

**Testimony of Sarah Burr,
Former Assistant Chief Immigration Judge (Retired), New York**

**New York City Council Oversight Hearing
“Examining Models for Providing Legal Services for Immigrants in Deportation
Proceedings”
February 25, 2014**

Good afternoon, and thank you to the New York City Council Committee on Immigration for having me here today. From 2006 to 2011, I served as the assistant chief immigration judge with jurisdiction over the immigration courts at 26 Federal Plaza and Varick Street here in New York City. I served as an immigration judge from 1994 until my retirement last year. Prior to serving as a judge, I was a criminal defense attorney, an immigration lawyer and a supervisor at the Legal Aid Society for 13 years. I am a member of the Study Group on Immigrant Representation, launched under the impressive leadership of Chief Judge Robert Katzmann of the Second Circuit. I have also served on the steering committee for the two-year study that laid the foundation for the New York Immigrant Family Unity Project. I speak today not on behalf of the immigration court or federal government, but in my individual capacity.

It is truly gratifying to see the City Council’s commitment to making New York a city that is welcoming to all immigrants – from those who have just arrived, seeking the protection of this country, to those who have built lives and families here over many years. Ensuring that all New Yorkers have access to due process and a working justice system has been of utmost importance to me as an attorney and a judge.

I am thrilled to watch the establishment – through the leadership of this Council - of the nation’s first immigration public defender system for New Yorkers facing deportation. As someone who has been in the field of immigration law for almost 25 years, I have seen thousands of immigrants who were placed into deportation proceedings and struggled to find competent counsel. An immigrant in removal proceedings does not have counsel appointed even if they are very young, do not speak English, are fleeing persecution, or are confined in a detention facility. The Study Group on Immigrant Representation was able to document precisely how dire the representation crisis in New York is, and how both lack of counsel and being in immigration detention make success in immigration court extremely difficult.

The problem of access to counsel has been particularly acute for detained New Yorkers, and has placed enormous burdens not only on them and their families, but on an already overworked court system. When an person in deportation proceedings – called the respondent – appears before a judge unrepresented, the judge has the responsibility to fully explain to him or her the nature of immigration court, all his or her rights, the charges against him or her, and any possible defenses against deportation. The judge must also work to develop the record, identify whether the respondent is eligible for bond or any applications, explain how to make these applications and what evidence to gather.

If necessary, the judge must conduct an individual hearing, which is essentially a bench trial, and question the respondent and his or her witnesses at length because there is no defense lawyer present to do it. The judge is in the awkward position of acting as both lawyer and judge. This is an extremely delicate balancing act, and definitely falls short of most people's view of due process in an adversarial system. A key player is missing – the forceful and competent attorney for the person facing the very serious outcome of possible deportation.

What are the consequences of having an unrepresented person in immigration proceedings? There are 3 major consequences:

1) Increased docket time for the respondent and the court. Like every other court in NYC, the immigration docket is heavy and backlogged, to say the least. When a pro se respondent appears in court, the judge must question him/her at length about their family background, their work background, their criminal record, conditions in their native country, etc. All of this is to ascertain information regarding bond eligibility, relief from deportation, or other legal issues. This will result in multiple continuances to seek counsel, and if that is unsuccessful, to have the respondent and his family gather documentation, seek witnesses, etc. The obvious result is that an already beleaguered court system is further bogged down.

2) The increased cost to ICE and the federal government for longer detention times. In these days of budget concerns, this is an important consideration.

3) The appearance of an unequal playing field. While the immigration judges take their responsibility to protect pro se respondents seriously, there are limitations to what a judge, as an impartial arbiter, can do. A judge cannot have confidential, off-the-record conversations

with the respondent. A judge has limited ability to investigate the facts beyond what the parties submit to the court. A judge cannot interview and prepare witnesses. A judge cannot help respondents initiate collateral proceedings in other courts, like family or criminal court, that would help their immigration cases. Despite judges' best efforts, their role as an impartial arbiter is in conflict with the proper role of a diligent attorney.

For these reasons, the New York Immigrant Family Unity Project has enormous benefits not just for the immigrants who receive counsel, but also for the immigration courts, which operate most efficiently when all parties are represented by competent counsel. Because NYIFUP represents all qualified low-income individuals, regardless of whether their cases appear strong or weak, that means the case is not continued for weeks or months, with the individual still in detention, at cost to the government and at cost to his family. The attorneys are able to move the cases along on the very first hearing – whether identifying what relief the individual will be seeking, or acknowledging that the person will be accepting a deportation order.

Importantly, the judges who see a NYIFUP attorney sitting alongside their client know that the person has received a high-quality consultation, understands why he or she is there and what his or her options are. This type of representation results in better prepared cases, fewer continuances, less time in detention, less strain on judges, and a more efficient and fair system all around.

I can say that the performance of these attorneys since the project began this past November is top notch. Having spoken to some of my former colleagues, they are more than pleased with the diligence, intelligence and compassion of these attorneys.

Given these benefits, I hope that the City will continue, and expand, its commitment to access to justice for immigrants in New York. Recent years have shown a huge increase in resources for immigration enforcement, without any corresponding increase in resources for the court system that must fairly decide these cases. The immigration laws have only become harsher and more complex since I began my career in this field. As a result, the need for immigrants to be able to access quality counsel is greater than ever.

The work of this Council in funding this pilot has launched a much-needed public conversation about the representation crisis, and I encourage you to keep that conversation

going. It is the first program of its kind in the nation, and the realization of a dream many of us have shared over the years. New York has started something that I believe will transform the quality of justice in our nation's immigration courts. I hope this city will continue to lead the way in this critical endeavor.

Thank you.

