thank
5 you. Thank you to all my colleagues, especially
6 our Chair Dromm, who has been a leader on
7 defending immigrants' right and the Speaker also,
8 who couple of months ago when we hold a hearing, I
9 think that she brought the tone on how we will be
10 responsible, as we've been, also in defending the
11 immigrants' right. Especially at this moment when
12 we're being on the attack nationwide.

13 I have a couple of things to say
14 about Reso 548, but first I had a question in
15 regard to yesterday, one of the local channel, the
16 Spanish one, Channel 47, dedicated half an hour on
17 immigration and there's no doubt that there's a
18 right-wing that as a result those hate year that
19 was promoted by the Bush and Cheney and his [off
20 mic] group has been trying to promote a number of
21 legislation against our immigrants. And in
22 yesterday's program they went over like most of
23 the state has many cases where a number of
24 legislator has come on from putting many bills
25 against immigrant, not only the Arizona bill, but

1
2 others. Have you noticed on any particular right-
3 wing in the state that has been trying to promote
4 any bill against immigrants in New York state?

5 BARBARA BRANDES: I wouldn't know
6 about that, but I just want to correct the record
7 for one minute. I am a Democrat, okay, I am a
8 staunch Democrat, but our President Barack Obama
9 has enforced and deported more immigrants and
10 criminal aliens than Bush and Cheney
11 Administration ever did. That's one thing, I just
12 wanted to put that on the record.

13 Now, while the president is pro-
14 immigration, and I think President Bush was pro-
15 immigration also, there is certainly a right-wing
16 element that is definitely anti-immigration. And
17 with my understanding about the Arizona situation
18 is that 95% of the prisons in Arizona are
19 privately run, so it's a business of why they're
20 putting immigrants in prison. And so I just want
21 to set that record straight.

22 Also, as far as right-wing in this
23 state, and I'm not aware of--

24 [Crosstalk]

25 BARBARA BRANDES: --anything in

1

2

particular.

3

4

Is there something in Westchester who had something?

5

LILI SALMERON: Well Secure

6

7

8

Communities went live in three counties in upstate New York, two of which are Putnam and Rockland and I forget the third one.

9

10

11

12

13

14

15

So this program is going to funnel immigrants into the detention system because at the point of arrests their fingerprints are going to be sent to Immigration and if they have a deportable offense in their background, then ICE will issue a hold. So we already have the situation in these places in New York State.

16

17

18

19

20

21

22

And then to add to her point, I read two days ago that in--it was in the Washington Post that the Obama Administration is allocating an extra \$1.4 billion to the programs like SCOM that are designed to deport criminal aliens. So his administration is ratcheting up this deportation regime.

23

24

I don't know if Josh, you wanted [off mic].

25

COUNCIL MEMBER RODRIGUEZ: So

1
2 again, but my question is that, as far as you
3 know, there is not any bill at the state level
4 that anyone has been promoting similar to the--is
5 it 71070? [Off mic] The one in Arizona and the
6 one that--another bill that has been promoted in
7 different state anti-immigrant bill. So as far as
8 you know, there's not anyone in the state right
9 now. Great. Has the governor approached the
10 different groups that you represent or any other
11 immigrants advocate group in regards to starting a
12 conversation on where he is right now regards to
13 the pardon panel?

14 JOSHUA EPSTEIN: So we, Immigrant
15 Defense Project along Northern Manhattan Coalition
16 for Immigrant Rights, worked with Governor
17 Paterson a lot about this pardon panel, along with
18 the Secure Communities, and also explaining other
19 issues of how the state and local law enforcement
20 works with Immigration and Customs Enforcement to
21 try and put the pardon panel, to try and expand
22 the pardon panel, and then with Secure Communities
23 to try and have the memorandum of agreement
24 rescinded.

25 And then we are starting

1
2 conversations now with Governor Cuomo's office on
3 both of those topics as well. I hope that answers
4 your question.

5 COUNCIL MEMBER RODRIGUEZ: And I
6 just want to end saying that Reso 548 is a Reso
7 that we hope will get the support of the immigrant
8 advocate group and we hope that the Mayor also
9 will come on board. I think it was a good moment
10 for the Mayor, especially for the immigration
11 commissioner to send someone to be here also to
12 share where they are because I think that I can
13 say that we can give a lot of credit for the Mayor
14 for a lot of good things and also some time for
15 the tone that he has nationwide on immigration,
16 but then when we look at the local level, there's
17 a lot of things that we have a lot of concern.
18 Like, the only reason why we have ICE in Riker's
19 Island is because the Mayor's signed, the Mayor
20 gave the authority for that to happen.

21 And we cannot go preaching about
22 nation and national immigrants agenda and then
23 looking at how ICE is going after a number of
24 people. Secure community is not supposed to be
25 applied, however, we had a case where Mr. Lehigh

1
2 Valerio [phonetic] last year, a taxi driver that
3 he has a case in 1983 and all he did in 1983, was
4 he had a gun in a grocery store and he was on
5 probation, his probation was reduced. Suddenly he
6 was driving his taxis, ICE went to his apartment,
7 he was not detained, they went directly to his
8 apartment and he was taken to the immigration
9 center and if Lechio's daughter would not be
10 working as a paralegal in a law firm and she would
11 have the first legal support and then we came on
12 board to support, most likely Mr. Lechio would not
13 be in the United States, he would be deported back
14 there.

15 So we hope is that with Reso 548 at
16 least we can alleviate the situation where
17 thousands of New Yorkers that has been paying
18 their taxes, that has been contributing for so
19 many years. And that's of concern also when it
20 comes to--New Yorkers that we have in Riker's
21 Island, most of them, they have made mistake, they
22 should pay for their mistake, but it is not fair
23 that when they are asked to have meeting with ICE
24 inside Riker's Island that they don't have legal
25 representation.

1
2 So there's a lot of things that we
3 have to correct. And I believe that also I hope,
4 first of all, one, that our new governor who when
5 he went to speak to the [off mic] La Prensa before
6 being elected, he said to the [off mic] La Prensa
7 editorial board that he will revise Secure
8 Community if he will be elected. So he was
9 elected, and we hope that he will definitely
10 follow his word and really revising Secure
11 Community and reinstate the pardon panel that
12 Governor Paterson established, I believe, in May
13 3r, 2010. Thank you.

14 And I would like to stay for the
15 whole hearing, but I have to go back to my
16 district, I have an important event back there, so
17 I apologize for not being to the complete hearing.
18 Thank you.

