



**COMMITTEE ON IMMIGRATION
& NATIONALITY LAW**

February 24, 2022

DANNY ALICEA
CHAIR
dalicea@cfny.org

Hon. Eric Adams
Mayor of the City of New York
City Hall
New York, NY 10007

Re: Policy Recommendations for Supporting New York City's Non-citizen Residents

Dear Mayor Adams,

The New York City Bar Association's Immigration and Nationality Law Committee writes to introduce ourselves and to welcome you as the Mayor of New York City. The New York City Bar Association (City Bar) is a 24,000-member organization founded in 1870. The City Bar's mission is to equip and mobilize a diverse legal profession to practice with excellence, promote the reform of the law, and uphold access to justice. The Immigration and Nationality Law Committee addresses diverse issues pertaining to immigration law and policy. Our members include staff members of legal services organizations providing immigration assistance, private immigration attorneys, staff members of local prosecutor's offices, employees of government immigration agencies, staff members of immigrant advocacy organizations, academics, and law students.

As you may know, many devastating immigration policies remain in effect because federal legislators have been unable to agree on comprehensive immigration reform. Therefore, it is critical that local jurisdictions continue the fight to defend and support our immigrant communities. As the historic gateway for immigrant Americans and the world's only truly global city, New York, we believe, has a particular responsibility to its non-citizen residents.¹

¹ See "Legal Steps to Implementation of Campaign Policy Proposals," New York City Bar Association (Dec. 2021), <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/legal-steps-to-implementation-of-mayor-elect-adams-campaign-policy-proposals> (the City Bar's New York City Affairs Committee issued a report addressing campaign proposals, including the We Rise Plan, which included a plank on "Immigrant

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 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.

I. FUNDING FOR IMMIGRATION SERVICES AND RESOURCES²

We hope your administration will continue New York’s mission of funding critical services for immigrant New Yorkers, including funding for legal, social, and health services, including mental health, public health, and physical health. We also believe support for immigrant communities means that City employees should be trained to approach non-citizen constituents with particular sensitivity. The City should prioritize training and educating its employees on concerns important to non-citizen residents. True support for immigrants means supporting immigrant families, including those with mixed immigration statuses. Such resources are critical to bringing fairness and dignity to our clients, neighbors, friends and family members facing deportation.

For immigrants, having an attorney can be the difference between staying in the community they know as home, or being separated from their family, community, and the life they have built here. A study in New York showed that in deportation hearings, non-detained respondents represented by counsel achieved a successful outcome, defined as either relief granted or termination of their case, in 74% of cases. Those with no representation were successful in only 13% of cases. For detained respondents, a 2017 study by the Vera Institute of Justice found that only 4% of cases involving unrepresented respondents were successful, compared to 48% of cases involving representation, an astonishing 1,100% increase.³ This is a testament to the City’s investment in the New York Immigrant Family Unity Project, which provides universal representation to detained individuals at the Varick Street Immigration Court in lower Manhattan.

During this protracted period of uncertainty for immigrant New Yorkers and their families, we respectfully urge you and your administration to show your unwavering support for the one in five New York City residents who are foreign-born.⁴ Immigrant New Yorkers are under constant threat of ICE enforcement and detention in deplorable conditions where they may be exposed to, or even die of, COVID-19. It is imperative that New York stand strong in support of our immigrant communities that contribute in so many ways to the fabric of our state’s society.

Immigration legal services providers across New York cannot survive without government funding. Without support from the City, these organizations face layoffs, and the clients they represent will be left to the whims of the federal government with no line of defense. In addition,

Safety and Empowerment,” and “explain[ing] where we believe the legal authority lies to turn each major campaign proposal into reality”) (all websites last visited Feb. 24, 2022).

² See also Letter to Mayor Adams, “Policy Recommendations Concerning Pro Bono Civil Legal Services and Access to Justice,” from the City Bar’s Pro Bono and Legal Services Committee dated Feb. 24, 2022.

