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September 24, 2013

The Task Force to Expand Access to Civil Legal Services in New York
c/o Jessica Klein, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004-2498

Re: “Bridging the Gap: Immigration Issues Are Civil Access-to-Justice Issues”

Task Force to Expand Access to Civil Legal Services in New York
The Chief Judge’s Hearings on Civil Legal Services

Dear Ms. Klein and the Task Force,

My name is Mark Noferi. I am a member of the Immigration and Nationality Committee (the “Committee”) of the New York City Bar Association (“City Bar”), and chair its subcommittee on detention and representation.¹ On behalf of the Committee and its Chair, Professor Lenni Benson,² I submit this letter to the Task Force in connection with the Chief

¹ I am a Visiting Associate Fellow with the Center for Migration Studies (cmsny.org), an interdisciplinary research organization and think tank in New York. Previously, I taught Constitutional Civil Rights and Immigration at Brooklyn Law School and supervised immigrants’ rights cases at Seton Hall’s Center for Social Justice.

² Lenni B. Benson is a Professor of Law at New York Law School (http://www.nyls.edu/faculty/faculty-profiles/faculty_profiles/lenni_b_benson/) and directs its Safe Passage Project, which provides representation to unaccompanied minors in immigration proceedings. Among other publications, in 2012 she co-authored a report for the Administrative Conference of the United States that comprehensively studied immigration adjudication and

Judge's Hearings on Civil Legal Services (specifically the October 1, 2013 Second Department hearing in Queens).³ Please accept this letter as a written submission.

We applaud this Task Force's and Chief Judge Lippman's exemplary work to expand access to civil legal services and ensure equal access to justice in the Empire State.⁴ As City Bar President Carey Dunne testified, this Task Force's efforts have made New York a "nationwide leader in the provision of civil legal services to the poor."⁵ Since this Task Force began work, the New York judiciary increased legal services funding by \$25 million over two years, which City Bar called a "remarkable result" in these difficult times.⁶

We also encourage this Task Force (and the civil access-to-justice community broadly) to more fully incorporate civil immigration proceedings into its work, building upon this Task Force's study of other federal civil proceedings.⁷ To its credit, this Task Force has from the outset considered immigration proceedings as within its purview, and identified immigrants as a group "most in need of legal assistance."⁸ It is a particular need in New York State, comprised of 22 percent immigrants (4.3 million residents), the second-highest percentage in the country.⁹

We believe even stronger collaboration between the immigration access-to-justice community and broader civil access-to-justice community can benefit both. Indeed, we view these as one community, not two. Immigration issues are civil access-to-justice issues. Both seek to deliver legal services where the "essentials of life" are at stake—housing, family, subsistence income, health care and education.¹⁰ Deportation proceedings encompass all these essentials and more. Yet both also seek to frame the "justice gap" as impacting society beyond individual cases. And both seek creative solutions to address the "justice gap," as both immigration and civil access-to-justice receive increased public attention and financial support.

provided recommendations to improve it. See Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* (2012) ("Benson and Wheeler"), at <http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>.

³ See Notice of Public Hearings, The Chief Judge's Hearings on Civil Legal Services, at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS_PublicHearingNotice-2013_1.pdf.

⁴ The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York* 6 (November 2010) [hereinafter "Task Force 2010 Report"], at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT.pdf>.

⁵ Carey Dunne, President, New York City Bar, *City Bar President Carey Dunne Testifies at Chief Judge's Hearing on Civil Legal Services* (Oct. 1, 2012), at <http://bit.ly/1a1l5qY>.

⁶ New York City Bar, *City Bar President Applauds Increase in Civil Legal Services Funding in Judiciary Budget* (Nov. 30, 2012), at <http://bit.ly/1a1loBY>.

⁷ The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York* 20 (November 2012) [hereinafter "Task Force 2012 Report"] (articulating economic benefits of legal aid in Social Security hearings), at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.

⁸ Task Force 2010 Report at 11 (surveying residents about various legal problems, including immigration).

⁹ Jeanne Batalova and Alicia Lee, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (March 2012), at <http://www.migrationinformation.org/usfocus/display.cfm?id=886#6b>.

¹⁰ See Task Force 2010 Report at 5.

Since the Task Force’s 2010 report, the value of collaboration and mutual study has only increased. In the immigration field, increased enforcement, especially through federal partnerships with state and local police, has increased the need for representation in proceedings.¹¹ Yet also, innovative immigration projects, such as Second Circuit Judge Robert Katzmann’s New York Immigrant Family Unity Project (“NYIFUP”), can now serve as models for broader civil justice reform.¹²

With these broad principles in mind, we set out three points below. First, we encourage the Task Force to more fully incorporate civil immigration proceedings into its work, because of the enormous social and economic impact of New Yorkers’ inability to access immigration legal services. Second, we salute this Task Force for fostering a more holistic, accurate debate regarding costs *and* benefits of access to justice funding, and highlight City Bar’s similar work in the immigration field. Third, we encourage this Task Force to study and learn from innovative immigration projects, and specifically to support the NYIFUP as the Task Force advocates to increase access-to-justice funding.