**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**TESTIMONY OF MARK NOFERI
MEMBER, IMMIGRATION & NATIONALITY COMMITTEE OF THE
NEW YORK CITY BAR ASSOCIATION**

**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION HEARING
“EXAMINING MODELS FOR PROVIDING LEGAL SERVICES FOR IMMIGRANTS IN
DEPORTATION PROCEEDINGS”
February 25, 2014**

My name is Mark Noferi. I am a member of the Immigration and Nationality Law Committee of the New York City Bar Association, and chair its detention and due process subcommittee.¹ I submit this testimony on behalf of the Committee today.

The New York City Bar Association applauds the City Council for holding this hearing today to examine providing legal services to immigrants in deportation proceedings. Particularly, in 2013, we applauded the Council for allocating \$500,000 to the New York Immigrant Family Unity Project (NYIFUP), the “nation’s first public defender system” for detained immigrants facing deportation.² We urge continued and expanded funding for NYIFUP. Appointed counsel to New Yorkers facing deportation, especially those detained, is a crucial step to supporting justice and due process and preserving families with the right to stay here. Moreover, the Council’s “seed money” is making New York a leader in spurring innovative immigrant representation projects, here and nationwide—demonstrating the benefits of representation to this City and state and federal governments, and building the case for national appointed counsel (which City Bar continues to support). New York, the city of immigrants, is establishing itself as a city of immigrant representation.

The City Bar’s support for immigration representation is longstanding. In a 2013 position letter, we called for nationwide appointed counsel to indigent non-citizens in immigration proceedings,³ following our 2009 report advocating for appointed counsel for immigration detainees.⁴

¹ See also Mark Noferi, *Deportation Without Representation*, Slate (May 15, 2013) at <http://slate.me/19uILZB>; Mark Noferi, *Cascading Constitutional Deprivation: The Right To Appointed Counsel For Mandatorily Detained Immigrants Pending Removal Proceedings*, 18 Mich. J. Race & L. 63 (2012).

² 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>.

³ 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>.

⁴ New York City Bar Association, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009) (“City Bar Report”), available at <http://bit.ly/1mpE2AS>.

We continue to engage lawmakers towards this goal. The City Bar's Justice Center also represents immigrant detainees and coordinates leading law firms' *pro bono* assistance.⁵ Additionally, the City Bar's Immigration & Nationality Committee, to expand the bar's expertise, has hosted panels on immigration reform and a training session on representing immigrants at bond hearings. A separate subcommittee to improve access to counsel for immigrant children conducted six free trainings inside the New York City family courts last year.

* * *

First, *the Council should support immigrant representation because it provides justice, fairness, and due process to New Yorkers in deportation proceedings.* New York's need for counsel is particularly acute. New York City has 3.1 million immigrants (foreign-born), constituting 37% of its population, and 47% of its employed population.⁶ But as federal immigration enforcement has increased, the numbers of New Yorkers in deportation proceedings have increased as well. As of January 2014, there were 49,539 pending cases in New York City immigration courts—nearly double the amount at the end of fiscal year 2008 (26,952).⁷ 13,046 cases were added in fiscal year 2013.⁸

The City Bar supports appointed counsel to any indigent noncitizen facing deportation (also known as “removal”), especially those jailed in detention during proceedings. New York State already provides lawyers to those at risk of losing children in civil proceedings,⁹ and those detained pretrial in criminal proceedings.¹⁰ Deportation proceedings, all too often, put both loss of children and jail at risk. As City Bar's President Carey Dunne has pointed out, “it's hard to see why appointed counsel is still denied to non-citizen residents facing detention and deportation.”¹¹

Deportation involves incredibly high stakes—“all that makes life worth living,” as the Supreme Court said.¹² Someone who is deported, often a long-time US resident with a green card, is banished from his or her home, friends, family (even US citizens), job, and property, and is sent to a

⁵ City Bar Justice Center, *Varick Removal Defense Project*, at <http://www2.nycbar.org/citybarjusticecenter/projects/immigrant-justice/varick-removal-defense-project>.

⁶ NYC.gov, *The Newest New Yorkers 10* (Dec. 2013), available at http://www.nyc.gov/html/dcp/pdf/census/nny2013/nny_2013.pdf.

⁷ TRAC Immigration, *Immigration Court Backlog Tool* (through January 2014), at http://trac.syr.edu/phptools/immigration/court_backlog/.

⁸ TRAC Immigration, *U.S. Deportation Proceedings in Immigration Courts* (through January 2014), at http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php. Six thousand of these cases are immigrant children under the age of 18. (Interview conducted by Professor Lenni Benson with New York Court administrator Star Beth Pacitto on February 19, 2014.)

⁹ N.Y. Family Court Act § 262(a) (McKinney 2011).

¹⁰ N.Y. Criminal Procedure Law § 170.10 (McKinney 2010); see Laura K. Abel and Max Rettig, *State Statutes Providing for a Right to Counsel in Civil Cases*, 40 Clearinghouse Review 245 (July-Aug. 2006), available at <http://www.civilrighttocounsel.org/pdfs/abelchart.pdf>.

¹¹ New York City Bar Association, *President's Letter: The City Bar Takes on Immigration Reform* (June 2013), at <http://bit.ly/1aFlc51>.

¹² *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010).