19 CHAIRPERSON DROMM: Okay. Thank
20 you very much. And just before we let the panel
21 leave, because I know when we get to vote on it
22 there's going to be some question from my
23 colleagues, but the resolution does state that
24 it's to ensure that legal permanent residents who
25 have paid their debts to, and are now productive

1
2 members of society, can continue to contribute to
3 our great state, and I wanted to reiterate that
4 point so as to clarify so that when it comes to
5 the floor of the Council that they understand that
6 this is what we are talking about.

7 And I just wanted to thank all the
8 panel members for coming in today. Thank you
9 very, very much.

10 [Crosstalk]

11 CHAIRPERSON DROMM: Okay. And now
12 the next panel--is it Jojo? Jojo Annobil from
13 Legal Aid Society, Gabriela Villaneal, Villareal,
14 and Jimmy Yan from Borough President Stringer's
15 office.

16 SERGEANT-AT-ARMS: Do you have any
17 statements?

18 CHAIRPERSON DROMM: Daniel Costas--

19 FEMALE VOICE: Coates.

20 CHAIRPERSON DROMM: --Coates.

21 DANIEL COATES: Coates.

22 CHAIRPERSON DROMM: Coates, I'm
23 sorry, from Make the Road New York, and Getachew
24 Fikremariam.

25 [Off mic]

1
2 CHAIRPERSON DROMM: Okay. And I
3 just want to apologize, we're going to have five
4 people on the panel, it's the last panel, so I
5 apologize for the seating arrangement.

6 JOJO ANNOBIL: We'll make it work.

7 CHAIRPERSON DROMM: You'll make it
8 work, it's what we have to do sometimes. I hope
9 eventually they'll get us back into City Hall as
10 well, then we can have better room than this. All
11 right, thank you, would you like to start?

12 JOJO ANNOBIL: Good morning, Chair
13 Dromm, my name is Jojo Annobil, I am the attorney
14 in charge of the Immigration Law Unit at the Legal
15 Aid Society. I submit this testimony on behalf of
16 the legal aid society today and want to thank the
17 Committee on Immigration for taking the initiative
18 to pass Resolutions 548 and 648.

19 The Legal Aid Society
20 enthusiastically supports the New York City
21 Council's proposed resolutions. The New York City
22 has always been cognizant of the needs of its
23 vibrant but vulnerable immigrant population.
24 Immigrants add to the creativity and the social
25 and economic fabric of the city and the society is

1
2 pleased that the City Council is seeking to
3 protect Haitian nationals who find themselves in
4 the U.S. and are unable to return to their [off
5 mic] island and also urging the continuation of
6 the immigration panel board.

7 With the permission of the chair, I
8 would like to address both issues and resolutions.

9 CHAIRPERSON DROMM: Your testimony
10 is a little long, so if you could just summarize
11 parts of it for us, I'd appreciate it.

12 JOJO ANNOBIL: Basically, we are
13 uniquely qualified to speak on both issues because
14 the Legal Aid Society has had Immigration Law Unit
15 for decades and we represent a lot of immigrants
16 who are facing removal and also help immigrants
17 who are applying for lawful status.

18 Talking about Immigration Panel
19 Board, I know for a fact that it is undeniable
20 that the immigration laws of this country are
21 flawed. Congress acknowledges this fact, yet does
22 not seem to want to assume the task of repairing
23 the system's problems. The inherent flaws of the
24 1996 laws continue to impact the lives of long
25 time, lawful permanent residents. These laws

1
2 inflict draconian consequences on non-citizens
3 with criminal convictions.

4 The impact of these punitive laws
5 has been devastating. Immigrants have been
6 deported for minor and even insignificant criminal
7 convictions even if they have U.S. citizen
8 children, are longtime residents of the U.S., have
9 serious health concerns, or would be subject to
10 harm in their home countries. Children usually
11 are left unsupervised and without father figures
12 often tending to truancy and, many times,
13 delinquency. Families that ordinarily would not
14 access public benefits are being forced to apply
15 for state and city aid, adding to the financial
16 burdens on the city.

17 The statistics are staggering, 20
18 years ago, approximately 5,500 people were
19 detained on an average day by immigration
20 authorities, and approximately 1,900 were deported
21 annually because of criminal convictions. As of
22 early 2010, approximately 30,000 non-citizens were
23 detained on any given day. And in 2009, 380,000
24 individuals were detained over the course of a
25 year. In 2009, [off mic] record 393,000 non-

1
2 citizens were removed, 128,000 of these
3 individuals were deported because of criminal
4 convictions.

5 Despite the complexity of
6 immigration laws and of the removal process
7 itself, non-citizens facing removal have a right
8 to obtain counsel, but not at government expense.
9 Since access to free immigration counsel is very
10 limited, many non-citizens facing deportation are
11 unrepresented, unprotected, and uninformed
12 throughout the immigration proceedings.

13 Of the immigrants whose proceedings
14 were completed in 2009, 52 % did not have counsel.
15 Within the group of those who were detained, more
16 than 84 % were not represented in their removal
17 proceedings.

18 Legal representation makes a
19 tremendous difference in whether a non-citizen is
20 able to avoid deportation. The continuation of
21 the pardon board would impose a sense of fairness
22 on the particularly inflexible and harsh federal
23 immigration laws that subject immigrants to
24 mandatory detention and deportation for a wide
25 range of often minor and nonviolent offenses, many

1

2

of which occurred decades ago.

3

4

5

6

7

Current law ties immigration judges' hands and requires deportation in many complex cases that deserve a careful weighing of the individual facts by an independent adjudicator.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Now talking about TPS for Haitians. Extending Haitian TPS is not only humane, but a continuation of the United States government's pledged commitment to assist the Haitian people recover from last year's devastating earthquake. During the last year or past year when the registration period was going on, the Society helped thousands of immigrants who are Haitian nationals with eligibility for TPS and also to apply for TPS.

The designation of Haiti for TPS has tremendously benefited Haiti and the Haitian people. It's allowed for record numbers of remittances back to the island. If the government decides not to extend TPS designation for Haitians, it will result in human tragedy. Haiti simply is not safe for the return of thousands of Haitians, with or without TPS status. The

1
2 requirements for designating a country for TPS
3 still applies to Haiti. The crisis culminating
4 from the earthquake is ongoing, it is still unsafe
5 for Haitians to return to their homeland.