* * *

City Bar’s advocacy for immigration access-to-justice naturally follows its longstanding position that lawyers provide value, both to those unable to adequately represent themselves and society at large. In 1959, four years before *Gideon v. Wainwright*,¹³ City Bar advocated providing appointed counsel to criminal defendants because it reflected society’s interest in “fundamental human rights.”¹⁴ In 2006, City Bar advocated a right to appointed counsel in civil proceedings, co-sponsoring the American Bar Association’s resolution.¹⁵ More recently, City Bar called for appointed counsel to all indigent individuals in immigration removal

¹¹ “[T]he Secure Communities program will likely result in a massive expansion of the immigration detention and deportation system in New York City and exacerbate problems with the criminal justice system.” NYU School of Law et. al., *Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City* 4 (July 2012), available at <http://immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf>; see also *id.* at 1 (“ICE enforcement in New York City is terrorizing the city’s immigrant community”).

In 2010, this Task Force found that immigrants reported other civil legal problems at greater rates than immigration legal problems (e.g., deportation). Task Force 2010 Report at 8. It is unclear whether this remains true.

¹² New York City Bar Association, *City Bar Statement Praising New York City Council’s Efforts to Fund Immigration Public Defender System, and Urging Nationwide Action* (July 19, 2013), at <http://bit.ly/1dKcHh>.

¹³ 372 U.S. 335 (1963).

¹⁴ New York City Bar, Special Committee to Study the Defender System, *Equal Justice for the Accused* 24 (1959).

¹⁵ *ABA Resolution on Civil Right to Counsel*, 15 Temp. Pol. & Civ. Rts. L. Rev. 507 (2006).

proceedings,¹⁶ following its 2009 report arguing for appointed counsel to immigration detainees,¹⁷ and calls from other nonpartisan and bipartisan organizations.¹⁸

City Bar's Justice Center also represents immigrant detainees and helps them secure *pro bono* help from leading New York City law firms.¹⁹ Additionally, our Immigration & Nationality Committee, to expand the bar's expertise, is hosting a training session on representing immigrants at bond hearings, and providing free trainings to attorneys who may encounter immigrant children (partnering with several non-profit organizations). For example, with the Office of Indigent Representation, we are providing trainings in Manhattan and the Bronx this month, and in November, with the County Lawyers Association, we will provide in-depth training on immigration issues facing children in family court proceedings.

I. City Bar Encourages the Task Force to Further Incorporate Civil Immigration Proceedings Into Its Work, Because of Their Social and Economic Impact on New York State

First, we encourage the Task Force to further incorporate civil immigration proceedings into its advocacy to close New York's "access-to-justice" gap, because of the enormous social and economic impact on individuals and the state at large.

New York State is comprised of 22 percent immigrants (4.3 million residents), the second-highest percentage in the country.²⁰ The percentage is even higher in New York's Second Department (host of these hearings), which includes counties like Queens and Kings, the second- and fourth-strongest immigrant counties in the nation.²¹ There is significant overlap

¹⁶ New York City Bar Association, *Letter to Senate Judiciary Committee Advocating Appointed Counsel* (Apr. 24, 2013) ("City Bar Letter"), available at <http://bit.ly/105sqW0>; Carey Dunne, President, New York City Bar Association, *President's Letter: The City Bar Takes on Immigration Reform* (June 2013), at <http://bit.ly/1aF1c51>.

¹⁷ Association of the Bar of the City of New York, Committee on Immigration & Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) ("City Bar Report"), available at <http://www.nycbar.org/pdf/report/uploads/20071793-ReportontheRighttoCounsel.pdf>.

¹⁸ See American Bar Association Commission on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*, 5-11 (Feb. 2010) ["ABA 2010 Report"], at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.aut_hcheckdam.pdf; The Constitution Project, *Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings* (October 2009), at <http://www.constitutionproject.org/wp-content/uploads/2012/10/359.pdf>.

¹⁹ City Bar Justice Center, *Varick Removal Defense Project*, at <http://www2.nycbar.org/citybarjusticecenter/projects/immigrant-justice/varick-removal-defense-project>.

²⁰ Jeanne Batalova and Alicia Lee, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (March 2012), at <http://www.migrationinformation.org/usfocus/display.cfm?id=886#6b>.