³ Vera Institute of Justice, “Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity” (Nov. 2017), <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

⁴ According to the Center for Migration Studies, 1 in 5 of New York City residents is foreign-born. That is approximately 1,734,200 out of New York City’s 8.8 million residents. See “Data Tool| Mapping Key Determinants of Immigrants’ Health in New York City,” Center for Migration Studies, https://cmsny.org/immigrant-health-nyc/?gclid=CjwKCAiA3L6PBhBvEiwAINIJ9IM-hPeY4GAqeVU65ncz75aP_WF69B3p16D6hQp8nl-s38LMG3irIBoCNYIQAvD_BwE; see also “QuickFacts: New York; New York city, New York,” U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/NY.newyorkcitynewyork/PST045221>.

new immigration trends and needs inevitably and unpredictably emerge (e.g., Haitian migrants, migrants fleeing the Afghan crisis and the Central American crisis, to name a few). Increased funding that enables legal services providers to respond to new and evolving crises is crucial.

The Committee also reiterates our call to remove the restriction on legal services funding for any immigrant in removal proceedings who has a criminal conviction on their record.⁵

II. PUBLIC HEALTH RESOURCES

The health of non-citizens must be made a priority in public health policymaking and non-citizens should be identified as beneficiaries of such policymaking. To date, our government has, to a large extent, excluded non-citizens from participating in public health protections and benefits afforded to citizens in the context of the COVID-19 pandemic. The U.S. Constitution protects citizens and non-citizens alike from violations of rights fundamental to our nation's concepts of liberty. The United States also has obligations under international law to respect the human rights of non-citizens, including rights related to physical and mental health. We recommend that immediate access to vaccination against COVID-19 be provided to all immigrants, including pregnant women, held in civil immigration detention in New York. We also believe access to vaccination should be a condition of any contract with private contractors operating detention facilities in New York. Furthermore, the City should consider terminating or not renewing immigration detention agreements with U.S. Immigration and Customs Enforcement (ICE) in New York State (or its private contractors) for purposes of civil immigration detention, unless all persons currently detained under those agreements have access to COVID-19 vaccines and other fundamental public health protections.

Ensuring equitable access to mental health services for non-citizens is also critically important in light of the trauma non-citizens often experience both on their journey to, and upon crossing the border of, the United States. In many cases, that trauma is compounded by indefinite detention, most often separated from family members. The profound trauma experienced by non-citizens in these contexts may have long-term consequences requiring appropriate mental health services and interventions that must be delivered by qualified mental health professionals, including social workers. As a matter of social justice, and in recognition of non-citizens' rights to due process under the Fourteenth Amendment of the U.S. Constitution, it is imperative that they are afforded equitable and nondiscriminatory access to such mental health services. We issue a call for action to allocate funding at levels appropriate to the provision of such mental health services to all non-citizens on a nondiscriminatory basis.

III. LAW ENFORCEMENT ACCOUNTABILITY

Protecting the rights of non-citizen New Yorkers also requires systemic changes to our City's criminal justice process. We commend the Mayor's Office for recognizing the right of New Yorkers

⁵ "We urge you to reconsider the criminal Carve-Out altogether and fully fund desperately needed immigration legal services, whether the potential clients are facing removal or seeking affirmative immigration benefits..." "Ending the funding "Criminal Carve Out" for Immigration Legal Service Providers," New York City Bar Association, June 1, 2018, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/ending-the-funding-criminal-carve-out-for-immigration-legal-service-providers>.

to be free from the unjust collateral consequences plaguing them long after an arrest or conviction. However, more could be done to remedy these issues. To this end, the Mayor's Office can take concrete steps to ensure non-citizen New Yorkers are truly safe from arcane and unjust collateral immigration consequences.

First, we recommend that the Mayor's Office of Criminal Justice and all City agencies work to expand the use of pre-arrest and pre-arraignment diversion programs throughout the City.⁶ Such programs allow non-violent, low-level arrests to be diverted entirely out of the criminal justice system when it is safe and appropriate to do so. For instance, a working model can be found in the "Brooklyn Clear" program, which focuses on diverting low-level drug cases immediately upon police contact. This program allows New Yorkers to enter treatment, counseling, and/or mediation prior to being arraigned in a criminal court or placed under formal arrest. This practice enables individuals to seek counseling and treatment as an alternative to receiving a criminal court record and is largely successful in reducing recidivism rates. Such pre-arrest diversion programs also eliminate the shadow of a criminal arrest that haunts many New Yorkers long after an initial arrest. This is especially true for New Yorkers who law enforcement officials deem not to pose a public safety threat.