6 Thousands of Haitians are still homeless and
7 living in makeshift tents where rape and violence
8 are rampant.

9 While the Legal Aid Society
10 commends the City Council for Resolution 648, we
11 respectfully recommend the following additions to
12 the Council's resolution: Please suspend
13 deportations to Haiti. Soon after the earthquake,
14 the Secretary of the Department of Homeland
15 Security announced the suspension of deportation
16 to Haiti. However, the Society was dismayed to
17 learn that on January 20th, 2011, 27 Haitians were
18 sent back to earthquake-ravaged Haiti. Deportees
19 were jailed in the local penitentiary described as
20 reminiscent of a slave ship upon arrival in Port-
21 au-Prince. Within days one such deportee died of
22 cholera-like symptoms and a second individual was
23 utterly on the brink of death.

24 Deportation to Haiti under current
25 conditions is absolutely inhuman and

1
2 unconscionable and can be tantamount to a death
3 sentence. It is contrary to the papers of TPS
4 designation to return nationals to an unsafe
5 country. Deporting Haitian nationals to Haiti and
6 condemning them to suffer there amounts to cruel
7 and inhuman treatment. The City Council should
8 send a strong message to DHS to suspend
9 deportations to Haiti indefinitely.

10 The second point we also wanted to
11 make was that, after the earthquake, parents of
12 U.S. citizens, adult relatives of U.S. citizens
13 were allowed to board U.S. planes with U.S.
14 citizen children help evacuate them back here.
15 Most of them came with tourist visas, some of
16 those visas have expired. USCS at some point had
17 mentioned that they would grant deferred action,
18 which is a [off mic] of discretion, to allow most
19 of these people at least to be able to work,
20 deferred action would grant them an opportunity to
21 work. Initially, they approved a couple of them
22 but have stopped approving them.

23 So you have parents who are
24 basically living off their U.S. citizen children's
25 food stamps and other support services. Parents

1
2 who have no other source of income, and it would
3 be a tremendous help if the City Council would
4 also add that piece to its resolution.

5 Thank you very much for having us
6 and I'm prepared to take questions. Thank you.

7 CHAIRPERSON DROMM: Thank you.

8 Next, please.

9 GABRIELA VILLAREAL: My name is
10 Gabriela Villareal, I'm with the New York
11 Immigration Coalition Service, an immigration
12 advocacy policy coordinator, and if I may, today,
13 I'd like to combine my testimony in support of
14 both hearings that are before the Council--the
15 Resolution number 548, as well as Resolution 648.

16 America's immigration system is
17 broken and is a national shame. Immigrant workers
18 and families are under siege. Workers are being
19 exploited and families are being divided.
20 Immigrants feel unsafe and vulnerable in their own
21 homes and workplaces.

22 Last year alone, nearly 400,000
23 immigrants were deported. The government [off
24 mic] Mayor Cuomo's quotas limiting how many
25 immigrants to come to America lawfully and the

1
2 result is an estimated 11 million undocumented
3 immigrants living in the shadows with minimal
4 protection.

5 The immigration system as it now
6 stands is simply out of step with the nation's
7 needs and values, which makes a continued emphasis
8 over the past many years on enforcement an
9 exercise in futility, cruelty, and squandered
10 resources. Current immigration enforcement
11 policies create fear among immigrants and non-
12 immigrant communities alike and are ineffectual,
13 as they are attempting to implement a system that
14 is simply unworkable.

15 We can no longer afford the human
16 and financial costs of taking an enforcement only
17 approach. The U.S. government has wasted
18 resources on ineffective and failed attempts at
19 enforcing dysfunctional immigration laws.

20 While the resolutions being
21 addressed today are directed towards the federal
22 and state governments, we appreciate the New York
23 City Council's efforts to be at the forefront of
24 protecting immigrant populations in considering
25 the following decrees. We also support at the New

1
2 York Immigration Coalition the continuation and
3 expansion of the work of the Immigrant Pardon
4 Board and the governor's office to prevent the
5 deportation of legal permanent residents with
6 minor criminal records from the past.

7 We support the continued work for
8 those who have served their time and has since
9 made positive contributions to the community.

10 Federal immigration law has greatly
11 expanded categories of legal immigrants subject to
12 mandatory deportation. With increasing
13 immigration enforcement, more individuals are
14 facing removal proceedings despite contributing to
15 New York's economies and being productive members
16 of our society.

17 Such a state policy to grant
18 pardons to legal permanent residents for minor
19 criminal convictions would be an innovative effort
20 to prevent them from being deported and warrants
21 continuation, as well as expansion. In order for
22 this policy to demonstrate the most impact, there
23 must be clear guidelines accompanied by an open
24 review process. The Immigrant Pardon Board should
25 function at a higher capacity to process

1
2 legitimate applications and would greatly benefit
3 from a coordinated outreach strategy to educate
4 the community and immigrant legal service
5 providers around New York State about the granting
6 of such pardons.

7 The New York Immigration Coalition
8 has included the expansion and continuation of the
9 pardon board on its Top 10 New York State advocacy
10 agenda and we welcome the adoption of this
11 resolution by the City Council as a concerted
12 effort to make sure that this policy stays in
13 place.

14 Next I'd like to talk about the
15 important resolution calling upon the Secretary of
16 the Department of Homeland Security to extend
17 Temporary Protected Status to Haiti and eligible
18 Haitians. By not extending the Temporary
19 Protected Status designation of Haiti and eligible
20 Haitians, the U.S. Department of Homeland Security
21 may be putting immigrants at risk for deportation
22 to a devastated country. This is not the message
23 to send to the Haitian people, both here in the
24 United States and in their home country. The
25 widespread destruction from the earthquake, the

1
2 cholera pandemic, and the upheaval and violence
3 after the presidential elections demonstrates the
4 need for this extension.

5 A Department of Homeland Security
6 decision to designate Haiti for extended
7 protection under TPS will help Haitian nationals
8 reside and work legally in the United States and
9 to send much-needed remittances back home to their
10 families and loved ones in Haiti.

11 And if I may respond to a question
12 that Council Member Rodriguez had posed to the
13 earlier panel, at this time, we do not know of any
14 anti-immigrant bills that have been introduced or
15 are planned to be introduced before the New York
16 State legislature. Thank you.

17 CHAIRPERSON DROMM: Thank you.

18 Next, please.

19 JIMMY YAN: Thank you. My name is
20 Jimmy Yan, I'm the general counsel for Manhattan
21 Borough President Scott Stringer and I'm here to
22 testify for Borough President Stringer. We
23 submitted extensive written testimony to you and
24 also since we share the views of the previous
25 statements by advocates, we will condense our

1

2

statement as much as possible.