²¹ Forty-eight percent of Queens County's residents are immigrants (over 1 million foreign-born residents), making it the United States' second-strongest immigrant county. *Id.* New York's Second Department also includes counties like Kings, the fourth-strongest immigrant county in the United States (with 38 percent foreign-born, nearly 950,000 residents), Westchester (24.2 percent foreign-born, over 231,000 residents), Nassau (21.5 percent foreign-

between those unable to access civil legal aid and those specifically unable to access immigration help. This Task Force's first report found that immigrant households are more likely to experience civil legal problems (including immigration issues), but less likely to take action.²²

Moreover, immigration proceedings and associated detention have recently exploded. Since the Task Force's 2010 report, enforcement has increased and new information has come to light. As of August 2013, there were 50,529 pending cases in New York immigration courts,²³ with over 16,000 added in the last fiscal year.²⁴

This Task Force recommended additional funding for legal assistance in proceedings with the "essentials of life" at stake, i.e., housing, family, subsistence income, health care and education.²⁵ Immigration deportation proceedings involve all these and more, permanently—indeed, "all that makes life worth living," as the U.S. Supreme Court said.²⁶ Someone who is deported, often a long-time US resident with a green card, loses his or her home, friends, family (even US citizen family), job, and property, and is sent to a "homeland" in which (s)he may have no ties and may be persecuted.²⁷

Deportation then has impacts beyond those who leave, on those who remain. Families are abandoned, economically and personally, to great human and social cost. Over a five-year period, the parents of over 7,000 US citizen children in New York were deported, with more every day. Indeed, 87 percent of the cases involving US citizen children ended in deportation.²⁸

Remaining family members then may lose their primary breadwinner, consequently lose housing, and may need public benefits to survive. Sadly, children of deported U.S. parents end up in foster care—5,000 in 2011.²⁹ Foster care for one child costs \$25,000 per year or more.³⁰

born, over 290,000 residents), and Suffolk (14.2 percent foreign-born, nearly 213,000 residents). See American Community Survey, available at <http://www.census.gov/acs/www/>.

²² Lake Research Partners, *Civil Legal Needs Among Low-income New York State Residents: Findings from a statewide survey of Low-income New York residents* 4 (Oct. 2010), in Task Force 2010 Report, Appendix 17, <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-Appendices.pdf>.

²³ TRAC Immigration, *Immigration Court Backlog Tool* (through August 2013), at http://trac.syr.edu/phptools/immigration/court_backlog/.

²⁴ TRAC Immigration, *U.S. Deportation Proceedings in Immigration Courts* (through August 2013), at http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php.

²⁵ Task Force 2010 Report at 5 ("The Task Force recommends that this new funding be targeted to providing legal assistance to address the 'essentials of life': (i) housing (including evictions, foreclosures, and homelessness); (ii) family matters (including domestic violence, children, and family stability); (iii) access to health care and education; and (iv) subsistence income (including wages, disability and other benefits, and consumer debts.").

²⁶ *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (Brandeis, J.); see also *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).

²⁷ City Bar Letter at 2.

²⁸ Moreover, the parents of over 10,000 US citizen children were detained without bond. *Insecure Communities* at 3.

²⁹ City Bar Letter at 2, citing Seth Freed Wessler, *Thousands of Kids Lost From Parents In U.S. Deportation System*, COLORLINES, Nov. 2, 2011, available at http://colorlines.com/archives/2011/11/thousands_of_kids_lost_in_foster_homes_after_parents_deportation.html.

The impact extends beyond family. Immigrants who own businesses—and seventeen percent of small businesses are immigrant owned—may have to close the business, liquidate assets, and fire workers, resulting in significant economic loss.³¹

Moreover, immigration proceedings, unique among civil proceedings, routinely involve detention. Detention, a.k.a. incarceration, exacerbates the stakes and the need for counsel.³² It restricts personal liberty in the most severe way our society employs. Additionally, detention makes it harder to secure counsel, and then without counsel, harder to collect evidence and litigate a case.³³ Transfer to rural detention facilities outside New York compounds this problem.³⁴ And detention of course renders someone unable to engage in all the “essentials of life” listed above—family, housing, work to gain subsistence income, or education. Over a five-year period, the parents of over 10,000 US citizen children in New York were detained without bond.³⁵ Detention is also expensive, costing \$159/day and over \$58,000/year for one individual.³⁶ Additionally, 350 children in removal proceedings are detained at federal facilities in Westchester County.