“homeland” in which (s)he may have no ties and may be persecuted.¹³ For these reasons, the right to counsel in criminal cases already includes immigration advice, since deportation can be “the most important part” of a criminal conviction to an immigrant.¹⁴

The City and State of New York “bear[] the cost of these deportations in very tangible ways.”¹⁵ Over 2005 to 2010, the parents of over 7,000 US citizen children in New York City were deported, with more every day. Indeed, 87% of those cases involving US citizen children ended in deportation. Remaining family members then may lose their primary breadwinner and housing, and may need public benefits to survive. Sadly, children of the deported enter foster care—5,000 nationwide in 2011.¹⁶

The impact extends beyond family to economic costs. Immigrants who own businesses—and 17% of small businesses are immigrant owned—may have to close the business, liquidate assets, and fire workers, resulting in significant economic loss.¹⁷ The New York Immigrant Family Unity Project estimated that \$4.1 million of turnover costs to New York State employers could be avoided by providing counsel and avoiding deportations of those with a right to stay here.¹⁸

Moreover, removal proceedings, unique among civil proceedings, routinely involve *detention*. Incarceration exacerbates the stakes and the need for counsel.¹⁹ An immigrant may be held for 2 to 4 weeks before seeing an immigration judge for the first time.²⁰ Detention renders someone unable to engage in all the “essentials of life”—family, housing, work to gain subsistence income, or education. As immigration judge Paul Grussendorf testified, “It is un-American to detain someone, send them to

¹³ City Bar Letter at 2.

¹⁴ *Padilla*, 130 S. Ct. at 1480; see also New York City Bar, *New York City Bar Association Applauds Court of Appeals’ Ruling Regarding Due Process Rights of Immigrant Defendants in People v. Peque* (Feb. 20, 2014) (supporting expanded criminal court advisals of immigration consequences), at <http://bit.ly/1dSXLGW>.

¹⁵ 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 IP*”), available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

¹⁶ 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.

¹⁷ 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.

¹⁸ *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers* 10-11 (Nov. 2013), available at http://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf.

¹⁹ City Bar Letter at 2.

²⁰ American Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* 12 (March 2013) (“*American Immigration Council*”), available at http://www.immigrationpolicy.org/sites/default/files/docs/aic_twosystemsofjustice.pdf.

a remote facility where they have no contact with family, place them in legal proceedings where they are often unable to comprehend, and not to provide counsel for them.”²¹

Counsel is particularly necessary to detainees because U.S. Immigration and Customs Enforcement employs detention so widely in New York. From 2005 to 2010, ICE denied bail to nearly 80% of its New York City arrestees. (Thus, ICE detained without bond the New York parents of over 10,000 US citizen children.)²² ICE set bond for another 20%, with nearly 75% of bonds over \$5,000; and released less than 1% on recognizance. Fifty five percent of those receiving bond could not afford to pay.²³ This starkly contrasts parallel New York criminal bail decisions, where criminal judges release 68% on recognizance; set bond for another 31%, with 80% of bonds under \$1,000; and deny bail to only 1%.²⁴

Counsel is thus key to winning a bond hearing and securing release. But detainees “face a Catch-22”: they typically cannot escape detention without counsel’s assistance, but typically cannot find counsel until they escape detention, given limited access to communication, financial constraints, and barriers to lawyers accessing detention facilities.²⁵ Without counsel, while detained, it is then harder to collect evidence and litigate a case.²⁶

Thus, the “immigrant representation crisis” particularly affects detainees.²⁷ Sixty percent of those in detained in proceedings lacked counsel, according to the New York Immigrant Representation Group’s 2011 study.²⁸ A stunning 97% of those detained without counsel lose. Meanwhile, 74% of those not detained and able to find representation won their deportation cases.²⁹ Counsel gives a chance to those with a right to stay here.

Whether detained or not, counsel is particularly important to immigration proceedings because they are incredibly complex.³⁰ As Justice Samuel Alito stated, “[N]othing is ever simple with

²¹ *Building an Immigration System Worthy of American Values, Hearing Before the S. Comm. on the Judiciary, 113th Cong. 8 (2013) (Statement of Paul Grussendorf) (“Grussendorf”), available at <http://www.judiciary.senate.gov/pdf/3-20-13GrussendorfTestimony.pdf>.*

²² NYU et. al., *Insecure Communities, Devastated Families: New Data on Immigrant Detention and Deportation Practices in New York City 3* (July 2012), available at

<http://immigrantdefenseproject.org/wp-content/uploads/2012/07/NYC-FOIA-Report-2012-FINAL.pdf>.

²³ *Id.* at 11.

²⁴ *Id.*

²⁵ City Bar letter at 2.

²⁶ *Id.*; Noferi, *Cascading Constitutional Deprivation*, 18 Mich. J. Race & L. at 105-08 (articulating impact of detention on ability to litigate proceedings).

²⁷ New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*, 33 Cardozo L. Rev. 357, 361 (2011), available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf.

²⁸ *Id.* at 363-64.

²⁹ *Id.*

³⁰ City Bar Letter at 2.

immigration law.”³¹ 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. Individuals without legal assistance, often also 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.³²

For all these reasons, City Bar continues to salute the Council’s provision of funding to immigrant representation, and urges the Council to continue it. Appointed counsel also has broad support. According to a recent poll, 76% of Americans, including 87% of Democrats and 67% of Republicans, support ensuring that “immigrants can have legal representation if they face deportation.”³³ Moreover, City Bar salutes the City Council for supporting representation regardless of citizenship. “Access to justice reflects our American values,”³⁴ and “there is no citizenship test for counsel in America.” Put another way, the familiar words “*You have the right to an attorney. If you cannot afford an attorney, one will be provided for you*” do not include “only if you are a citizen.”³⁵

Lastly, *the Council should support immigrant representation because its funding helps make New York a leader in spurring immigrant representation, demonstrating its benefits, and establishing immigrant representation nationwide.* Innovative projects like the New York Immigrant Family Unity Project are showing that representation can be provided, cost-effectively, and that representation has quantifiable benefits, to communities and governments.