3

4

5

6

7

8

9

10

11

I want to thank Chairman Dromm and the Immigration committee for holding this hearing on this vital topic. Borough President Stringer supports the two resolutions on TPS for Haitians and continuing the Immigrant Pardon Board. Want to thank and commend Council Member Rodriguez for introducing the pardon board resolution, and Council Member Eugene for the important resolution on Haitian TPS.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Allowing TPS to expire for Haitian nationals now in the face of all the facts we know about their current needs and the conditions would be a tragic mistake. Borough President Stringer also strongly supports the positions taken by Senator Gillibrand and Congresswoman Clarke in their bicameral efforts to bring 35,000 Haitians with currently pending U.S. government approved family immigrant petitions to the U.S. This initiative will allow spouses and children of U.S. citizens and permanent residents to avoid the visa backlogs that are keeping them in Haiti, allowing them to come to the U.S. and work and live with their families.

1
2 And of course with the Immigrant
3 Pardon Board, the process [off mic] this board is
4 invaluable, it allows for the governor's office to
5 avoid the arbitrary application and review that's
6 harmed many of our state's permanent residents in
7 the past.

8 In addition, in terms of what
9 additional local efforts that can happen to
10 protect immigrant communities from deportation,
11 want to address three different things. One, in
12 March of 2010, as you know, the U.S. Supreme Court
13 decided Padilla, which recognized the 6th
14 Amendment rights to immigration counsel for non-
15 citizens in criminal proceedings. The city must
16 formalize and clarify requirements in its
17 contracts for criminal defense services and should
18 take two important steps to achieve the goals set
19 forth in Padilla.

20 First, the city should require each
21 contracting defender organization to have a
22 written immigration plan to outline how it will
23 fulfill its responsibilities under Padilla.

24 Second, the city should ensure an
25 appropriate amount of funding as necessary to

1
2 ensure that that immigration plans can be
3 effectively implemented.

4 Borough President Stringer
5 testified before the Mayor's Office last year to
6 support these proposals. We understand the
7 criminal justice coordinator has had a strong
8 commitment to these requirements, we hope they can
9 further strengthen these requirements with their
10 criminal defense contracts.

11 Another issue is the Secure
12 Communities program. This program requires local
13 law enforcement to provide fingerprints of all
14 arrestees to federal immigration authorities to
15 identify immigrants eligible for deportation.
16 Recent studies have shown that a vast majority of
17 people deported due to SCOM, 80 % of them are non-
18 criminals or people who were picked up for lower
19 level offenses, so people who are being unfairly
20 targeted for this action. This also raises
21 concern that SCOM may be facilitating racial and
22 ethnic profiling by local law enforcement.

23 Also, ICE has made clear that
24 states and localities will bear any additional
25 costs associated with the program, including

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

liability for challenged police actions.

It's vital that we send the memorandum of agreement between New York State and DHS authorizing SCOM. In December of last year, I, along with Chairman Dromm, Council Member Rodriguez, and numbers of other elected officials in the city, state, and federal government, sent a letter to Governor Paterson asking him to rescind the memorandum of agreement.

Also, the city's participation in the criminal alien program at Riker's Island has to end. The Department of Corrections' voluntary cooperation with Ice through the program has led to the annual transfer of 3 to 4,000 New Yorkers into inhumane immigration detention conditions and eventual deportation.

The current practice of collaborating with ICE and allowing them expansive access to Riker's is a wasteful expenditure of our city's already strained resources. Our city cannot afford to be involved in a system lacking accountability and transparency. It's critical that the city separate ICE operations from Riker's to ensure that our local police will not be in the

1

2 business of immigration enforcement.

3

4

5

Thank you again for allowing me to testify and we look forward to working with the Council on these issues.

6

7

CHAIRPERSON DROMM: Thank you very [pause].

8

9

10

DANIEL COATES: Morning, my name is Daniel Coates, and I'll also summarize some of my remarks.

11

12

13

14

15

16

17

18

Hi, my name is Daniel Coates, thanks again for the opportunity to testify, Chairman Dromm, Council Member Williams and Eugene. I work with Make the Road New York. I am here to voice support for--or I'm here representing the organization and to voice support for Resolution 548, the expansion of the pardon board.

19

20

21

22

23

24

25

But we think that the pardon board must be considered while keeping a clear vision of the backdrop in which the pardon board is operating. It's well understood that the current deportation system is broken and the effects of the broken immigration system are felt in a city like New York with 40 % residents are foreign-

1
2 born, 7 % of children nationally, and certainly
3 more in New York, have at least one undocumented
4 immigrant parent, although, 75 % of such children
5 are themselves citizens.

6 Even children with lawful
7 immigrants, green cardholders are at risk of
8 losing a parent to deportation as Immigration and
9 Customs Enforcement deported the lawful permanent
10 resident mother or father of approximately 90,000
11 children over the last decade, 86 % of such
12 children being United States citizens.

13 So we commend your committee today
14 for holding this hearing calling on Governor Cuomo
15 to expand the pardon board to help protect more
16 immigrants from arbitrary efforts by federal
17 officials to banish them from this country,
18 however, we believe that New York City has the
19 power to do more to protect our immigrant
20 communities than the pardon board ever could.

21 I'll pick up on a little bit on
22 what Mr. Yan was saying. Currently 3,500 New
23 Yorkers are funneled into ICE custody each year
24 through New York City Department of Corrections.
25 The New York City Department of Corrections

1
2 facilitates ICE's civil immigration enforcement
3 efforts, even though it has no legal obligation to
4 do so and despite the cost to the city of this
5 collaboration that is estimated at tens of
6 millions of dollars per year.

7 The Department of Corrections
8 participates in ICE investigations by identifying
9 all foreign-born New Yorkers in DOC custody for
10 ICE and providing them special access to DOC
11 databases. ICE issues immigration detainers for
12 any of these individuals who it thinks it can
13 deport.

14 And as a quick side note, although
15 the rhetoric is about deporting criminal aliens,
16 we believe that the vast majority of the people
17 caught up in the system are folks who either have
18 no criminal record or have been guilty for a very,
19 very, very minor offenses, similar to a lot of the
20 sort of discussions been going on in the previous
21 panel.

22 Detainers are requests, not legal
23 obligation, something ICE has repeatedly
24 confirmed. Once these individuals are taken into
25 ICE custody, sent far away to detention centers in

1
2 Texas, Louisiana, Arizona, where it is incredibly
3 difficult, as has been discussed, to obtain legal
4 representation. Again, includes New Yorkers with
5 no criminal record, asylum seekers, victims in
6 human trafficking, long-term permanent residents,
7 juveniles, and people seeking protection under the
8 Violence Against Women Act.

