



March 22, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Hon. Carl E. Heastie
Speaker, New York State Assembly
Legislative Office Building 932
Albany, NY 12248

Hon. Andrea Stewart-Cousins
Majority Leader, New York State Senate
Legislative Office Building 907
Albany, NY 12247

Re: Letter in Support of Increased Funding for Immigration Legal Services in Fiscal Year 2024 and in Support of the Access to Representation Act (A.170/S.999)

Dear Governor Hochul, Speaker Heastie, and Majority Leader Stewart-Cousins:

On behalf of the Immigration and Nationality Law Committee, the Civil Rights Committee and the Pro Bono and Legal Services Committee (“the Committees”) of the New York City Bar Association (“City Bar”), we write to highlight the importance of state funding for immigration legal services.¹ In furtherance of the City Bar’s mission, and using the Committees’ collective expertise, we write to urge you to increase funding for critical immigration legal services in the Fiscal Year 2024 State budget.

In addition to the Committees’ continued support for existing state-funded legal services programs, we also write to urge passage of the Access to Representation Act (“ARA”) (A.170 AM

¹ The Immigration Committee addresses diverse issues pertaining to immigration law and policy. Members include staff of non-profit legal services providers (LSP’s), private immigration attorneys, staff of local prosecutor’s offices, employees of government immigration agencies, law firm *pro bono* counsel, academics, and law students. The Civil Rights Committee addresses both civil rights and civil liberties matters. Its membership includes attorneys from state and local government agencies, law firms, not-for-profit organizations, and law school faculty. The Pro Bono and Legal Services Committee consists of attorneys who work at public interest and pro bono legal services organizations, civil rights organizations, or who direct pro bono efforts at law firms and corporate legal departments.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

Cruz / S.999 Sen. Hoylman-Sigal). The ARA would establish a right to representation for people at risk of deportation. It would be an indispensable step towards New York fully supporting its immigrant communities and their families—many of whom pay state taxes and contribute in several other ways to the fabric of our state’s society—and the over-burdened legal and social service providers serving immigrants throughout the state. Establishing a right to counsel in immigration court where family unity, economic stability, and due process are at stake has never been more imperative.

LEGAL REPRESENTATION IS CRUCIAL FOR PEOPLE IN IMMIGRATION AND DEPORTATION PROCEEDINGS

For immigrant New Yorkers facing the labyrinthine immigration enforcement and deportation systems, access to legal representation can be the difference between staying in the state they know as home, or being separated from their family, community, and the life they have built here. The stark differences in outcomes based on representation in cases compels us to ensure that low-income immigrants are not facing deportation on their own. Investing in immigration representation will help many more immigrants understand and navigate one of the most complex areas of United States law. Similarly, access to an attorney also ensures that more individuals can gain release from immigration detention. The chances of an unrepresented immigrant successfully obtaining any of these results is extremely low.

The presence of counsel can ameliorate a multitude of challenges inherent in immigration proceedings. Some examples include language barriers, trauma, different and sometimes corrupt legal systems in countries of origin, as well as poverty and lack of other resources, to name a few. Moreover, attorneys for the Department of Homeland Security prosecute all immigration cases, creating an imbalanced system where one side is always represented and the other is not. The presence of counsel encourages accountability and supports due process. A study in New York showed that non-detained respondents represented by counsel achieved a successful outcome in immigration court in 74% of cases, defined as either relief granted or termination of their case, while those who had no representation were successful in only 13% of cases.²

LESSONS LEARNED FROM THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT (NYIFUP)

We can garner many lessons about the benefits of government-sponsored counsel in immigration proceedings from the City and State’s investment in the New York Immigrant Family Unity Project (“NYIFUP”). Since 2014, New York City has funded the NYIFUP program, which provides representation to detained immigrants who have deportation proceedings at the Varick Street immigration court in Manhattan. Then in 2017, the State expanded the City’s universal representation efforts to upstate New York. Together, City and State NYIFUP made New York the first state in the nation to guarantee legal representation to every indigent detained person facing deportation in New York’s immigration court.