The NYIFUP is already delivering results. It is representing over 100 clients, obtaining release from detention for 23% to date, helping four stay in the U.S., and helping others secure representation for related matters. Indeed, NYIFUP has already received inquiries from other cities interested in replicating New York’s efforts.³⁶ Moreover, since the Council funded NYIFUP, the Immigrant Justice Corps, also with Judge Robert Katzmann’s support, received significant foundation support to hire “fellows” to represent additional immigrants in New York.³⁷ The Council’s funding has served as “seed money” to spark additional projects.

Moreover, NYIFUP will help show that legal assistance has concrete benefits in deportation proceedings, as many recognize in other civil proceedings. As New York’s Chief Judge Jonathan

³¹ *Padilla*, 130 S. Ct. at 1490 (Alito, J., concurring).

³² City Bar Letter at 2.

³³ Belden Russonello Strategists LLC, *American attitudes on immigration reform, worker protections, due process and border enforcement* 3 (April 2013), available at <http://cambio-us.org/wpcontent/uploads/2013/04/BRS-Poll-for-CAMBIO-APRIL-16-2013-RELEASE.pdf>.

³⁴ New York City Bar Association, “Bridging the Gap: Immigration Issues Are Civil Access-to-Justice Issues” 13 (Sept. 24, 2013) (testimony to Chief Judge Lippman’s Task Force to Expand Access to Civil Legal Services in New York), at <http://bit.ly/1mpDGu2>.

³⁵ City Bar Letter at 3.

³⁶ 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>.

³⁷ Kirk Semple, *Seeking Better Legal Help for Immigrants*, N.Y. Times (Jan. 28, 2014), at <http://nyti.ms/1mpDDhL>.

Lippmann has 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.”³⁸ Studies have showed significant economic impact from legal assistance in federal benefits proceedings,³⁹ domestic violence,⁴⁰ and eviction proceedings.⁴¹ 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 may be even more pronounced, with secondary impacts on those who remain.⁴²

Lastly, by demonstrating these benefits of representation, New York City is helping to make the case for appointed counsel nationwide. Appointed counsel in immigration proceedings would likely reduce the costs of taxpayer-supported immigration detention;⁴³ help the fair administration of justice in enormously backlogged immigration courts;⁴⁴ and economically benefit society, by reducing social costs such as foster care and increasing the economic contributions of those with a right to stay here.⁴⁵ City Bar’s Immigration & Nationality Law Committee is currently working to more specifically articulate these benefits.⁴⁶

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

³⁹ 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>.

⁴⁰ 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.

⁴¹ 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., at http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-2011_Appendices.pdf.

⁴² City Bar, “Bridging the Gap” at 10.

⁴³ New York City Bar, *Why Right to Counsel in Deportation Proceedings Won’t Break the Bank* 1, at <http://bit.ly/1mpDhYx>. Detention is expensive, costing the federal government \$159/day and over \$58,000/year for one individual. National Immigration Forum, *The Math of Immigration Detention* 2 (August 2013), at <http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf>.

⁴⁴ 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>. The average case in New York immigration courts has been pending for 570 days (over a year and a half). TRAC Immigration, *Immigration Court Backlog Tool* (through January 2014), at http://trac.syr.edu/phptools/immigration/court_backlog/.

⁴⁵ 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>.

⁴⁶ 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/1dKcTtHh>. (“Appointing counsel in these [immigration] cases pays for itself...”).

CENTRAL AMERICAN LEGAL ASSISTANCE

Ayuda Legal Para Refugiados Salvadoreños y Guatemaltecos

240 Hooper Street Brooklyn New York 11211 (718) 486-6800 Fax (718) 486-5287

Statement of Anne Pilsbury, Director, **Central American Legal Assistance** to City Council Immigration Committee on February 25, 2014.

CENTRAL AMERICAN LEGAL ASSISTANCE (“CALA”) has been providing direct legal services to Central Americans since the early 1980’s.

At present, we represent over 300 people a year in removal proceedings, several thousand more for applications for work authorization and Temporary Protected Status, DACA (Obama’s student program), adjustment of status and naturalization. I think we are the largest provider of legal services for Latino immigrants in the city by almost any measure. While most of our clients are Central Americans, we also represent a significant number of Colombians, Mexicans and others who are in danger of removal but have a colorable defense. I attached a list of the people we saw last year by country just to give you an idea of the variety of immigrants we are helping.

The best model for delivery of legal services, based on my almost 30 years’ experience in NYC, is one which meets the following criteria:

1. Provides long term, high quality representation in removal proceedings (not just filing of applications.)
2. Is easily accessible for people who do not speak English and who do not have control over their work schedules, i.e. allows same day walk-in service.
3. Facilitates the development of a one-on-one relationship between attorney/accredited representative and client; i.e. staff fluent in both the applicant's language and cultural and political history so there is no need for translators and the attorney understands the context for the person's initial decision to emigrate.
4. Legal staff capable of presenting cases before federal courts.
5. Ability to follow the case through over a period of several years.

One of the problems we have encountered over the last ten years with funding from the City is that DYCD does not provide any dedicated funding for removal defense. Our removal defense cases, which usually mean fact-intensive asylum or cancellation of removal claims, are counted and funded the same as a single naturalization application. DYCD has told us they favor funding one time application assistance, i.e. those applications filed with and adjudicated by U.S. Citizenship & Immigration Services, rather than the much more difficult project of legal defense for persons in removal proceedings which are adversarial, require

legal training and go on for years. This bias has resulted in severe underfunding of the area of greatest need – removal defense. As I am sure you can appreciate, going from being undocumented to holding Lawful Permanent Resident (LPR) status is the most difficult step on the path to citizenship. The funding should reflect this reality.