9 This destructive DOC practice can
10 be felt in three main ways. Firstly, the effect
11 on families. In addition to the emotional costs,
12 many people become rely on some form of public
13 assistance, as in many cases it is the primary
14 breadwinner who is no longer there.

15 Secondly, undermining public safety
16 by weakening the city's policing efforts, making
17 immigrants more fearful of talking to the police.
18 Forces victims, especially those in domestic
19 violence situations, to suffer in silence because
20 they fear that contacting the police is a direct
21 pipeline to deportation for themselves or the
22 person who they're reporting.

23 Finally, as previously mentioned,
24 the city is spending tens of millions of dollars
25 to accommodate ICE.

1

2

It does not have to be this way.

3

The solution to the problem is for the Department

4

of Corrections to exercise its discretion to

5

decide which detainers it will honor. We believe

6

that New York City has the legal authority to

7

decide when and if it wants to hold people at

8

taxpayer's expense on immigration detainers. ICE,

9

and its parent agency, the DHS, have made it

10

crystal clear time and again that detainers are

11

requests and do not impose any obligation on

12

localities such as New York. It's time for New

13

York to stop being a gateway into the immigration

14

detention at New York City taxpayers' own expense.

15

So we support, again, the Council's

16

resolution to expand the immigration board--the

17

pardon board's authority and the resolution

18

regarding Haitian TPS, however, we also urge the

19

Council to take action it can and use the power

20

that it has to make New York City a city that

21

stands by its community and a national leader in

22

the fight for a more just society. Thanks a lot.

23

CHAIRPERSON DROMM: Just one

24

comment before we go to the next speaker. I

25

believe when Commissioner Schriro was here, she

1
2 admitted that the relationship between ICE and the
3 city is voluntary, if I'm not mistaken, and I'm
4 just asking my counsel to go get me some
5 statistics as well to support some of the numbers
6 that you were giving before and I'm going to
7 comment on that a little bit later on.

8 DANIEL COATES: Yeah.

9 CHAIRPERSON DROMM: Thank you.

10 Yes, sir.

11 GETACHEW FIKREMARIAM: Good

12 morning.

13 MALE VOICE: Good morning.

14 GETACHEW FIKREMARIAM: Thank you

15 for--

16 [Crosstalk]

17 GETACHEW FIKREMARIAM: --thank you,

18 Chairman Dromm, and thank you, Council Members,

19 for inviting us to testify on behalf of

20 immigrants. I am speaking in favor of both

21 resolutions.

22 And first I would like to state how
23 the immigration job our agency is doing is
24 severely restricted and how that also affects
25 protecting immigrants from deportation or from the

1
2 job [off mic] protecting immigrants from
3 deportation.

4 For more than 25 years African
5 Services Committee--I'm sorry, my name is Getachew
6 Fikremariam, and I'm Immigration Board certified
7 immigration practitioner [off mic] accredited
8 representative and I work with African Services
9 Committee.

10 For more than 25 years, African
11 Services Committee has focused its work on
12 promoting the health and self-sufficiency of
13 African [off mic] in New York City. African
14 immigrants have the fastest growing segment of the
15 black population in the United States and they
16 have the fastest growing immigrant community in
17 New York City.

18 When we first opened our doors, our
19 first efforts were targeted towards Ethiopian and
20 other refugees who are newly entering the country
21 and needed a helping hand. Over time, our focus
22 shifted to Francophone West Africans, then to the
23 rest of Africa, and now our program included
24 Caribbean immigrants as well.

25 Our Harlem-based office provides a

1
2 number of services to committee members, including
3 English classes and medical interpretation for
4 [off mic] HIV and other STD, testing, case
5 management, and housing assistance for HIV
6 individuals and a range of civil legal services,
7 both for HIV individuals and for community members
8 as a whole.

9 The greatest demand for our service
10 comes in the area of immigration. Almost every
11 single client walks in the door whether they come
12 to English classes or for case management or for
13 our women support group also needs immigration
14 assistance. This, in addition to the large number
15 of individuals who contact us exclusively for
16 immigration assistance. We provide clients with
17 immigration legal consultation, educating
18 individuals about immigration law and procedure,
19 and assist them in getting released from
20 detention, help them with obtaining immigration
21 benefits by filing for asylum, permanent residence
22 and naturalization about what sort of petitions
23 and temporary status like TPS and extension of
24 non-immigrant status. Clients also receive
25 representation during U.S. ICE interviews, and

1

2 before immigration judges.

3

4

5

6

7

8

In the past, we took and succeeded in winning a good number of asylum cases on behalf of our clients from Guinea, Ivory Coast, Sierra Leone, Ethiopia. At the moment, most of our clients have--at the moment, most of these clients have become taxpaying good citizens.

9

10

11

12

13

14

15

16

17

18

19

Most recently we have focused on [off mic] asylum claims and [off mic] petitions, in addition to the political asylum cases we took on behalf of clients from [off mic] Zimbabwe, Congo, Camerone, Gambia, and [off mic]. Our statistics in winning these cases on behalf of our clients has been very high. This is in addition to the large number of marriage and family-based adjustment cases we have handled and enabled our clients to obtain lawful permanent resident status over the years.

20

21

22

23

24

25

The considerable demand for immigration services creates two related challenge for us. First is our limited capacity to take on cases. The majority of our funding is restricted to non-immigration civil services who have a small stream of funding towards immigration work.

1
2 However, there are few agencies to whom we can
3 refer our clients, both because our agencies are
4 similarly tapped for resources, and also there are
5 no agencies in New York that are able to provide a
6 comparable level of linguistic and culturally
7 appropriate services.

8 Many immigrants who we turn down
9 either because we cannot have the space for them
10 or because they do not have options for [off mic]
11 their status unwittingly hire deceptive immigrant
12 consultants who promise to get their papers and
13 charge a lot of money. We find that a number of
14 our clients actually lose their money and are
15 actually put at increased risk of deportation due
16 to the [off mic] careless work of immigration
17 consultants or sometimes [off mic] who prey upon
18 immigrant communities.

19 Now next continuing and expanding
20 the Immigration Pardon Board, Resolution number
21 548, would be a blessing for a number of our
22 clients. One good example is a client from Haiti
23 who came as a child with an immigrant visa. He
24 came to our agency to seek immigration legal
25 advice to see if it was wise to proceed with his

1
2 U.S. Citizenship application. However, because of
3 the crimes he committed as a [off mic] and angry
4 young man he would have faced deportation if he
5 had applied for citizenship. At this stage in his
6 life, he has completed his college education and
7 has rehabilitated himself beyond imagination. He
8 has become such a mature, decent professional with
9 all his emotions under control, he has completely
10 changed. So pardon by the board will be a renewal
11 of his immigrant life.