² Accessing Justice, The Availability and Adequacy of Counsel in Immigration Proceedings, New York Immigrant Representation Study (Dec. 2011), <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1551&context=faculty> (all websites last visited March 21, 2023).

Thanks to New York’s leadership in establishing this program, people in detention in New York count on an attorney standing with them through the complexities of a proceeding that can mean the difference between life and death. Furthermore, those with representation are 3.5 times more likely to be granted bond and over 10 times more likely to achieve the right to remain in the United States.³ This program is critical to bringing fairness and dignity to our clients, neighbors, friends and family members facing deportation. According to the Vera institute, our NYIFUP program has helped more than fifty jurisdictions across the United States construct their own universal representation programs for detained immigrants.⁴

FUNDING IS CRITICAL TO ENABLE LEGAL SERVICES PROVIDERS TO PARTNER EFFECTIVELY WITH PRO BONO ATTORNEYS AT LAW FIRMS

In addition to struggling to keep up with the increasing demands of their immigration dockets, legal service providers are losing their ability to effectively leverage the important resources that major law firms provide to immigrant communities through their *pro bono* representation programs. Non-profit legal services providers (“LSPs”) and law firm *pro bono* programs in New York have successfully relied on each other for a long time. Their partnership is key, allowing LSPs to continue screening eligible immigrants, while relying on law firms to staff cases, including many of the complex cases that require resources that LSPs simply cannot provide. However, law firms can only provide these *pro bono* services because LSPs also provide full mentorship support to guarantee the continued quality of representation of immigrant New Yorkers. Law firms rely on the expertise of LSPs to provide appropriate training and support to firm attorneys so they may competently represent clients. Without such training, law firms are reluctant to take *pro bono* matters because they do not specialize in immigration law and they want to ensure that their *pro bono* clients receive informed, high quality representation. Unfortunately, LSPs are overloaded with clients while simultaneously short staffed, making *pro bono* placement, mentoring, and other necessary support even more challenging. Thus, robustly funding LSPs increases their direct representation capacity and has a domino effect that enables LSPs to help more people by referring cases to well-trained *pro bono* attorneys at firms.

Now more than ever, it is vital that New York significantly invest in protecting our immigrant communities. Immigrant New Yorkers remain under constant threat of ICE enforcement and an ever-changing immigration landscape. Furthermore, New York, like many other states, is receiving high numbers of asylum-seeking families and individuals. The City and State have invested millions of dollars and other resources to meet the increasing needs of these families. New York’s immigration legal service providers have also demonstrated a non-stop commitment to supporting newly arriving immigrants who settle in or pass through the State. Indeed, we are all working at full capacity to try to keep up. The ARA is a comprehensive solution to the legal services aspects of this crisis.

³ Ingrid V. Early and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review* 164, no. 1 (December 2015), 9, <https://perma.cc/82F5-WE2D>.

⁴ “Advancing Universal Representation Initiative,” Vera, <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative>.

During this protracted period of uncertainty for immigrant New Yorkers and their families, we urge New York State leadership to take proactive measures to support its immigrants. We celebrate the State's track record in ensuring that some immigrants have access to counsel and respectfully urge you to continue to pave the path forward, establishing a right to representation by passing the Access to Representation Act and increasing investments in immigration legal services. Doing so will promote family, community, and economic stability as well as fairness and due process. It will also allow New York's committed legal services organizations to retain staff and leverage the crucial *pro bono* legal services rendered by major law firms.

Respectfully,

Danny Alicea

Danny Alicea, Chair
Immigration & Nationality Law Committee

Kathleen Rubenstein

Kathleen Rubenstein, Co-Chair
Civil Rights Committee

Kevin Jason

Kevin Jason, Co-Chair
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Nicole L. Fidler

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Jessica M. Klein

Jessica M. Klein, Co-Chair
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Cc:

Hon. Catalina Cruz

Hon. Jeffrey Dinowitz, Chair, NYS Assembly Codes Committee

Hon. Brad Hoylman-Sigal, Chair, NYS Senate Judiciary Committee

Hon. Liz Krueger, Chair, NYS Senate Finance Committee

Hon. Charles Lavine, Chair, NYS Assembly Judiciary Committee

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