There are approximately 45,000 cases pending in New York City's immigration courts. The majority of the people in removal proceedings are Latin Americans, although China leads the list as the single largest group. Many of these people can win legal status if properly represented.

We urge the City Council to review its funding of immigrant legal services to tilt in favor of removal defense by organizations that offer in-house, easily accessible, quality representation. The City needs to make sure that groups that say they do removal defense actually do it. Just doing two or three cases a year should not be acceptable. While pro bono panels are welcome, they can only be a supplement to the non-profits able to handle a volume and which have the depth of experience needed. The most efficient model is one which supports legal aid organizations with in-depth expertise in the type of case and the political facts of the countries involved; with such legal resources, a high volume of clients can be represented well. This does points to some specialization in terms of immigrant populations: for eg., we are very familiar with Latin America and its populations

but not so with African countries and we lack the languages to handle Haitian cases well.

Speaking of all funding sources – city, state and private – there is a chronic problem with funding being too earmarked: i.e. for a narrow category of cases. Some years it is for violence against women, other years for victims of sex-trafficking, other years for juveniles or LGBT cases. The undocumented immigrant community in New York City very much needs organizations that can do a wide variety of cases and which are not opening and closing intake based on narrow funding streams. In other words we need some general unrestricted funding. The City would, ideally, be aware of what types of cases are funded by the federal government (notably assistance to LPRs and to victims of domestic violence by legal residents) and concentrate instead on the work where federal funding is prohibited.

Many of our local law schools, especially NYU, CUNY and NY Law have excellent immigration law clinics. There are plenty of eager young lawyers, often themselves first generation immigrants, hoping to do immigration defense work. We hope the City Council will provide general funding to organizations such as CALA and others so we can hire and keep these new lawyers.

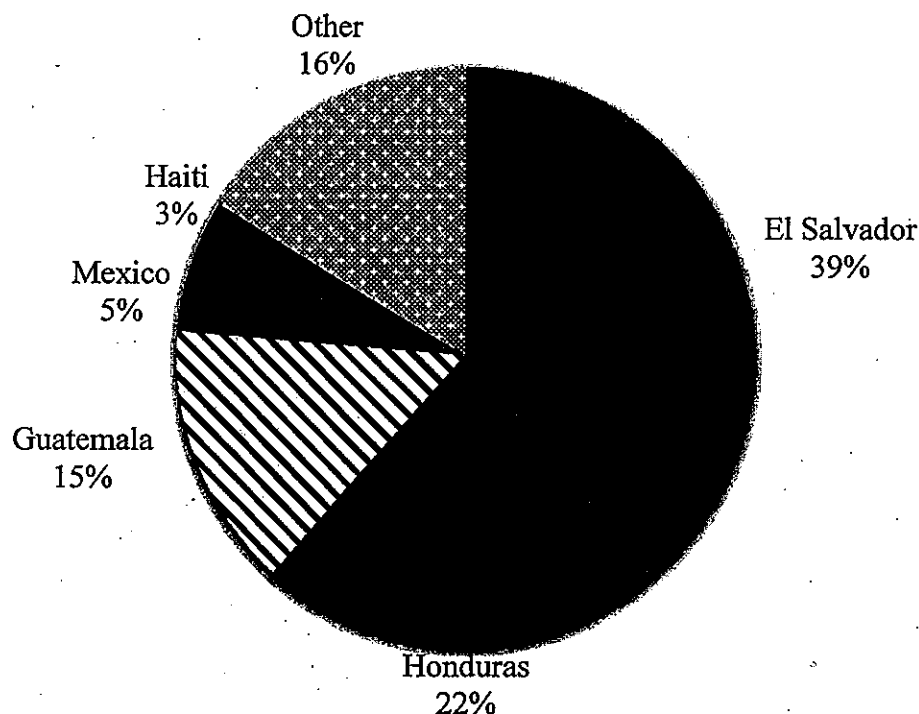
CENTRAL AMERICAN LEGAL ASSISTANCE

Ayuda Legal Para Refugiados Salvadoreños y Guatemaltecos

240 Hooper Street Brooklyn New York 11211 (718) 486-6800 Fax (718) 486-5287

Consultas by Country 2013

(750 total)



Countries CALA saw in 2013 (33 countries total)

Belize: 1

Brazil: 2

Bulgaria: 1

Colombia: 12

Cuba: 2

Dominican Republic: 16

DR Congo: 1

Ecuador: 42

El Salvador: 292

Granada: 1

Guatemala: 111

Guyana: 3

Haiti: 20

Honduras: 169

Jamaica: 5

Mexico: 36

Nepal: 1

Nicaragua: 6

Nigeria: 1

Pakistan: 1

Panama: 1

Paraguay: 2

Peru: 10

Philippines: 1

Russian: 1

Sierra Leon: 1

St. Vincent & Grenadines: 1

Syria: 1

Tajikistan: 1

Trinidad & Tobago: 2

Unknown: 3

USA: 2

CENTRAL AMERICAN LEGAL ASSISTANCE

Ayuda Legal Para Refugiados Salvadoreños y Guatemaltecos

240 Hooper Street Brooklyn New York 11211 (718) 486-6800 Fax (718) 486-5287

Number of Persons in Removal Proceedings in New York City Immigration Courts in the first nine months of 2012: 45,090

(26 Federal Plaza = 44,415; Varick Street Detention Center = 675)¹

Top Nationalities at 26 Federal Plaza Immigration Court (most recent data)²:

1. China
2. Ecuador
3. El Salvador
4. Guatemala
5. Honduras
6. Mexico
7. Nepal
8. Soviet Union
9. Dominican Republic
10. India

¹ EOIR FY 2012 Statistical Year Book, February 2013, Table 21, Y2

² TRAC Immigration "US Deportation Proceedings in Immigration Courts by Nationality, Geographic Location, Year and Type of Charge"

http://trac.syr.edu/phptools/immigration/charges/deport_filing_charge.php

Testimony of Oren Root
Before
The Committee on Immigration
New York City Council
Regarding Examining Models for Providing Legal Services for Immigrants
In Deportation Proceedings

February 25, 2014

Introduction

Good afternoon, Chairman Menchaca and fellow Councilmembers. Thank you for giving me the opportunity to testify before the Committee today. I am Oren Root, Director of the Center on Immigration and Justice at the Vera Institute of Justice.

