



**WRITTEN TESTIMONY RESPECTFULLY SUBMITTED
BY THE IMMIGRATION AND NATIONALITY LAW COMMITTEE**

**HEARING OF THE NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

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OVERSIGHT: LEGAL SERVICES FOR ASYLUM SEEKERS IN NEW YORK CITY

The Immigration and Nationality Law Committee of the New York City Bar Association (City Bar) is pleased to provide this written testimony on the topic of “Oversight: Legal Services for Asylum Seekers in New York City” for the New York City Council Committee on Immigration.

Founded in 1870, the City Bar has a longstanding mission to equip and mobilize the legal profession to practice with excellence, promote law reform, and advocate for access to justice. With over 23,000 members, the City Bar is an important voice in the legal profession in New York City and beyond. The Immigration and Nationality Law Committee addresses diverse issues pertaining to immigration law and policy. Our members include staff of legal services organizations, private immigration attorneys, judges, staff of local prosecutor’s offices, employees of government immigration agencies, academics, and law students. We submit this testimony based on our collective expertise and the experience of our clients. It is by no means intended to be a comprehensive survey of all the issues faced by asylum seekers, but rather of summary of certain issues that our members have experienced first-hand when assisting asylum seekers.

As a preliminary note, the Immigration Committee calls for continued respect and dignity towards all immigrants, particularly with regard to non-citizens who recently arrived in New York City over the past year. We are troubled by expressions of hostility and prejudice toward immigrants to the city, and toward these recent arrivals in particular, including the inaccurate depictions of certain non-citizens’ motives for leaving their home country. We reiterate that both international refugee law and U.S. asylum law seek to protect immigrants from persecution in their

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.

home countries regardless of their manner of entry into the U.S and it is the U.S. Government's responsibility to ensure that asylum seekers are able to adequately seek asylum in the U.S.¹

New York's Continued (and Increasing) Need for Immigration Legal Services

New York City has the highest concentration in the U.S. of legal services providers, pro bono law firms, law school clinics and private attorneys that all provide crucial legal services to immigrant communities and strive to respond to the needs of these communities as they arise. Still, the need for legal services for non-citizens has for most of our recent history outpaced demand. This trend is due to an interlocking set of factors, including: (i) challenges to policies that would otherwise reduce unnecessary immigration enforcement and remove cases from the immigration court system; (ii) changes in federal immigration policies that have narrowed access to critical forms of immigration relief, including for long-term community members and asylum seekers; (iii) failed efforts in Congress to reform our immigration system; and (iv) the reality that all non-citizens, regardless of how long they have resided in the U.S., and regardless of status, are subject to an ever-evolving and byzantine set of laws and policies underpinning our immigration system.

The recent migration pattern that has led to thousands of new immigrants in NYC has exposed the fault lines in our immigration system and the need for increased legal services. In the last eight years, there has been a growing movement to drastically reduce, if not eliminate, access to asylum. Against that backdrop, asylum seekers in NYC are a particularly vulnerable community. Making matters worse, the number of asylum seekers living in shelter and other unstable housing is at an all-time high, making it harder for them to retain counsel and meaningfully defend themselves in deportation proceedings. The lack of access to legal services especially during their first year in the U.S. is highly concerning given the procedural challenges they face and the fact that failing to file an asylum application within their first year of arrival can bar them from pursuing asylum. During a time when survival is the priority for asylum seekers, navigating the complexities of U.S. asylum law on their own is simply impossible. Legal services providers, at times with pro bono assistance from law firms, have attempted to develop and replicate *pro se* models for asylum seekers to apply for asylum. Still, the reality is that many asylum seekers are struggling to apply for asylum within their one-year mandatory filing deadline and find legal representation to prepare and advance their asylum claims whether with U.S. Citizenship and Immigration Services or the immigration court system (formally known as the Executive Office of Immigration Review or "EOIR").