12 Federal immigration law enacted in
13 1996 greatly expanded the categories of legal
14 immigrants subject to mandatory detention as
15 aggravated [off mic] including people who have
16 pleaded guilty to misdemeanor drug possession. So
17 many legal permanent residents are being arrested
18 and detained based on trivial convictions,
19 immigrants being deported for swiping a metro card
20 when they fell on hard times or immigrants who
21 shoplifted in a moment of weakness. Many
22 immigrants plead guilty to criminal charges in
23 exchange for a probation or no jail time without
24 having been advised about their rights and the
25 plea makes them subject to deportation.

1
2 Now because of the stepped up
3 immigration enforcement, they are facing
4 deportation for all the convictions. Only a
5 governor pardon can prevent such deportation in
6 such cases.

7 Finally, [off mic] Resolution 648,
8 the TPS status gives a number of Haitians here in
9 the U.S. a temporary immigration status and allows
10 them to get employment to transition and become
11 productive taxpaying members of their community
12 here in America. It also protects them from being
13 forced to go back to Haiti and face the
14 devastating conditions created by the recent
15 earthquake in their home country. The devastation
16 is so real and so sad, we learned a lot about this
17 devastating condition when we were attempting to
18 expedite the visa processing of one of our
19 client's children who's priority date were not
20 current. As a result of the devastating 7.0
21 earthquake, the household, the client and her
22 family was destroyed.

23 Since that date, the family has no
24 place to live and no prospect of rebuilding their
25 home and their lives. There is a lot of violence

1
2 in Haiti, there is a lot of kidnapping and robbery
3 that puts their lives in danger. In fact, just
4 recently her daughter called her mother from Haiti
5 and told her that she was attacked by robbers.
6 This is a sad situation in Haiti and TPS saves a
7 number of Haitians from facing this harsh reality.

8 Further, some of our HIV Haitian
9 clients, HIV-positive Haitian clients who are
10 critically ill, TPS allows them to access medical
11 and other benefits to sustain their lives and take
12 care of themselves. Hence, we truly support
13 Resolution 648 which calls upon the Secretary of
14 Department of Homeland Security to extend the
15 Temporary Protected Status designation of Haiti
16 and eligible Haitians beyond July 22, 2011, expiry
17 date.

18 Thank you.

19 CHAIRPERSON DROMM: Okay. Thank
20 you very much. I got some of these facts and
21 figures and I just wanted to comment on it,
22 although it's a little bit separate from what
23 we're talking about here today, ICE, I couldn't
24 resist the opportunity to share some of the
25 feedback that we got from Commissioner Schriro in

1

2 terms of the numbers, which I want some of the
3 advocates to know and are pretty shocking
4 actually.

5

6 We asked her a question and we
7 asked for follow up on the number of people who
8 ICE removed from city jails in calendar year 2009
9 and this year to date who had no prior
10 convictions, and 49.3 % and 49.5 % respectively
11 are the inmates who were discharged to ICE had no
12 prior convictions. Which then begs the next
13 question is, what were those people at Riker's for
14 in the first place and under what circumstances
15 were they sent--was ICE able to put the retainer
16 on them.

17

18 So I have a lot more information, I
19 just didn't want to elaborate on that, but it was
20 kind of what you had mentioned, Mr. Coates, in
21 your testimony, and I just wanted to have an
22 opportunity to read that into the record as well.

23

24 And also in terms of--sorry, just
25 looking for your name--Mr. Annobil's testimony as
well, 19 Council members did sign on to a letter
supporting the ending of all deportations to
Haiti. And I'm going to share that with you and

1
2 take your suggestions about adding that into the
3 resolution and discuss it with the sponsors as
4 well. And by the way, the people who signed on to
5 this letter--and I'll share that with anybody who
6 wants it, I have copies here--were Council Member
7 Eugene and Council Member Williams as well. So I
8 just wanted people to know that.

9 And with that, I'm going to turn
10 over the questioning to Council Member Williams.
11 You're on.

12 COUNCIL MEMBER WILLIAMS: Thank
13 you, Mr. Chair. Thank you so much for the
14 testimony. This is one of my favorite
15 letterheads, this one right here, this is very
16 good.

17 [Crosstalk]

18 MALE VOICE: Thank you.

19 COUNCIL MEMBER WILLIAMS: So along
20 with Council Member Eugene, we represent the
21 largest concentration of Haitians outside of Haiti
22 and outside of Florida and Miami, so this really
23 hits home for us, and as we mentioned, I'm sure
24 he's going to speak, it's his bill, and he's the
25 first Haitian elected to the City Council. I do

1

2 have a lot of Haitians in my district as well.

3

4 I also signed on to a letter with
5 Public Advocate Bill de Blasio to Obama asking for
6 them to suspend--to extend, sorry, TPS.

6

7 I did have a question, I don't know
8 if it's backed up by numbers, but I always feel
9 like--and I'm glad to hear you can answer--but I
10 always feel like the darker the nation, the less
11 likely they'll be able to avail themselves of some
12 of the immigration that other people might. I
13 believe if Haiti were Nicaragua or Cuba, an
14 Eastern Europe country, we wouldn't dare send
15 Haitians--or that country's people back there at a
16 time like this. I'm happy for my brothers and
17 sisters in Cuba and Nicaragua and other nations,
18 but I'm disappointed that we wouldn't even think
19 of doing that. Is that backed up by any kind of
20 numbers or facts or is that a figment of my
21 imagination?

21

DANIEL COATES: You mean...

22

COUNCIL MEMBER WILLIAMS: So

23

24 African nations and nations that have more [off
25 mic] in them skin or black, are they less likely
to avail themselves of things like asylum or--I

1
2 don't know what it's called, if there's an
3 emergency like an earthquake, are they less likely
4 to be allowed to come here for those reasons,
5 let's say for TPS had no--Cuba had it, Nicaragua
6 have it, Haitians have a problem keeping it, or
7 you don't know?

8 GETACHEW FIKREMARIAM: Well in
9 fact, because of the language barriers also, most
10 of our clients are Francophone African speaking
11 clients, so there is the language barrier also and
12 sometime there aren't many organization who [off
13 mic] provides services for this particular kinds
14 of community so they are--really they have a hard
15 time coming out and also seeking for assistance.

16 COUNCIL MEMBER WILLIAMS: Does
17 anybody have numbers that say whether that's true
18 or not?

19 JIMMY YAN: This is completely
20 anecdotal, but I know that in Staten Island
21 there's also a large Liberian community that year
22 after year faces incredible difficulties renewing
23 TPS status, so...