The Vera Institute is the recipient of the \$500,000 Fiscal Year 14 grant from the City Council that has funded the New York Immigrant Family Unity Project (NYIFUP) pilot at the Varick Street immigration court. As you have heard from prior witnesses, the Vera Institute is working with the Northern Manhattan Coalition for Immigrant Rights, The Center for Popular Democracy, Make the Road New York, the Immigration Justice Clinic at Cardozo Law School, and scores of other immigrant, legal services, and progressive organizations to make NYIFUP a reality in Fiscal Year 15 for all detained New Yorkers in deportation proceedings.

The Vera Institute and our fellow collaborators are very grateful to the Council for making possible the pilot that has been operating since last November at Varick Street and that is demonstrating how a very modest investment of \$3,000 per case is preventing the deportation of members of the communities of our great City who have a legal right to remain in the United States and is allowing them to continue to contribute to the welfare and happiness of their New York families and the economy of the City.

NYIFUP Goals

The goals of the New York Immigrant Family Unity Project are to:

- Obtain successful case outcomes for detained New Yorkers who have a right to remain in the United States.
- Ensure that all detained New Yorkers facing deportation are empowered to make informed decisions about their cases and receive due process of law.
- Keep New York families intact and our immigrant communities strong and contributing segments of the City.
- Create efficiencies in the process by reducing the number of clients who have to fight their cases while detained and by speeding the resolution of cases for those who cannot be released from custody.

The Need

The \$500,000 received this fiscal year from the Council is funding the representation of 166 detained New Yorkers facing deportation at Varick Street. With some supplemental funds from the award of legal fees received in prior litigation by the Immigration Justice Clinic at Cardozo Law

School, the current pilot is able to provide representation for 190 individuals facing deportation at Varick Street who otherwise would be left to fend for themselves in a system that the New York Immigrant Representation Study¹ showed would result in 97 percent of them being deported. While the present funding is incredibly valuable to, and often life changing for, the 190 individuals who receive representation and their families, it allows NYIFUP to meet only 20 percent of the need at Varick Street. There are approximately 700 other New Yorkers of the total 900 estimated indigent unrepresented immigrants at Varick Street who are not being represented and who have only a three percent chance of winning their cases without a lawyer. An estimated 750 additional indigent New Yorkers, who, by the vagaries of which county jail U.S. Immigration and Customs Enforcement (ICE) assigns them to, have their cases heard in the immigration courts in Elizabeth and Newark, New Jersey, are also currently going unrepresented.

To provide representation to all of the 900 indigent detained unrepresented individuals a year at Varick Street and the 750 indigent detained unrepresented New Yorkers at the Newark and Elizabeth immigration courts would cost **\$5.3 million**. The per-case cost would remain at just over \$3,000 per case.

Launching the Pilot

Vera used an RFP process to select the organization(s) that would provide the legal services for the pilot. Vera staff, joined by members of NYIFUP's Advisory Board, scrutinized the proposals received to determine which bidder would provide the best legal services to the most clients. With the selection committee weighing a combination of quality of proposed services, prior experience in deportation defense, and the number of clients to be served, a consortium of Brooklyn Defender Services and The Bronx Defenders—operating as the New York Immigration Defenders (NYID)—was selected to provide NYIFUP's legal services. Both Brooklyn Defender Services and The Bronx Defenders have exemplary records as national groundbreakers in providing holistic public defender services and both, before NYIFUP, had robust immigrant legal services units complementing their much larger criminal defense units.

In creating the model that became NYIFUP, the New York Immigrant Representation Study identified cooperation from the court and enforcement agencies as essential for the efficient operation of the pilot—both to maximize the quality of the representation and to minimize the cost of providing such high-quality legal services. Before the pilot launched, Vera organized several stakeholder meetings including with officials of the Executive Office for Immigration Review (EOIR), the U.S. Department of Justice agency that runs the immigration courts; the Office of Chief Counsel (OCC) of ICE, which prosecutes deportation cases; and Enforcement and Removal Operations (ERO) of ICE, which apprehends and detains individuals put into deportation proceedings. Signifying the importance and precedent-setting nature of NYIFUP, the nation's first public defender for deportation cases, Second Circuit Court of Appeals Chief Judge Robert Katzmann hosted the first stakeholder meeting.

EOIR, OCC, and ERO from the first stakeholder meeting to the present have provided significant cooperation and procedural flexibility that are essential to the efficient success of NYIFUP. Without that cooperation and procedural flexibility that has been freely offered by the judicial, prosecutorial, and enforcement agencies, NYIFUP would be considerably less efficient, to the detriment of all parties. Vera continues to convene periodic, well-attended stakeholder meetings that work on,

¹ http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf

and often succeed in, finding solutions to procedural hurdles to providing the best representation at the lowest cost to noncitizens facing deportation at Varick Street.

The Pilot in Operation

Three immigration judges are assigned to the Varick Street court, which exclusively handles cases for people placed in detention by ICE. Each judge handles new cases one afternoon a week—one on Monday, another on Tuesday, and the third on Wednesday. To pace intake, since NYIFUP was funded to represent only 20 percent of the anticipated need at Varick Street, NYID chose to handle cases on alternate weekly court intake days—Tuesday in week one, Monday and Wednesday in week two, Tuesday in week three, etc., until they have accepted representation for 190 cases.