Since June 2023, the Mayor's Asylum Application Help Center has started providing assistance with the specific, yet limited, goal of preparing and filing I-589 applications to asylum seekers residing in NYC shelters. To carry out this massive project, it has called upon many players

¹ Congress passed the Refugee Act of 1980, which amended the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., to bring "United States refugee law into conformance" with the 1967 Protocol. *Cardoza v. Fonseca*, 480 U.S. at 436. The Refugee Act makes clear that Congress intended "to protect refugees to the fullest extent of [the United States'] international obligations, rendering the scope and meaning of those obligations relevant to any interpretation of the INA's asylum provisions." *Yusupov v. Attorney Gen.*, 518 F.3d 185, 203 (3d Cir. 2008) (footnote omitted); accord, e.g., *Cardoza-Fonseca*, 480 U.S. at 436–38; *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1060–61 (9th Cir. 2017) (en banc). The U.S. rule related to asylum codified at 8 U.S.C. 1158(a)(1) provides that non-citizens seeking refugee protection may apply for asylum regardless of their manner of entry.

in NYC and has led to an unprecedented collaborative effort between legal services providers, pro bono firms, private practitioners and many others, to assist with preparing and filing I-589 applications.

While this is a welcome effort to palliate the lack of legal representation available to the recent influx of non-citizens, the Asylum Application Help Center does not aim to provide legal advice or legal representation to any of the asylum seekers in the shelters and therefore it does not purport to replace the crucial need for full legal representation that legal services providers, pro bono law firms, private practitioners, and law school clinics provide. Below, we outline some of the major issues that we have witnessed that are being faced by asylum seekers in NYC.

Issues Faced by Asylum Seekers:

1. Complexities of US asylum law, including constant changes in regulations, forms

U.S. asylum law is complex and ever changing. Most asylum seekers understand that they are fleeing because they are afraid of someone or something, but do not understand the elements of asylum or the threshold that must be met. There is an added layer of multiple players and sources of information. Immigration practitioners have become educators, constantly demystifying the process and dispelling misinformation. This is in addition to being lifelong students — constantly researching and educating themselves on the frequent new rules and regulations.

To meet the demand of asylum seekers seeking to comply with their one-year filing deadline with limited resources, legal services and immigration practitioners have adopted the pro se asylum model. This model is helpful to the extent that it ensures many asylum seekers meet their one-year filing deadline by submitting their asylum applications. The issue is that there is nothing simple or straightforward about the application itself nor the legal framework that dictates whether an asylum application is viable or not. The application requests extensive biographical information, which includes years of address history, employment history, family history, and educational history. This is in addition to providing a narrative summary of the reasons an individual is applying for asylum. Most of the applications completed in a pro se asylum model are completed in a few hours and in one sitting. This means that asylum seekers (some children) have to be prepared to share their traumatic experiences with a stranger in a matter of 2-3 hours. This also includes the real risk that critical information may be withheld or not elicited until much later in a person's case. For the asylum seeker, this may pose serious problems because sometimes the full extent of a person's claim may not come to light until someone takes the time to investigate the country conditions in a person's home country. Worse, sometimes an asylum-seeker's credibility may be called into question during immigration proceedings if something in their testimony, even if somewhat minor, changes from what was written in their asylum application. In asylum cases, credibility is a critical threshold issue that can make or break a person's chances of securing relief.

For those who might be able to submit their asylum applications through these pro se models, many still face the follow-up challenge of securing legal representation to help them advance their claims before the immigration courts. Earlier this year, Make the Road New York surveyed about 800 new asylum seekers. While many of us have noted in our daily experience the

challenges asylum seekers face in obtaining legal representation, the statistics in the report were alarming. Indeed, while 95% intended to seek asylum, the vast majority (93%) had not found a lawyer to take their case.²

The many procedural and substantive complexities of U.S. asylum law continuously increase and have created much confusion for asylum seekers. One important area of confusion we have seen with asylum seekers is what is required by asylum seekers to change their address with immigration agencies. It is often difficult for asylum seekers to figure out (without any assistance) how to update their address and with which agencies (ICE, EOIR, and/or USCIS). Many asylum seekers report diligently communicating their change of address with ICE and then are often left confused when they learn that ICE does not communicate their new address to EOIR or anyone else for that matter. There is a consistent misunderstanding that ICE and EOIR are the same body. Relatedly, migrants in shelters will likely face added challenges in communicating with the relevant immigration agencies now that many of them are being taken out of the City's shelter system.

Similarly, any pro se asylum clinic model cannot expect asylum seekers to navigate the constant changes in immigration forms, USCIS addresses and other important documents without pro bono assistance. Sending an asylum applicant who does not speak the language a blank employment authorization application form that they have to fill out and cannot submit for six months can create unnecessary confusion and delays if the form is subsequently rejected.