Immigration proceedings are also incredibly complex, like the proceedings this Task Force cited if not worse.³⁷ As Justice Alito stated, “[N]othing is ever simple with immigration law.”³⁸ The Immigration and Nationality Act has sixteen categories for grounds of removal alone, all with parts, subparts, exceptions, and waivers, each with multiple elements. Qualifying for relief is even more complex, and requires extensive evidence. This Task Force, in studying federal benefits hearings (like Social Security), found that low-income New Yorkers “may not be aware of the programs or of their eligibility”; that “[d]etermining eligibility can... require navigation through a maze of complex rules and regulations”; and that “[p]roof of eligibility may require documents and/or information that are difficult for low-income persons to access or obtain.”³⁹ Similarly, in immigration proceedings, individuals without legal assistance (often also

³⁰ New York City Bar, *Why Right to Counsel in Deportation Proceedings Won't Break the Bank 1*, at <http://www.nycbar.org/images/stories/pdfs/committee/why-right-to-counsel-in-deportation-proceedings-wont-break-the-bank.pdf>.

³¹ City Bar Letter at 2, citing NALEO Education Fund, *Immigration Reform Must Provide the Integrations Services Immigrants and American Communities Need to Thrive Together*, 2 (2013), available at http://s143989.gridserver.com/2013/Images/CIRintegration_overview.pdf.

³² City Bar Letter at 2.

³³ *Id.* (detainees “face a Catch-22: they typically cannot escape detention by winning a bond hearing without the assistance of counsel, and they typically cannot find counsel, given the limited access to communication and information, until they escape detention”).

³⁴ *Id.*, citing City Bar Report at 7; Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63, 105-08 (2012) (articulating impact of detention on ability to litigate proceedings).

³⁵ *Insecure Communities* at 3.

³⁶ National Immigration Forum, *The Math of Immigration Detention 2* (August 2013), at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

³⁷ City Bar Letter at 2.

³⁸ *Padilla*, 130 S. Ct. at 1490 (Alito, J., concurring).

³⁹ Task Force 2012 Report at 20.

facing language and cultural barriers) are unlikely to even know what facts will help them make their case, let alone argue it in court based on complex statutory analysis.⁴⁰

Thus, individuals without legal assistance are detained and deported at far higher rates, to great negative effect on New York. Judge Katzmman called this the “immigrant representation crisis.” Sixty percent of those in detained in proceedings lacked counsel, according to Judge Katzmman’s 2011 study.⁴¹ A stunning 97 percent of those detained without counsel lose.⁴² Meanwhile, 74 percent of those not detained and able to find representation won their deportation cases.⁴³ Counsel matters.

For all these reasons, we strongly encourage this Task Force to advocate to close the “access-to-justice gap” in immigration proceedings, as well as other civil proceedings. City Bar, for example, has proposed appointed counsel in immigration proceedings.⁴⁴

Moreover, the lack of assistance in immigration proceedings undoubtedly has downstream effects on New York civil courts. Immigration decisions commonly lead to further civil consequences. In family court, parents detained or deported without counsel cannot show for family court hearings, with grave consequences.⁴⁵ Although immigrant children in family court may have appointed counsel, lack of immigration expertise often results in missed opportunities to help children obtain Special Immigrant Juvenile Status and thus a path to permanent resident status. Immigration decisions also have complicated consequences for benefits hearings, which provide benefits to various classes of noncitizens according to complicated criteria.⁴⁶ Legal assistance in immigration proceedings would likely help New York civil judges better resolve these matters as well.

II. This Task Force’s Articulation of Economic Impacts of Civil Legal Aid Changes the Debate, and Inspires City Bar’s Similar Work Regarding Immigration

Second, we salute this Task Force’s work to articulate costs and benefits of legal assistance, as fostering a more holistic, accurate policy debate on access to justice. This Task Force has inspired City Bar’s similar work to articulate costs-benefits in the immigration field, as described below.

⁴⁰ City Bar Letter at 2.

⁴¹ New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 *Cardozo L. Rev.* 357, 363-64 (2011), available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.

⁴² *Id.*

⁴³ NYIRS, *Accessing Justice* at 363-64.

⁴⁴ New York City Bar Association, *Letter to Senate Judiciary Committee Advocating Appointed Counsel* (Apr. 24, 2013) (“City Bar Letter”), available at <http://bit.ly/105sqW0>; Carey Dunne, President, New York City Bar Association, *President’s Letter: The City Bar Takes on Immigration Reform* (June 2013), at <http://bit.ly/1aF1c51>.

⁴⁵ Sarah Rogerson, *Unintended And Unavoidable: The Failure To Protect Rule And Its Consequences For Undocumented Parents And Their Children*, 50 *Fam. Ct. Rev.* 580, 587 (2012).