On NYIFUP intake days, starting at 8:00 am, NYID lawyers see all unrepresented immigrants who will be having their first court appearance that afternoon. NYID lawyers screen those going to court to determine whether their household income is at or below 200% of the federal poverty guidelines—\$23,340 for a single person and \$47,400 for a family of four. Those whose household income exceeds the guidelines are ineligible for NYIFUP representation. All those who are financially eligible, who are not otherwise represented, and who want NYIFUP representation, receive it. On an average intake day, NYID accepts seven cases for representation.

Once a case is accepted for representation, an NYID lawyer goes over the charges and other relevant documents with the new client to determine whether there is a viable claim for relief (an application to continue or obtain legal status) or a defense to the charges. Based upon what claims are or are not available, what does the client want to do? What are the possibilities for release while the case is being litigated? What documents and other information must be obtained to seek release or the identified relief? Key among the many facts the lawyer will gather are what family members does the client have in the United States and what will be the consequences to them if the client is deported.

It should be noted that the NYIFUP intake process is radically different from all prior attempts nationwide to ameliorate the immigrant representation crisis. All other efforts have involved a screening regarding the merits of the case. By and large, those with the strongest claims were the only ones who received representation. Those with what appeared from a triage screening to be harder claims to prove were typically left without counsel, when they in fact were those who would most have benefited from legal representation.

Also noteworthy is that, through the cooperation of ICE, NYID lawyers are able to have access to the charging and other relevant documents before appearing in court and have a dedicated space to conduct their multiple interviews before court begins. Without these accommodations from ICE, lawyers would have no alternative at the first court hearing but to automatically request an adjournment on each and every case because they would have had no meaningful opportunity to prepare for that first court appearance.

NYIFUP representation covers all proceedings in immigration court, all appeals to the Board of Immigration Appeals, and related proceedings with U.S. Citizenship and Immigration Services (USCIS), the government agency that handles immigration benefits. NYID is encouraged, but not mandated, to provide or to secure representation for appeals to the federal courts, for post-conviction proceedings, and for Family Court proceedings. While NYID is required to accept all 190 cases before the end of this fiscal year (and will, in fact, beat that deadline by approximately three months), NYID

will continue to provide full representation within the required scope of representation on all of the 190 cases until they reach conclusion. For clients who are released, it is reasonable to assume that many of those cases will not conclude for a couple of years.

Preliminary results

From inception of operations on November 6, 2013 through January 31, 2014, NYID has accepted representation on 101 cases (53 percent of 190). Pertinent data for the first three months of the pilot include:

- Fifty-two percent of those cases are still being litigated. (In the cases examined by the New York Immigrant Representation Study, only five percent of detained unrepresented individuals were able to identify relief they could pursue.)
- Four cases have successfully concluded with the clients being entitled to remain in the United States; this number will grow substantially, but because of typical court processing times, few cases have had enough time to come to successful conclusion.
- The only case to go to a merits hearing (the equivalent of a trial) resulted in the client getting relief and maintaining his lawful permanent resident status.
- A robust 23 percent of NYID clients have been released, 19 while their cases remain pending and four after their cases achieved a successful conclusion.
- In nine percent of the cases, NYID has filed, or secured other counsel to file, ancillary proceedings—in Family Court for guardianship and special findings; in various state courts for post-conviction relief, and before USCIS for immigration benefits.
- Five percent of cases ended in an order of voluntary departure, which makes more feasible for the individuals involved to apply to return to the United States lawfully than if they were deported.

Examples of how representation has made a difference

Immigration law is fiendishly complex. Ninety-nine percent of lawyers in the United States would be ill-equipped to conduct an effective deportation defense. To expect non-legally trained individuals, many of whom do not speak English, to advance successful defenses or claims for relief (where the burden of proof is on the individual, not the government) is unrealistic, particularly while being detained in a county jail in New Jersey. That is why only three percent of detained unrepresented individuals examined in the New York Immigrant Representation Study won their cases. What follows are illustrations of how, just in the first three months of the pilot, with many cases still in their early stages, NYIFUP representation has made a difference.

Knowing what claims of relief or defenses to advance is often complicated. And, as noted, the individual must prove entitlement to the defense or the relief sought; the government does not have to prove lack of such entitlement.

- A 56-year-old lawful permanent resident (LPR) from Queens, who has lived in the country for more than 40 years, with three U.S. citizen children, four U.S. citizen siblings, and a U.S. citizen mother, won his case by filing for a form of relief that was abolished in 1996, but which a subsequent U.S. Supreme Court ruling has stated still applied to people with convictions that predated the statutory change.
- A 37-year-old lawful permanent resident from Staten Island, who has lived in the country for 27 years, with three U.S. Citizen siblings and a fourth who is an LPR, with a long work history, won his case (it was terminated, the equivalent of a dismissal) by successfully challenging the government's contention that a particular conviction was a crime involving moral turpitude.

- A 23-year-old lawful permanent resident from Queens, who has lived in the United States since he was three years old, and who is supporting his mother, his sister, and his sister's child, from his earnings working at a supermarket, also got his case terminated, because his lawyer alerted the judge that the charges did not support the contention that he was deportable.
- The lawyer for a 20-year-old man from Brooklyn, where he lives with his sisters, was eligible for Special Immigrant Juvenile Status, based upon abandonment by his father, which claim requires filing for guardianship and special findings in Family Court in Brooklyn. The young man was released on bond and is now home with his sisters and working.
- A 38-year-old from the Bronx, who has lived in the United States for 18 years and who has worked for the same employer for the past 15 years, made an application in 1998 that would have given him legal status in the United States, but the application was later deemed abandoned. His lawyer recognized that the client could renew that long-ago application for status before the immigration court.