Potential solutions include:

- Calling upon the federal government to centralize the procedure for changing address for asylum seekers so that all administrative agencies are informed;
- Offering an alternative stable address for asylum seekers who are facing unstable housing, such as living in shelters;
- Advocating for alternative ways for asylum seekers to securely receive important case information and documents, such as NTAs and work permits (including electronically).

2. Issue of “in between cases” that have been issued Notices To Appear that are not filed with EOIR

Without proper legal assistance, many asylum seekers are at a complete loss when it comes to understanding the legal posture of their immigration cases. This is especially true for those that were apprehended at the southern border by immigration officials and handed a Notice to Appear (“NTA”) only to later find out that their case has not yet been filed with the immigration courts and it is unclear if and when that NTA may be filed. Many are understandably confused when they learn that the hearing dates included in their NTAs are not in fact the correct hearing date and time. Even more confusing, the immigration court will not accept change of address from asylum seekers that have not had their cases filed with the court system. In the midst of all this confusion, it is the asylum seeker who bears the consequences when the immigration court relies on an incorrect or

² Make the Road New York & Hester Street, *Displaced and Disconnected: The Experience of Asylum Seekers and Migrants in New York City in 2023*, https://maketheroadny.org/wp-content/uploads/2023/06/Displaced-and-Disconnected_MRNY-Report.pdf (last visited October 14, 2023)

outdated address and ultimately issues an in absentia order if the person never appears at the hearing (whenever it is finally scheduled) simply because the asylum seeker never received adequate notice of their hearing. This is sadly more common than not and a huge waste of resources for all parties involved.

In the past year, the federal government has expanded access to Temporary Protected Status (TPS) eligibility for immigrants from several countries, including most recently Venezuela. As a result, we know from public reporting that many of the City's newest immigrants have applied or will be applying for TPS and other forms of relief that can be adjudicated outside of removal proceedings, which as we have outlined above is often costly for the individual and resource-intensive for every involved stakeholder (including the federal government).

Potential solutions include:

- Advocating for alternative ways to securely receive important case information and documents such as NTAs and work permits (including electronically).
- The City should call on the federal government to reconsider whether individuals who appear to be eligible for relief outside of removal proceedings should even have their cases filed with the immigration courts.
- Relatedly, where a case has been officially initiated in the immigration court system, the federal government should assess, through a collaborative process, whether the individual wishes to keep their case on the court's docket (which may be the case for some individuals who wish to seek relief that can only be granted by an immigration judge).

3. Access to technology

Asylum seekers need access to technology to seek asylum in the U.S. and to follow up on their applications. There are advantages to the use of technology in asylum proceedings, including instant receipts once an application is filed with USCIS and access to all filed documents online; however, technology can also create complications for certain younger and elderly members of the immigrant community who may simply not have the capacity or means to access these resources.

Potential solution:

- Consider increasing funding for legal services providers who can assist vulnerable asylum seekers with filing online asylum applications and work permits.

4. Language barriers

As described above, the complexities of U.S. asylum law and its procedural hurdles are magnified by the lack of proper interpretation and translation available to asylum seekers. The need for appropriate interpretation and translation is fundamental for asylum seekers. The availability and quality of interpretation and translation during the preparation of an asylum application are crucial, as well as during the asylum interview or hearing, and proper interpretation and translation can change the outcome of a case. Pro se asylum and work permit clinics will

provide more effective assistance if such interpretation and translation services are made available to asylum seekers.

Potential solution:

- Consider increasing funding to provide access to quality interpretation and translation to asylum seekers, including providing translating resources for crucial evidence in asylum applications.

5. Precarious living conditions

The precarious living conditions of asylum seekers, especially in City shelters, can have devastating and long-term consequences. The heavy reliance by ICE, EOIR and USCIS on asylum seekers' addresses that are entirely unstable in the first year of arrival can lead to devastating consequences for asylum seekers, such as in absentia removal orders. This causes additional burdens and delays for both asylum seekers and EOIR and is alleviated when asylum seekers have proper legal representation, as the attorney of record uses their professional address for any correspondence. Asylum seekers with no legal representation are at a significant disadvantage compared with an asylum seeker with legal representation. Unaccompanied children living in shelters are even more vulnerable and should automatically be provided pro bono legal representation if they are seeking asylum.