⁴⁶ Huyen Pham, *When Immigration Borders Move*, 61 *Fla. L. Rev.* 1115, 1117-18 (2009); see also Guide to Public Benefits for Immigrants (2009) (detailing criteria for benefit eligibility in New York), at <http://publicadvocategotbaum.com/documents/PA002ImmigrantGuidev11.pdf>.

The economic benefits of legal assistance are historically ignored or under-researched compared to costs.⁴⁷ As a result, policymakers have too often considered only costs of civil legal assistance—and then naturally cut costs.⁴⁸ Criminal defender cuts are an example as well.⁴⁹

This Task Force’s work flips the script. For example, this Task Force found a 6-to-1 ratio of economic benefits to costs regarding legal assistance in federal benefits proceedings, in a study by the economic consulting firm NERA.⁵⁰ Similar results were found in domestic violence and eviction proceedings.⁵¹

Work like this leads the way for cost-benefit analysis to be a positive, not negative, talking point for increased civil legal assistance. Chief Judge Lippmann, City Bar President Carey Dunne, and City Council Speaker Christine Quinn, among others, have made this point eloquently. As Justice Lippmann said, “[F]or every dollar invested at the local and state level,” it’s a “benefit from a fiscal perspective to local and state government and obviously society as a whole.”⁵² Similarly, Carey Dunne said, “Increasing access to justice by funding legal services for the City’s poorest residents actually benefits the entire City’s economy.”⁵³ Speaker Quinn testified, “[T]he people who need the services are not going to go away... they’re simply going to end up in a worse situation with worse choices, which is only going to be a greater drain on the local governments.”⁵⁴

With a true accounting of both costs and benefits of legal assistance, policymakers can be more fully informed when deciding to fund access to justice. Indeed, although fairness should

⁴⁷ John P. Gross, *The True Benefits Of Counsel: Why “Do-It-Yourself” Lawyering Does Not Protect The Rights Of The Indigent*, 43 N. Mex. L. Rev. 1, 32 (2013) (“Typically, the “cost” of providing counsel is viewed as simply the amount of money that will have to be paid to the attorneys who provide the representation. This view ignores the costs associated with not providing counsel and the economic benefits that counsel can provide.”).

⁴⁸ *Id.* at 33-34.

⁴⁹ Justice Policy Institute, *System Overload: The Costs Of Under-Resourcing Public Defense* (2011).

⁵⁰ Task Force 2012 Report at 18-25; *see also* Dr. Elizabeth Becker, Senior Vice President, NERA Consulting, *Report to the Task Force to Expand Access to Civil Legal Services in New York* (Oct. 1, 2012), at Appendix 11, p. 675-87, <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS2012-APPENDICES.pdf>.

⁵¹ Report of Jeffrey L. Baliban, Navigant Consulting, to the Task Force to Expand Civil Legal Services in New York, Presented At The First Judicial Department Hearing (September 26, 2011) (domestic violence legal assistance), at Appx. 8, 13:2-26:5, and Appx. 12, p. 824 et. seq., at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011_Appendices.pdf; Geeta Singh, Cornerstone Research, *Testimony at the Chief Judge’s Hearing on Civil Legal Services* (September 26, 2011) (eviction legal assistance), at Appx. 8, 40:25-53:3, and Report, at Appx. 12, p. 917 et. seq., *also at* http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011_Appendices.pdf.

⁵² Justice Jonathan Lippmann, Appellate Division of the First Department of New York (Sept. 26, 2011), 38:5-8.

⁵³ Carey Dunne, President, New York City Bar Association, *President’s Letter* (June 2013), at <http://www.nycbar.org/component/content/article/93-president-page/1785-presidents-page061713>; *see also* New York City Bar, *2013 Policy Recommendations for New York City’s Next Mayor* 39 & n. 89 (May 2013), at <http://www.nycbar.org/images/stories/pdfs/mayoralreport04302013.pdf>.

⁵⁴ *id.* at 37:4-10.

always be the primary concern—as Learned Hand said, “Thou shalt not ration justice”⁵⁵—costs will inevitably enter the debate. If so, policymakers should have the full picture. Foundations like MacArthur and Pew Charitable Trusts are funding research in this area as well.⁵⁶

The immigration community is following this Task Force’s example. For example, City Bar’s Immigration & Nationality Law Committee is currently preparing a report to more specifically articulate these benefits in the immigration context.⁵⁷ Appointed counsel in immigration proceedings would likely reduce the costs of taxpayer-supported immigration detention;⁵⁸ increase administrative tribunal efficiency at the hearing level, and reduce costly appeals to the federal Circuits;⁵⁹ and economically benefit society, by reducing social costs such as foster care and increasing the economic contributions of those not detained nor deported.⁶⁰

Similarly, the New York Immigrant Family Unity Project is citing economic benefits as support for immigrant representation.⁶¹ As Judge Katzmman’s report said, “[p]ut simply, the City and State of New York bear a heavy cost as a result of the immigrant representation crisis.”⁶² The report continued,

⁵⁵ Address at the 75th Anniversary Celebration of the Legal Aid Society of New York (Feb. 16, 1951). See also The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York 2* (November 2011) [hereinafter “Task Force 2011 Report”] (“of course, no dollar amount can be placed on the life-changing impact that the provision of civil legal assistance can have for vulnerable low-income families and individuals”), at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011TaskForceREPORT_web.pdf.

