

Testimony of the New York Immigration Coalition
In Support of Immigration Legal Services
(January 24, 2019)

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 renewed and increased 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 deem suspect of being 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 two years 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 increased by 25% between Fiscal Years 2016 and 2017, and again by 11% between Fiscal Years 2017 and 2018. In the New York City area alone, arrests increased by 35% between Fiscal Years 2017 and 2018. 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.

In addition to the interior enforcement which targets mainly long-standing members of our communities, the Department of Homeland Security (DHS) brought the Southern Border crisis directly to New York this past summer, when they transferred a total of 394 recently-arrived asylum seekers to the Albany County Jail. These men and women, who included separated parents, detainees as young as 18 years old, and highly traumatized individuals, presented new challenges to community groups attempting to serve them as they fought for their ability to simply apply for asylum in the United States from behind bars.

Regardless of how long they have been in the country, however, once placed in the deportation pipeline these New Yorkers all face the same challenge of defending themselves against deportation charges in one of New York's six immigration courts. In those instances, having an attorney on a case significantly affects the outcome. A study published last year 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.

Detained immigrants are not the only ones who need lawyers, however. According to the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, as of November 2018 there were over 108,000 cases pending in front of New York's immigration courts. Over 105,000 of those were non-detained individuals facing one of 34 judges in the New York City court, which holds jurisdiction over the city, Long Island, and the lower Hudson Valley. Nearly 2,000 cases were non-detained and before one of the 2 judges in the Buffalo immigration court, which has jurisdiction over the remainder of the state. These numbers are sure to grow as the Federal Government shutdown endures, forcing hearings that have been scheduled for years to be cancelled and postponed to an unknown future date, while immigration enforcement continues unabated. At

the end of the first month of the shutdown, over 5,000 cases had already been cancelled. While non-detained individuals may have a better chance of finding counsel while their cases are pending, indigent and low-income immigrants struggle to find affordable and trustworthy legal representation and face the same challenges as their detained counterparts.

Finally, only about 10% of estimated undocumented immigrants in New York State are facing deportation proceedings. The remaining estimated 900,000 also need access to lawyers to hopefully avoid being placed in proceedings in the first place. There is no way to estimate how many may unknowingly qualify for immigration benefits, but undocumented immigrant New Yorkers routinely report massive difficulties in accessing counsel to simply determine their options and make choices for themselves and their families. What is more, statistics from the Federal Trade Commission (FTC) show that the lower the prevalence of lawyers in an area, the higher the incidences of immigration services fraud, which heightens risk of losing eligibility for future benefits and puts an individual at risk for deportation.

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 2019, New York made an extraordinary investment into immigration legal services. Local and State Government invested over \$65 million for immigration legal services, including nearly \$28 million from the State, \$47.5 million from New York City, and various other funding from counties and municipalities. State funding was mainly funneled through New York's Office for New Americans (ONA), with \$6.4 million being allocated to ONA programming and an additional \$10 million for the Liberty Defense Project (LDP), which is also administered through ONA. The remaining funding was made through appropriations to specific organizations. In December, 2018 two Requests for Applications were issued by ONA for legal services: \$3 million for the ONA Legal Counsels program, which will be expanded from 6 attorney positions to 13, as well as \$2.8 million for legal positions through the LDP. In addition, \$4.2 million was granted to the Vera Institute to continue running the state-wide New York Immigrant Family Unity Project, which provides universal representation to detained immigrants facing deportation in New York, and \$2 million will go to a network of 27 ONA "Opportunity Centers", which provide citizenship application assistance through the State.

To ensure these investments have a meaningful impact, it is crucial that they be renewed for one very specific reason: immigration cases, whether a deportation proceeding or an affirmative application for an immigration benefit, take years to resolve. By not renewing the funding now, the practical effect would be that New Yorkers who were able to gain access to counsel through these

programs will effectively lose their lawyers halfway through their cases. In addition, while the investments are significant, they remain insufficient to meet the huge need, particularly in areas outside of New York City.

Beginning in 2017, the New York Immigration Coalition began surveying both immigrant communities and legal service providers to determine the challenges both face in obtaining and providing legal representation. The surveys showed that:

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 and are limited by existing funding streams to serving only residents of the five boroughs. This leaves 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. The lack of access to drivers licenses or reliable transportation further isolates these vulnerable New Yorkers.
- 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 2019 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 speed up deportations and slow down 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. This is particularly an issue for areas in Upstate New York, where several law schools struggle to find local jobs for their recent graduates due to the lack of available supervision within organizations.

In Fiscal Year 2019, 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.

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 \$10 million in funding for the Liberty Defense Project (LDP)** that was first included in the FY 2018 budget and renewed again last year. Since immigration cases takes 1 - 4 years on average to resolve, not renewing the funding would effectively leave those already receiving services through the program without recourse. Priority should be given to the groups originally named in the FY 2018 budget as they have spent nearly two years working with the Governor's office to build the program and have made hires and taken on caseloads that rely on the continued funding.
2. **Add an additional 10 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.

3. **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.
4. **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.
5. **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. In addition, many of these findings can be found in our report: “No Safe Harbor: Challenges in Obtaining Legal Representation in New York State” available at www.nyic.org/nosafeharbor.

Respectfully submitted,

The New York Immigration Coalition