24 JOJO ANNOBIL: Well I know
25 Liberians were granted TPS years back, and even

1
2 after the government decided not to grant them TPS
3 any longer, the President by his active power was
4 able to give them something called Deferred
5 Enforce Departure, which is DED very similar to--
6 sorry, very similar to TPS. And I also know, for
7 example, that Sudanese nationals also have TPS,
8 currently have TPS. But I don't know in terms of
9 numbers how many people benefit from TPS.

10 COUNCIL MEMBER WILLIAMS: Well it'd
11 just be something I would be interested to note
12 comparing countries percentage wise but--

13 [Crosstalk]

14 JOJO ANNOBIL: --might be able to
15 furnish you with that information.

16 COUNCIL MEMBER WILLIAMS: I would
17 love to see that.

18 JOJO ANNOBIL: Sure.

19 COUNCIL MEMBER WILLIAMS: So I can
20 speak from knowledge, as opposed to--

21 JOJO ANNOBIL: Sure.

22 [Crosstalk]

23 COUNCIL MEMBER WILLIAMS: --I
24 think. Also, so obviously this should be extended
25 and there's no reason why it shouldn't. I have

1
2 two questions. Is there any cost to the federal
3 government to expand this? And then one of the
4 biggest reasons I heard as we were doing this,
5 people just weren't availing themselves of TPS,
6 which doesn't mean that it should be ended because
7 it should be made available when more people feel
8 comfortable. But that was one of biggest reasons,
9 but they're saying they extended it one time and
10 we didn't have the turnout that we wanted it to
11 be. And so I wanted to know if there was any cost
12 to extending it to the federal government.

13 JOJO ANNOBIL: I don't think we can
14 look at it in terms of costs because, if you look
15 at countries that are presently designated for
16 TPS, some of them have been on the list for
17 probably 11 years now--El Salvador, Nicaragua--and
18 so I don't think it's in terms of cost. I think
19 it's in terms of the fact that the Haitian
20 population believe that they've always been
21 singled out and not been given the benefits they
22 deserve.

23 I believe even before the
24 government decided to grant TPS [off mic] to
25 Haitians, those who were against it were

1
2 indicating that if the government granted to TPS,
3 Haitians will take boats and come, arrive on the
4 shores in Florida. That didn't happen because, in
5 essence, what it actually did was that it allowed
6 people to work legally for the first time and to
7 be able to send money back home, keeping people
8 back home where they are comfortable rather than
9 bringing them here--somebody talked about language
10 barriers, sometimes there are huge language
11 barriers that people have to overcome in
12 uncomfortable situations.

13 So I think in terms of cost, I
14 don't think the federal government can use cost to
15 indicate that they would not grant TPS to Haitian
16 nationals. Currently, I believe only 54,000
17 applications were granted. The estimate in the
18 beginning was nearly 200,000. Why we didn't
19 arrive at that figure, a lot of people have given
20 different reasons, some of them being that
21 Haitians or immigrants are still fearful of the
22 federal government and don't believe that--or
23 believe that this is just a way of getting them
24 out of the shadows and probably deporting them.

25 And so we still have a lot of work

1
2 to do to get people out if Haiti is designated for
3 TPS again. I hope that answers your question.

4 COUNCIL MEMBER WILLIAMS: Yes, I
5 think Haitians were right to believe that they
6 were singled out and not getting what they should
7 have gotten. In terms of some of the other
8 countries--Nicaragua, El Salvador--who have had it
9 for 11 years, what are the numbers, are there
10 still Nicaraguans and El Salvadors by applying now
11 or have they been increased, like is there any
12 comparison that can say, we did it for them and
13 not for Haiti?

14 JOJO ANNOBIL: The way the TPS
15 program runs is that when the government decides
16 to redesignate the country, it's only those who
17 previously applied for the status who are now
18 eligible for re-registration or someone who did
19 not apply for registration in the beginning only
20 because the person was in some kind of lawful
21 status. And so even though the person was still
22 eligible for TPS, the person did not apply for it,
23 so the numbers don't usually increase.

24 What we had hoped was that USCS has
25 an interpretation of who can change status in the

1
2 United States and that if you came here without
3 status, meaning you came with someone else's
4 passport or just walked across the border--Mexico
5 or Canada--you can't change your status. We are
6 advocating that TPS gives you some form of a
7 lawful status and that should be counted as an
8 admission. We should allow these--

9 COUNCIL MEMBER WILLIAMS:

10 [Interposing] I'm sorry, 'cause I just want to be
11 clear.

12 JOJO ANNOBIL: Sure.

13 COUNCIL MEMBER WILLIAMS: So if the
14 TPS is extended, you're saying new people can't
15 apply?

16 JOJO ANNOBIL: Well you have to
17 have been illegible for TPS--

18 COUNCIL MEMBER WILLIAMS: Yes.

19 JOJO ANNOBIL: --you must have
20 been--

21 COUNCIL MEMBER WILLIAMS: Eligible.

22 JOJO ANNOBIL: --eligible prior to-

23 -

24 COUNCIL MEMBER WILLIAMS: January
25 12--

1

2 JOJO ANNOBIL: Yes.

2

3

COUNCIL MEMBER WILLIAMS: --yeah.

4

5

JOJO ANNOBIL: So when there's a
redesignation, those people who currently have

6

TPS--

7

COUNCIL MEMBER WILLIAMS: Yeah.

8

JOJO ANNOBIL: --can re-register.

9

COUNCIL MEMBER WILLIAMS: Okay.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JOJO ANNOBIL: The other people who
were here and were eligible for TPS, but for some
reason, let's say the person had some form of
status, let's say the person was a lawful
permanent resident and has since lost that status
either because, for example, the person was
married to a U.S. citizen spouse, but was not able
to lift the conditions on the conditional lawful
permanent resident, that person, if TPS is
redesignated for Haiti, can apply for TPS.
They're not someone who basically wasn't here and
because it's redesignated, things that they can
apply, it's only for people who were here lawfully
and for some reason weren't able to do it plus
people who have TPS currently.

COUNCIL MEMBER WILLIAMS: But if I

1
2 applied and I have it and they don't re-extend it,
3 I still have it.

4 JOJO ANNOBIL: No.

5 COUNCIL MEMBER WILLIAMS: It's
6 done.

7 JOJO ANNOBIL: Well at the end of--
8 on July 20th, if the federal government decides
9 not to extend TPS, then the employment
10 authorization document they have is basically up
11 to July 20th, it's gone and so you are not
12 eligible to work without authorization and you
13 could be deported, which is what TPS prevents,
14 deportation.

