

**Testimony of the New York Immigration Coalition
In Support of Immigration Legal Services
(February 5, 2018)**

Dear Members of the Senate and the Assembly,

On behalf of the New York Immigration Coalition, a statewide organization representing over 200 non-profit organizations who work with immigrant New Yorkers, we write to urge the inclusion of funding for immigration legal services in the FY 2019 New York State Budget.

Never has the need to fund immigration legal services been greater. Because immigration law is civil and overseen by administrative courts, Constitutional protections do not apply. This includes the right to counsel, right to a speedy trial, or protection from cruel and unusual punishment. Nonetheless, and despite its civil designation, the immigration legal system is quasi-criminal in nature. Denials of applications for benefits can lead to deportation proceedings. These proceedings occur in an adversarial context, with the government being represented by a trained attorney regardless of the immigrant's ability to obtain legal representation. Arrests by Immigration and Customs Enforcement (ICE) have every semblance of a criminal arrest and can lead to weeks or months of detention, often in county jails or private detention centers many states away.

Such a system is primed for overreach. For example, ICE warrants are administrative, meaning they are not reviewed by an independent fact-finder who can determine whether probable cause has been established. Within 100 miles of the border, Border Patrol can suspend constitutional protections and stop anyone they deemed unlawfully present in the United States, often based on the color of their skin or the language they are speaking. At the same time, in the last year attorneys have seen the well-established interpretations of law, including state law, be revisited, new policies with burdensome requirements be rolled out, all as immigration applications adjudications have slowed down significantly.

To add to the fear and feeling of unrest within immigrant communities, arrests by ICE agents have increased by 25% over Fiscal Year 2016. These arrests by ICE have become far more widespread, including by agents who team up with local law enforcement, by agents going to New York's courthouses, and for individuals who had been checking-in routinely with ICE for many years while under orders of supervision (immigration's version of probation) while continuing to live their lives in the United States.

Once placed in the deportation pipeline, having an attorney on a case significantly affects the outcome. A recent study on the impact of the New York Immigrant Family Unity Project (NYIFUP) in New York City, a state-wide version of which was fully funded for the first time in FY 2018, shows that having an attorney increased chances of winning and gaining the ability to legally remain in the US by 1,100%. The reasons for this discrepancy are clear. Once arrested and placed in deportation proceedings by ICE, and without assigned counsel, it is up to the individual to defend themselves. This includes providing evidence to rebut the government's assertion that they should be deported (even as they are detained in a jail cell that can be

hundreds of miles, and sometimes several states, away from family members and friends), establishing that they qualify for legal status in the United States or that the government is wrong in alleging that the legal status they were previously in has expired, taking testimony for themselves and any witness they wish to call as well as cross-examining government witnesses, and making arguments of law.

Simply put, the need for lawyers is necessary to ensure that due process is respected and that immigrant New Yorker's rights are upheld even as federal policies continue to disproportionately target them.

In FY 2018, New York made an extraordinary investment into immigration legal services, but unfortunately a combination of bureaucracy and geographic barriers has mitigated the impact of the funds. Local and State Government invested a combined \$65.2 million for immigration legal services, including nearly \$28 million from the State, \$47.5 million from the City, and various other funding from counties and municipalities.

The main barriers that immigrant New Yorkers continue to face in obtaining immigration-specific legal services are:

- Geographic: 75% of providers are located in New York City, leaving those living in the rest of the state severely underserved. The more rural the area, the less likely there is to be even one immigration legal service provider.
- Financial: For those New Yorkers who cannot access legal services or are not eligible for services from a non-profit, financial considerations prevent many from engaging private bar attorneys.
- Long wait lists: Organizations often close intakes or have to wait several weeks before being able to give initial appointments.

For non-profits that do engage in this work, the main challenges to increasing the rate of representation to immigrant New Yorkers are:

- Lack of general funding that is flexible enough to allow providers to address the need in front of them, instead of meeting pre-established deliverables by case-type.
- Lack of funding to support supervisory work. Currently 75% of organizations expect their supervisors to carry full or nearly full caseloads in addition to their supervisory responsibilities. This leaves them little time to properly mentor and train newer attorneys or pro bono attorneys, which in terms limits the growth of the non-profit immigration legal field.
- Lack of physical space to support expansion, and lack of technology and partnerships to expand services beyond their geographic areas.
- Lack of funding for support staff and support services such as English for Speakers of Other Languages (ESOL) classes, mental health professionals for evaluations and support, case managers, social workers.