Second, short of eliminating the City's current Detainer Law, we recommend revising it to more closely align with the statute's original purpose and intent. New York City Administrative Code 9-131 et. seq. governs when the City detains non-citizens for civil immigration enforcement purposes. Since civil immigration detainers do not require probable cause,⁷ the City's Detainer Law is the sole source of authority for agencies like the Department of Corrections to detain individuals based on a request by ICE for a suspected violation of civil immigration laws. The statute prohibits DOC from notifying ICE that a New Yorker held within its custody is subject to an immigration detainer unless the detainer request is accompanied by a judicial warrant. See NYC Administrative Code 9-131(b)(1). In spite of this clear language, the Department of Corrections regularly notifies ICE of the custody and release of numerous non-citizen New Yorkers even without ICE first presenting a judicial warrant. This practice goes beyond and arguably violates the original intent of the City's Detainer Law. It also needlessly exposes non-citizen New Yorkers to unjust collateral consequences.

Third, we encourage the Mayor's Office to maintain New York as a sanctuary city and resist any entreaties by ICE to diminish the policies supporting this. We commend your administration's recent decision to decline the Department of Homeland Security's request that city's increase their

⁶ The City Bar has been a proponent of increased use and availability of diversion programs, including drug treatment diversion courts and mental health courts, and supports the creation of a first time felony diversion court. See "A Pathway Out of Mass Incarceration and Towards a New Criminal Justice System: Recommendations for the New York State Legislature," New York City Bar Association, May 2021, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/a-pathway-out-of-mass-incarceration>; see also "Creating a First Time Felony Diversion Court," New York City Bar Association, Dec. 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/creating-a-first-timefelony-diversion-court>.

⁷ See *People ex rel. Wells v. Demarco*, 168 A.D.3d 31, 88 N.Y.S.3d 518 (2d Dept 2018); see also, *Gonzalez v. Immigr. & Customs Enf't*, 416 F. Supp. 3d 995, 1018 (C.D. Cal. 2019), *rev'd and vacated sub nom on other grounds. Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788 (9th Cir. 2020) (reversing the District Court's class action certification but upholding the federal government's concession that civil immigration detainer requests do not require probable cause).

collaboration with Immigration and Customs Enforcement.⁸ At the local level, immigration practitioners consistently encounter situations where ICE enforcement guidelines are haphazardly implemented or disregarded. This results in many non-citizen New Yorkers being placed into removal proceedings for low-level, non-violent offenses despite having no other criminal record after residing in the U.S. for decades. Furthermore, numerous peer-reviewed studies indicate that increased local cooperation with civil immigration enforcement harms rather than strengthens public safety.⁹

IV. CONCLUSION

Thank you for considering our concerns. We strongly encourage the Mayor's Office to continually uphold policies that protect non-citizens and promote their dignity. The Immigration and Nationality Law Committee welcomes opportunities to collaborate with your administration in furthering these important goals.

Respectfully,

Danny Alicea, Chair
Immigration & Nationality Law Committee

Cc: Philip Banks III, Deputy Mayor for Public Safety
Manny Castro, Commissioner, Mayor's Office of Immigrant Affairs
Deanna Logan, General Counsel & Deputy Director for Crime Strategies, Mayor's Office of Criminal Justice
Brendan McGuire, Chief Counsel to the Mayor
Raniece Medley, Interim Civil Justice Coordinator, Office of Civil Justice, Department of Social Services
Anne Williams-Isom, Deputy Mayor for Health and Human Services

Contact

Elizabeth Kocienda, Director of Advocacy | 212.382.4788 | ekocienda@nycbar.org
Mary Margulis-Ohnuma, Policy Counsel | 212.382.6767 | mmargulis-ohnuma@nycbar.org

⁸ Press Release, "Statement from Commissioner Castro on Non-Cooperation with ICE Laws and Policies," Jan. 31, 2022, <https://www1.nyc.gov/site/immigrants/about/press-releases/statement-from-commissioner-castro-01-31-22.page>.

⁹ David Hausman, *Sanctuary Policies Reduce Deportations Without Increasing Crime*, PROC. NAT'L ACAD. SCIS. U.S. (Nov. 3, 2020), <https://www.pnas.org/content/117/44/27262.short> ("sanctuary policies, although effective at reducing deportations, do not threaten public safety"); Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/theeffects-of-sanctuary-policies-on-crime-and-the-economy/> ("[O]n average, 35.5 fewer crimes [are] committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.").