15 COUNCIL MEMBER WILLIAMS: If it
16 wasn't extended, is there anything else the
17 federal government could do to help?

18 JOJO ANNOBIL: If the Secretary of
19 the Department of Homeland Security decides not to
20 extend it, then the next thing that you'd be
21 looking at is similar to what the Liberians have,
22 Deferred Enforce Departure, which is also very
23 similar to TPS, also allows them to work and also
24 prevents them from being deported, but that is the
25 only other thing.

1
2 COUNCIL MEMBER WILLIAMS: I am just
3 flabbergasted that the United States would even
4 consider sending anybody back to a country that's
5 been devastated. One, that has been devastated,
6 and, two, in many aspects because of our country
7 they be devastated. So it's just an amazing thing
8 for me, so I really hope that it does get extended
9 and I thank you for clarifying for some things
10 that I didn't know.

11 And I personally helped a friend of
12 mine and his mom after living here for 17 years or
13 so, they got picked up and sent to a deportation
14 center and was about to be sent out. They were
15 able to make some phone calls. He was here, they
16 got duped by a lawyer who is now in jail, so it's
17 a bunch of stuff screwed up, he was married to a
18 citizen, they had some problems trying to make it
19 happen. And I just can only imagine if he didn't
20 know someone like me or people didn't have
21 connections, what would've happened. This is a
22 terrible, terrible situation.

23 But thank you all for the
24 testimony. I apologize that I'm going to have to
25 leave myself.

1
2 CHAIRPERSON DROMM: Thank you,
3 Council Member Williams. Council Member Eugene.

4 COUNCIL MEMBER EUGENE: Thank you
5 very much, Mr. Chair. So let me first thank you
6 again, each one of you for coming to support these
7 two legislation, Resolution 548 and Resolution
8 568. And I want to thank again, Mr. Chair, for
9 holding these very, very, very important hearing.

10 I believe that it is not fair, it
11 is not fair, not good for United States, not good
12 for those family whose members have been deported.
13 Just imagine people have been living in the United
14 States for so long, being part of the fabric of
15 this country, having children, having families,
16 when you deport those people, who are they? They
17 are fathers, they are mothers, they are children.
18 This is breaking families, and we in the United
19 States, we stand for family values.

20 If we are talking about family
21 values, we have to remember, we have to know that
22 we have to keep the families together and when you
23 deport the mothers, the fathers, you are
24 traumatizing the children. The children, who are
25 going to raise them? And we know [off mic]. When

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

children don't have fathers and mothers and mothers in the house, those children, they are prone to go to any negative situation, to go to negative [off mic].

My opinion is we shouldn't deport people from United States, give them the opportunity like those who came for the first generation, second generation, for those who came before us, give them also the opportunity to have the piece of the American dream.

With respect to the Haitian situation, I would be remiss if I don't take the opportunity to thank each one of you here, the chairman and each one of you here, for everything that you did to alleviate the suffering of my Haitian brothers in Haiti. We all know that on January 12 what happened, the horrific earthquake that devastated Port-au-Prince, the largest part of Haiti, and after the earthquake we have the outbreak of cholera, and now the political crisis. As we speak, Haiti is not completely stable.

I was in a communication yesterday with my contact in Haiti and also people from both candidates for presidency, we are trying to figure

1

2 out how to bring Haiti in a stable situation.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

On January 6, I believe, I'm not sure about the date, I had the opportunity to participate in a meeting in the White House with Vice President Joe Biden, Homeland Security, State Department, and U.S. [off mic]. Vice President Joe Biden said that the interest of United States and interests of Haiti are linked together. It is in the interest of United States to do everything to help Haiti get back on track. And when we mention, for example, one of my questions was why they are deporting Haitian to Haiti right now, because they say that they are deporting Haitian to Haiti to protect the safety of United States. How we can protect the safety United States if we don't protect the safety of Haiti, if we say that the interests of those countries are linked together?

And I went to Haiti myself recently, up to now, there are people who are still living under the tents in the same condition, like in the aftermath of the earthquake, in need of basic necessity--clean water, access to medicine. When you see, for

1
2 example, eight or nine people sleeping under a
3 tent--I'm talking about children, pregnant women,
4 seniors, sick people all together--and you know
5 the outpouring of support that have been sent to
6 Haiti, and I think that you are right, Jojo, when
7 you said that Haitian people believe that they
8 have been singled out, undermined, and [off mic].
9 This is exactly the true feeling of the Haitian
10 community. And we said that to the Vice
11 President.

12 And I think today it is very
13 important that we come together again to ensure
14 that the TPS be [off mic]. It is very important.
15 Haiti is not safe for people to get back. Haiti
16 is still struggling to even to remove the [off
17 mic] in Haiti. It is not done yet, there are
18 still people under [off mic], they're still,
19 nothing has been done. And this is the reason I
20 think that it is very important that we come
21 together and we keep the momentum going.

22 Another thing that I want to
23 mention, the other nation that's been receiving
24 TPS for many years. It is fair enough, what we
25 are asking, we are asking for justice for

1
2 fairness. This should be [off mic] TPS for
3 Haitian people. We know that Haitian people have
4 not been treated the same way. When we go to
5 Miami, we know that there is what they call the
6 wets food and dry food. When people come from
7 other countries, when they get to the land, they
8 get everything, but if they are Haitian, they go
9 to jail.

10 And I think that it is an
11 opportunity for all of us--for the elected
12 official, the State Department--to do the right
13 thing and to stand for the American philosophy,
14 American ideal: access to everyone, equal
15 opportunities to everyone.

16 And again, I want to thank you from
17 the bottom of my heart and I think that the chair
18 and I and the members, we're going to review the
19 [off mic] the resolution and see if we can include
20 also the suggestion that you made for our bill. I
21 know that the chair is going to [off mic] also the
22 situation of ICE trying to separate to [off mic]
23 resolution to separate the duty of the police
24 officers and the immigration officers, I think
25 this is a very wonderful suggestion, but we have

1

2

to work on that, and I know that the chair is
going to take the lead on that.

3

4

5

6

7

And again, to all of you, thank you
very much. I don't have any questions, but again,
I commend you, I congratulate you. Thank you so
much.

8

9

10

11

12

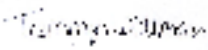
13

CHAIRPERSON DROMM: Thank you,
Council Member Eugene, for your beautiful plea for
Haiti, thank you. And thank you to the panel, and
I don't think we have any more--no, and with that,
we are going to adjourn, thank you.

MALE VOICE: Thank you.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date March 14, 2011