⁵⁶ MacArthur Foundation, *The Power of Measuring Social Benefits*, at <http://www.macfound.org/programs/social-benefits/>; The Pew Charitable Trusts, *Pew-MacArthur Results First Initiative*, at <http://www.pewstates.org/projects/pew-macarthur-results-first-initiative-328069>.

⁵⁷ New York City Bar Association, *City Bar Statement Praising New York City Council’s Efforts to Fund Immigration Public Defender System, and Urging Nationwide Action* (July 19, 2013) at <http://bit.ly/1dKcHh>. (“Counsel also provides economic and social benefits that outweigh its costs. Appointing counsel in these [immigration] cases pays for itself...”).

⁵⁸ New York City Bar, *Why Right to Counsel in Deportation Proceedings Won’t Break the Bank 1*, at <http://www.nycbar.org/images/stories/pdfs/committee/why-right-to-counsel-in-deportation-proceedings-wont-break-the-bank.pdf>.

⁵⁹ *Id.* at 1-2. For example, each appeal to a federal Circuit court costs the government nearly \$18,000 for judges to hear and government lawyers to litigate. U.S. Dep’t of Justice, Office of Immigration Litigation, *What Does it Cost to Regulate Immigration? Three Measurements to Calculate Costs 6* (July 2011) (estimating, for FY 2009, that each appeal to a federal Circuit costs \$9,993 for a Circuit court to hear, and \$7,865 for Department of Justice Office of Immigration Litigation lawyers to litigate), available at http://www.justice.gov/civil/docs_forms/ImmigrationBulletin/July_2011.pdf.

⁶⁰ New York City Bar, *Why Right to Counsel in Deportation Proceedings Won’t Break the Bank* at 2. The NYIFUP estimated the costs of foster care in New York at nearly \$36,000 a year. Cardozo Law School, *NY City Council, Immigration Justice Clinic, And Other Groups Announce Program For Immigrants Facing Deportation* (July 19, 2013) (“ten times the cost of providing deportation defense”), at <http://www.cardozo.yu.edu/news/ny-city-council-immigration-justice-clinic-and-other-groups-announce-program-immigrants-facing>.

⁶¹ Cardozo Law School, *NY City Council, Immigration Justice Clinic, And Other Groups Announce Program For Immigrants Facing Deportation* (July 19, 2013) at <http://www.cardozo.yu.edu/news/ny-city-council-immigration-justice-clinic-and-other-groups-announce-program-immigrants-facing>.

⁶² New York Immigrant Representation Study Report: Part II, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings 1* (2012) (“Accessing Justice II”), available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

“the local community... bears the cost of these deportations in very tangible ways: when splintered families lose wage-earning members, they become dependent on a variety of City and State safety net programs to survive; the foster care system must step in when deportations cause the breakdown of families; and support networks to families and children must accommodate the myriad difficulties that result when federal policies are enforced without regard for local concerns.”⁶³

Because deportation spans *all* the “essentials of life” involved in various civil contexts—housing (as in eviction proceedings), family (as in custody or parental termination proceedings), work (as in unemployment proceedings)—the economic benefits of avoiding deportation are likely even more pronounced than other civil cases, with secondary impacts on those who remain. (Detention temporarily impacts those essentials of life as well.) Yet crucially, because deportation impacts all these essentials, the articulation of economic benefits from avoiding deportations can assist advocates in all those other civil legal proceedings.

III. We Encourage This Task Force to Study and Support the NY Immigrant Family Unity Project as a Model for Expanding Civil Access to Justice

Third, we encourage this Task Force to review and support the New York Immigrant Family Unity Project (NYIFUP) as part of its work to expand access to civil legal services. We also highlight other ways in which this Task Force, and the broader civil access-to-justice community, can learn from innovative immigration projects and studies.