Potential solutions include:

- Consider increasing funding for legal representation of all asylum seekers placed in removal proceedings;
- Consider mandatory legal representation for children in removal proceedings.

6. Unreasonably lengthy delays for asylum seekers to apply for work permits

Existing rules forcing asylum seekers to wait for a minimum of 150 days before filing their asylum application forces many asylum seekers to work unlawfully for survival; and for those who do not work until they are granted work authorization, this further accentuates their economic vulnerability by forcing them to rely on government assistance. Without lawful work authorization from the very beginning, asylum seekers are further marginalized and cannot afford costly legal representation. The tight one-year filing deadline for asylum claims that is currently in place also pushes many asylum seekers to fall victim to fraudulent immigration attorneys or notarios who prey on their vulnerability. We applaud the City's efforts to shine a light on the need for the federal government to explore every available tool to get work authorization in the hands of our city's immigrants.

Potential solutions include:

- Now that many asylum seekers will be able to seek relief under the TPS program, the City should call on the federal government to ensure TPS applicants receive work authorization

within 30 days. Shortening the wait time will maximize the benefits of this program, both for the individual and the City.

- Consider advocacy around allowing asylum seekers to apply for work authorization as soon as their asylum application is received by USCIS or EOIR.
- In light of the recent expansion of TPS for Venezuelans, the City should continue to wield its considerable influence by calling on the federal government to expand access to critical forms of relief like TPS, which does not have a waiting period for employment authorization.
- Consider advocacy around extending the one-year filing deadline in light of the current humanitarian crisis.

7. Lengthy delays faced by asylum seekers to get asylum claims adjudicated

The already heavy backlog of asylum cases with USCIS and EOIR is a continued cause for concern, and with global displacement causing thousands to seek refuge in places like NYC is only going to further add to the already unreasonable delays in asylum claims being adjudicated. This delay results in delayed family reunification and extreme psychological harm for asylum seekers who are re-traumatized many times before their case is ultimately adjudicated.

Potential solutions include:

- Consider calling on the federal government to expand and renew TPS and deferred action for countries affected by political unrest and natural disasters;
- Consider advocacy around expediting TPS adjudications and extending validity of TPS and work authorization to avoid the need to apply for asylum for non-citizens who want to return to their home countries;
- The City should also call on the federal government to modernize its administrative policies on who qualifies for asylum, which will help undo years of efforts by prior administrations to narrow the definition of who qualifies as a “refugee” for asylum purposes.

8. Lack of funding for legal services providers who are key to providing effective and specialized legal representation for asylum seekers

Overall funding for affordable legal services remains scarce. The few foundations that fund the work have very specific requirements, and most do not fund screenings which are an essential part of assessing the legal needs of recent arrivals. Recently arrived families facing removal proceedings need an attorney to screen them for all available forms of immigration humanitarian relief. Once they are screened, they need assistance with their request for relief and representation in removal proceedings. The experts in this field work for nonprofit and social service organizations across the city. Most of these organizations are not being directly funded. Instead, these experts are scrambling and competing for grants from the selected few foundations to help the City meet this moment.

- Rather than cut, the City needs to significantly increase funding for legal service providers who are helping not only asylum seekers but also balancing heavy caseloads of members of our City’s immigrant communities.

- Consider setting up a centralized database that includes comprehensive resources for asylum seekers in NYC in various languages.

The Immigration Committee has consistently advocated for full legal representation for all immigrants, including asylum seekers, in removal proceedings, and for this it is imperative that funding is increased for legal service providers so they continue being able to provide this life-saving work to asylum seekers. The participation of pro bono firms is also essential, and involves training and mentoring by legal services providers in order for the law firms to provide legal services to asylum seekers. While pro se asylum clinic models have helped many asylum seekers file their initial asylum applications, this is just the first step in ensuring adequate assistance to asylum seekers and further infrastructure needs to be put in place, such as work permit clinics, assistance with gathering evidence for asylum cases and preparing for interviews and hearings, as well as assistance with reopening and appealing in absentia removal orders. These components are critical to providing New York's immigrants with the legal assistance and support they need to navigate our complex and challenging immigration system.

Respectfully submitted,

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