



**COMMITTEE ON
IMMIGRATION & NATIONALITY LAW**

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Mayor Bill de Blasio
City Hall
New York NY 10007

**Re: The Need to Fund Immigration Legal Services without a Carve-out Based on
Certain Convictions**

Dear Mayor de Blasio:

The New York City Bar Association (“City Bar”) has long advocated for increased representation in civil legal proceedings for people who cannot afford counsel, and has recognized the particular need for counsel in immigration court proceedings. The City Bar’s over 24,000 members include attorneys in private practice, government service, non-profit practice, and academia. The Immigration and Nationality Law Committee is comprised of immigration attorneys, current and former judges, immigration law scholars, and attorneys specializing in human and civil rights; this letter is based upon committee members’ expertise and experience counseling clients.

Last June, we wrote you a letter urging full funding for the New York Immigrant Family Unity Project (NYIFUP).¹ We applaud the ongoing commitment of the Mayor’s Office and the City Council in increasing funds for desperately needed legal services for non-citizens. We are troubled, however, that the City has moved to an approach which forecloses funding for representation for non-citizens who have been convicted of certain crimes. While we understand the need to prioritize among many competing demands for funding, the City Bar believes that all immigrants, especially those who are detained and those who face possible deportation to dangerous countries, should have competent counsel without first passing any criminal litmus test.

¹“Letter to Mayor de Blasio Regarding Due Process, Universal Representation, and the New York Immigrant Family Unity Project,” June 1, 2017, available at http://s3.amazonaws.com/documents.nycbar.org/files/2017154-NYIFUPsupport_FINAL_6.1.17.pdf.

The criminal carve-out is based on New York City Administrative Code §§ 9-131 and 14-154 (“detainer laws”), which provide exceptions to New York City’s otherwise bright line rule against honoring civil immigration detainers lodged by U.S. Immigration and Customs Enforcement (ICE) for defendants held in New York City custody. If the individual has been convicted of one of the 170 enumerated offenses in the five years immediately prior to the current arrest, those provisions require an ICE detainer to be honored.

The carve-out arose initially in the context of funding for NYIFUP which provides universal representation to New Yorkers in immigration detention. The Administration appears to have reasoned that if New York City is honoring an ICE detainer and delivering an individual into immigration detention, that individual should not get the benefit of city-funded immigration defense counsel to fight the attempt at removal. However, an individual who has a criminal conviction giving rise to ICE interest may nonetheless be able to successfully fight against removal by seeking complex forms of immigration relief created by Congress. Cancellation of removal, U nonimmigrant visas, asylum, and withholding of removal, are but a few forms of relief for which criminal convictions may be waived by the immigration authorities. The likelihood of a pro se respondent successfully raising these defenses in Immigration Court is very low. The New York Immigrant Representation Study found that prior to the creation of NYIFUP, detained respondents in Immigration Court won immigration relief in only 4% of cases, whereas with NYIFUP the success rate has risen to 48%.²

Based on the experience of our Committee members, New York City now appears to be injecting the criminal carve-out into all of its immigration legal services contracts including City Council discretionary funding. This means that in any encounter with a legal service provider, whether for unaccompanied minor children seeking Special Immigrant Juvenile Status or asylum; legal permanent residents seeking naturalization; domestic violence survivors seeking relief under the Violence Against Women Act; or many others who similarly are not detained and have no involvement whatsoever with the detainer laws, legal services providers are now apparently required to investigate prior criminal history to assess whether the potential client even qualifies for a consultation.

It is fundamentally unfair to deny legal services to immigrants based on prior convictions, particularly since immigrants who have had contact with the criminal justice system are often most at risk for removal. Indeed, the U.S. Supreme Court has recognized the need for immigrants to receive competent counsel regarding the immigration consequences of criminal convictions, finding that, “deportation is an integral part – indeed, sometimes the most important part – of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”³

It is not uncommon for indigent defendants to plead guilty because they are unable to afford to post bail. Many people in pre-trial detention who cannot pay bail end up pleading guilty, while more than half of people who are released on bail have their cases dismissed by

² “Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity,” Vera Institute of Justice, Nov. 2017, *available at* https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf.

³ *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010).

prosecutors once they are released.⁴ In cases where immigration attorneys find that their clients did not get proper advice or due process in their criminal case, they may attempt to obtain post-conviction relief. To have these same people be deprived of a lawyer to review the circumstances of their conviction seems doubly punitive. Furthermore, some individuals caught up in removal proceedings have viable claims to U.S. citizenship, but the laws of acquisition and derivation of citizenship are so complicated, they are unlikely to be able to assert them without expert immigration representation.

We urge you to reconsider the criminal carve-out for funding desperately needed immigration legal services, whether the potential clients are detained or non-detained, but particularly in the latter circumstance, where New York City's detainer laws are completely inapplicable and where high quality representation is so important because even a routine application could trigger detention and deportation.

Thank you for your consideration.

Respectfully,



Victoria F. Neilson

Cc: Hon. Steven Banks, Commissioner, NYC Human Resources Administration
Hon. Jordan Dressler, Civil Justice Coordinator, Office of Civil Justice, NYC Human Resources Administration
Hon. Daniel Dromm, Chair, Finance Committee, New York City Council
Hon. Vanessa Gibson, Chair, Capital Budget Subcommittee, New York City Council
Hon. Liz Glazer, Director, Mayor's Office of Criminal Justice
Hon. Corey Johnson, Speaker, New York City Council
Hon. Rory Lancman, Chair, Justice System Committee, New York City Council
Hon. Carlos Menchaca, Chair, Immigration Committee, New York City Council
Hon. Bitta Mostofi, Acting Commissioner, Mayor's Office of Immigrant Affairs

⁴ "Bronx Charity Founder Wants to Pay Bail for Poor Defendants Nation-Wide," New York Times, Nov. 13, 2017, available at <https://www.nytimes.com/2017/11/13/nyregion/bail-project-fund-poor-defendants.html? r=0&mtref=undefined&gwh=3C181BFABF44DCCF36A4C37C97E545A9&gwt=pay>.