On July 19, 2013, Speaker Quinn, Judge Katzmann, and others announced the City Council’s decision to fund \$500,000 to the New York Immigrant Family Unity Project, a pilot project to represent detained immigrants in proceedings.⁶⁴ The New York Times called it the nation’s “first immigration public defender system.”⁶⁵ City Bar praised it as “a model for what Congress should enact nationwide, to support justice, economic fairness and efficient administration of the courts.”⁶⁶ NYIFUP has distributed a request for proposals to implement

⁶³ *Id.*

⁶⁴ Cardozo Law School, *NY City Council, Immigration Justice Clinic, And Other Groups Announce Program For Immigrants Facing Deportation* (July 19, 2013), at <http://www.cardozo.yu.edu/news/ny-city-council-immigration-justice-clinic-and-other-groups-announce-program-immigrants-facing>. The NYIFUP is a joint effort between Judge Katzmann, the Vera Institute, Cardozo Law School, the Northern Manhattan Immigrants’ Rights Coalition, and the Center for Popular Democracy.

⁶⁵ Kirk Semple, *City to Help Immigrants Seeking Deportation Reprieves*, N.Y. Times (July 18, 2013), at http://www.nytimes.com/2013/07/18/nyregion/city-to-help-immigrants-seeking-deportation-reprieves.html?_r=0; Mark Noferi, *The First Immigration Public Defender System: New York City 2013*, Law at the Margins (Aug. 1, 2013), at <http://www.lawatthemargins.com/perspectives-the-first-immigration-public-defender-system-new-york-city-2013/>.

⁶⁶ New York City Bar Association, *City Bar Statement Praising New York City Council’s Efforts to Fund Immigration Public Defender System, and Urging Nationwide Action* (July 19, 2013), at <http://bit.ly/1dKCtHh>.

this funding, and hopes to begin representation this fall. It has already received inquiries from other cities interested in replicating the model.⁶⁷

We encourage this Task Force to study the NYIFUP's work, and consider recommending it for additional state grant funding. As the Task Force noted in 2011, its advocacy resulted in 56 grants awarded to civil justice providers from Judiciary funding.⁶⁸ Like the New York City Council, New York State could find it economically and socially valuable to fund representation in federal immigration proceedings, because of all the impacts described above.

Certainly too, the immigrant representation crisis extends well beyond the five boroughs. The size of the immigrant populations in other counties, such as Westchester, Nassau, Suffolk, and others, has caused an explosion of need for services.⁶⁹ Or, for example, New York Law School's Safe Passage Project, directed by our Committee chair Professor Lenni B. Benson, brings students and volunteer attorneys to immigration court each month and screens every child at removal hearings. This past year, the Project trained over 300 attorneys, placed over 100 cases and trained more than 200 students. But like other civil contexts, more pro bono attorneys and students, and resources for non-profit organizations, are needed.⁷⁰

That said, limited funding leads to creative solutions. As NYIFUP tests creative solutions to the immigration access-to-justice problem, it may serve as a model in serving low-income populations that this Task Force and others can learn from.

For example, NYIFUP poses an opportunity to test cost-effective mechanisms to fill the access-to-justice gap. The Task Force recommended that "mechanisms be put in place to evaluate the cost-effectiveness of client services and civil legal services delivery systems."⁷¹ NYIFUP, through its partner Vera Institute, will analyze data from the project to assess its efficacy. Other civil assistance projects can learn from its example.

Additionally, the NYIFUP, and immigration proceedings generally, provide an excellent opportunity to test the efficacy of non-lawyer legal assistance. The Task Force established a new initiative to examine the increased use of supervised non-lawyer advocates.⁷² City Bar has similarly begun to examine their use, in a report this summer entitled *Narrowing the Justice*

⁶⁷ Amy Connors, *A historic step in access to justice for immigrants facing deportation*, Vera Institute for Justice (Aug. 15, 2013), at <http://www.vera.org/blog/historic-step-access-justice-immigrants-facing-deportation>.

⁶⁸ Task Force 2011 Report at 1.

⁶⁹ New organizations serving immigrants have sprung up to meet the need. Additionally, law school clinics serving immigrants have been started—in addition to clinics in the five boroughs' law schools, Albany, Cornell, Hofstra, and Pace have clinics that directly represent immigrants in proceedings. Additionally, Pace's new Community Law Practice, which employs recent law school graduates in a "low bono" model, undertakes significant immigrant representation in Westchester and nearby. See <http://www.law.pace.edu/pace-community-law-practice>.

⁷⁰ The following organizations regularly volunteer at the immigration courts: Catholic Charities of New York, The Door, the American Immigration Lawyers Association, Legal Aid, Human Rights First, Kids in Need of Defense, and Safe Passage Project of New York Law School.

⁷¹ Cardozo Law School, *ibid*.

⁷² Task Force 2012 Report at 36; Task Force 2010 Report at 6.