This last point has become particularly crucial in 2018 because the changes in policy and approach to immigration enforcement have significantly impacted lawyers' abilities to perform

even their basic function of providing legal counsel. Because the interpretations of law and guidance are constantly changing in the new administration, because the immigration agencies are using all tools possible to slow adjudications - including issuing requests for additional evidence or notices of intent to deny which must be responded to, requiring interviews for even the simplest application such as a green card renewal, and not responding to stakeholder questions or outreach - each case an attorney works on now takes much longer than before. This new work is added to the near constant rapid response, crisis response, and know your rights presentations that attorneys must now take on to preserve their clients' rights.

The result is that, because of inflexible funding streams tied to high deliverables, attorneys have less time and are thus less efficient in pushing back at bad law or policy, to the detriment of their client and all others similarly situated, and allowing these new challenges to perpetuate and grow. At the same time, attorneys are burning out and increasing numbers of experienced attorneys are leaving the field entirely, further shrinking the pool of expertise and availability to mentor newer lawyers.

In Fiscal Year 2018, both New York City and New York State significantly expanded funding streams for legal service providers. However, challenges remain to ensure the effectiveness of these funds.

Neither the City or the State have yet to fully detail the types of services offered through their respective funding streams, or, in the case of the State, what the geographic distribution of the funds will be. In New York City, half of the funds have yet to be allocated as of the time of this testimony. However, to ensure that the funding has the most impact on New York's communities, the New York Immigration Coalition makes the following recommendations for Fiscal Year 2019:

1. **Renew the funding for the Liberty Defense Project (LDP)** that was first included in last year's budget. Since immigration cases takes 1 - 4 years on average to resolve, not renewing the funding would effectively leave those who began to be served by it in FY 2018 without recourse. In addition, the grantees have spent a year working with the Governor's office to set up a legal services program from the ground up, and several of them advanced money to re-grantees to honor the purpose of the program even as it was still going through bureaucratic stages. To not renew the funding would not only leave the individuals and families receiving benefits from the LDP without assistance, but it would also force the grantees to lose the positions they created and hired under the grant. The renewal is necessary to the long-term success and stability of the organizations it funds, and should be for **\$12 million** to include:
 - a. \$4 million to the Vera Institute to run the New York Immigrant Family Unity Project;
 - b. \$2 million to the Hispanic Federation for legal services;
 - c. \$1 million to Northern Manhattan Coalition for Immigrant Rights for legal services;
 - d. \$1 million to the Empire Justice Center for legal services;

- e. \$2 million to Catholic Charities , which is the total of the \$1 million allocated in last year's budget for legal services and \$1 million raised by the Governor in private funds to establish and operate a state-wide pro bono attorney network;
 - f. \$1 million to the New York Immigration Coalition for legal services, which was reduced to \$700,000 last year so that some funding could be given to the Asian American Federation specifically for services to Asian communities;
 - g. \$1 million to the Asian American Federation to provide legal services to the Asian community, which was left out of last year's budget.
1. **Add an additional 8 million** to be allocated through a competitive bidding process, which would ensure that organizations currently unable to meet the needs of their communities have access to funds and would also increase transparency in the funding process.
 2. **Ensure that funding is not tied to high case numbers**, but rather contracts that rely on the expertise of the providers to use the funds in the way that best serve their entire community, and that grows the field so that more knowledgeable staff attorneys continue to take on representation of immigrants.
 3. **Include an increase in the budget of the Office for New Americans to \$10 million** in the budget to allow them to help more New Yorkers who are eligible for citizenship to apply for it.
 4. **Allocate \$1 million for a hotline** that would be open 24 hours and staffed by attorneys who could act as crisis counselors for immigrants unsure what to do when they have an interaction with Immigration and Customs Enforcement.

We thank you for your time and attention to this testimony. For any follow up questions or comments, please do not hesitate to contact Camille Mackler, Director of Immigration Legal Policy at the New York Immigration Coalition, at cmackler@nyic.org.

Respectfully submitted,

The New York Immigration Coalition