Gap.⁷³ Non-lawyer advocates already practice in immigration courts, pursuant to a formal accreditation program by the Board of Immigration Appeals.⁷⁴ Yet little data exists to test whether non-lawyers in fact ameliorate the justice gap, or rather do more harm than good.⁷⁵ Increased funding for the NYIFUP might further the study of this and other civil justice issues, as responding organizations creatively propose different strategies to the NYIFUP.

More generally, recent studies of immigration adjudication contain lessons for civil and administrative adjudication generally. Like other civil cases, the absence of legal assistance in immigration proceedings affects the fair administration of justice. Immigration courts are now enormously backlogged, with the average case in New York immigration courts pending for 588 days (over a year and a half).⁷⁶ As the Task Force found in other civil cases,⁷⁷ immigration judges blame the lack of legal assistance, resulting in more continuances and more time and effort by the court to assist unrepresented parties.⁷⁸ Professor Benson's Administrative Conference of the United States study thus recommended increased legal assistance, as a way to foster meaningful pretrial conferences (much like federal civil courts), thus narrowing issues for trial and increasing efficiency.⁷⁹ Other civil proceedings could adopt these recommendations.

* * *

In conclusion, we salute the work of this Task Force. We hope this testimony regarding immigration proceedings will facilitate an even greater impact by this Task Force's work.

A final note. With so much overlap between immigration proceedings and other civil proceedings, the main difference may be that (nearly) all involved in immigration proceedings

⁷³ New York City Bar, Committee on Professional Responsibility, *Narrowing the Justice Gap: Roles for Nonlawyer Practitioners* (June 2013), at <http://www2.nycbar.org/pdf/report/uploads/20072450-RolesforNonlawyerPractitioners.pdf>.

⁷⁴ Mark Noferi, *Response to Invitation to Comment: ABA Task Force on the Future of Legal Education, Subcommittee on Delivery and Regulation* (Theme F) (Feb. 8, 2013), at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/201302_mark_noferi_comment.authcheckdam.pdf.

⁷⁵ Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 125-26; cf. Molly M. Jennings and D. James Greiner, *The Evolution Of Unbundling In Litigation Matters: Three Case Studies And A Literature Review*, 89 Denv. U. L. Rev. 825, 832 (2013) (“[p]erhaps, like a small dose of antibiotics, a small amount of lawyering can be ineffective, or even harmful....”).

⁷⁶ TRAC Immigration, *Immigration Court Backlog Tool* (through August 2013), at http://trac.syr.edu/phptools/immigration/court_backlog/.

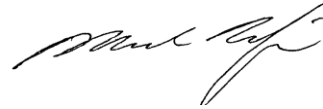
⁷⁷ Task Force 2010 Report at 3 (“when there are substantial numbers of unrepresented New Yorkers in court, the overall quality of justice suffers, because courts are less efficient when resources have to be diverted from matters involving represented parties to try to assist unrepresented parties”).

⁷⁸ City Bar Letter at 3, citing Lenni Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication* 58-59 (2012) (“Benson and Wheeler”), available at <http://www.acus.gov/sites/default/files/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>.

⁷⁹ Benson and Wheeler at 58-59.

are noncitizens.⁸⁰ To its credit, this Task Force has never drawn that distinction in its calls for access to justice.⁸¹ Nor do we. Access to justice reflects our American values, and should not be (and in most cases, is not) dependent on the citizenship status of those involved. As City Bar points out, there is no citizenship test for appointed counsel in America, whether in civil, criminal, or other proceedings.⁸² That said, legal services organizations receiving federal Legal Services Corporation funding are prohibited from serving the undocumented, which City Bar continues to oppose.⁸³ This restriction exacerbates the access-to-justice gap in all civil proceedings, and makes increasing access to justice for immigrants even more crucial.

Respectfully submitted,



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⁸⁰ About one percent in immigration proceedings are estimated to actually be US citizens. Jacqueline Stevens, *U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens*, 18 Va. J. Soc. Pol'y & L. 606 (2011).

⁸¹ See Task Force 2010 Report at 11 (surveying issues in immigration proceedings).

⁸² New York City Bar Association, *Letter to Senate Judiciary Committee Advocating Appointed Counsel 3* (Apr. 24, 2013), available at <http://bit.ly/105sqW0>.

⁸³ See e.g. Barry J. Kamins, President, New York City Bar Association, *Letter Asking Congress to Repeal Legal Services Corporation Restriction* (Jan. 24, 2008), at <http://www.nycbar.org/pdf/report/City%20Bar%20Ltr%20Re%20LSC%20Restrictions%20Draft%2012-13-07.pdf>.