Presenting sufficient proof to obtain release is a significant challenge in part because, just as in claims for relief and defenses, the individual has the burden of proving that s/he should be released and in part because immigration judges often require a great deal of documentary proof to set bonds at a level that the individual's family can post. Few unrepresented detained individuals have the knowledge of what documents would be necessary, much less the ability to obtain them while in a county jail in New Jersey.

- A 39-year-old lawful permanent resident from the Bronx, who has lived in the United States since he was nine years old and who was diagnosed six years ago as bipolar and schizophrenic, was legally ineligible for release on bond. Because of his mental health condition, which deteriorated as a result of his being detained and receiving different medication while in detention, his lawyer persuaded ERO to release him on medical and humanitarian parole. To obtain that release, however, required having a psychologist evaluate him in detention and prepare a report showing that continued detention was deleterious to his health. In addition, his lawyer had to order the stenographic transcripts from two state court proceedings from 1991 which showed that the official court records stating that those two cases had ended in convictions were both erroneous. The client is now back in the community receiving support from his parents, grandmother, and mental health service providers.
- A 31-year-old from Queens, who has lived in the United States for 15 years and who has maintained steady employment, has a two-year-old U.S. citizen with his longtime partner, who is an LPR. He was arrested when a neighbor called the police because he was having a non-violent argument with his partner. The police arrested him despite his partner saying there was no violence and that she was not pressing charges. ICE held him on no bond. To get bond set, and in an amount his family could afford, his lawyer obtained affidavits from the partner, the partner's parents, a cousin, and his criminal defense lawyer (stating that the case would not end in a criminal conviction). Based upon this array of evidence, the immigration judge set a bond the family could meet and the client, who is the primary caretaker for his son because of his partner's long hours working at a job in New Jersey, is reunited with his family.
- A 38-year-old from Brooklyn, with a U.S. citizen wife, who is a truck driver for a well-known multinational corporation, was turned over to ICE in violation of New York City's detainer discretion law regarding arrests with no convictions due to a court paperwork error. ICE held him on no bond and, once in court, the immigration judge declined to set a bond. His NYID lawyer prevailed upon his criminal defense attorney to get the Brooklyn criminal case advanced

on the calendar and dismissed. Once that occurred, ICE set a bond the client's family could meet and the client is back at his job.

Often **ancillary proceedings**—that is, proceedings before a different court or government agency—**are essential** to successfully pursue relief in immigration court. Except in theory, it would be impossible for a detained unrepresented immigrant to pursue such ancillary proceedings.

- A 31-year-old lawful permanent resident from Brooklyn, who has lived in the United States since he was seven years old and all of whose relatives are U.S. citizens, needs a motion to vacate judgment on his one criminal conviction. NYID has secured representation for the client on that motion and the post-conviction lawyer is in negotiations with the District Attorney's office to negotiate a disposition in that case that will be more favorable for the immigration case. Meanwhile, his detention has led to his mother, who is in poor health, losing 30 pounds and to the mother of his two-year-old son attempting suicide.
- A 28-year-old from Queens, who has lived in the United States since he was 13 years old, is eligible to receive Deferred Action for Childhood Arrivals (DACA). ICE detained him on no bond. When his lawyer applied for a bond that the family could make, the immigration judge set the bond at \$12,500, which the family cannot make, because the client has a pending misdemeanor case in Queens. He could resolve the case in Queens, if he was free to go to court, but that is out of his control while he is detained. His NYID lawyer is working with his Queens criminal defense attorney to try to get that case resolved so that an application can be made for a reduced bond to obtain his release, and a subsequent application for DACA.
- As noted above under relief claims, the 20-year-old from Brooklyn who will seek Special Immigrant Juvenile Status first had, through his lawyer, to bring a guardianship proceeding in Brooklyn Family Court.

Clients are often so traumatized by detention and the prospect of extending their stay in custody that one of their NYID lawyer's initial tasks is to **persuade the client not to give up**. This is a prevalent problem that too often ends up with clients throwing in the towel though they might have prevailed. In the following cases, clients who came into court planning on accepting an order of deportation, took their lawyer's advice (often after extensive discussion), and have reason to be glad they allowed themselves to be persuaded.

- The 37-year-old lawful permanent resident from Staten Island, who has lived in the United States for 27 years, and whose case is also listed under knowing which defenses to advance, was released two days after he had to be persuaded to fight his case, and then his case was terminated four days later. His lawful permanent resident status remains intact.
- The 20-year-old from Brooklyn who is seeking Special Immigrant Juvenile Status and who has been reunited with his sisters and is gainfully employed also had to be persuaded the day his lawyer met him not to give up and accept an order of deportation.

Lawyers provide **valuable services even to clients who are ordered deported**. Additionally, all those who accept an order of deportation do so after having received competent legal advice so that they can intelligently make whatever decisions they believe are best for themselves.

- A 24-year-old Mexican man was the victim of labor law violations by his former employer. His lawyer worked with the New York State Department of Labor to get him \$3,700 in back wages which has been sent to him in Mexico. At NYID's request, the Department of Labor has also issued a certification that the client had been a victim of a crime. His lawyer will be applying for a U Visa for the man, which will allow him to return to the United States with lawful status.

The application for a U Visa could have been made without the client accepting an order of deportation, but it would have required his remaining in detention, probably for months, and he was unwilling to do so.

- After a 40-year-old Bronx man, with a U.S. citizen wife and two U.S. citizen children, was ordered deported, his lawyer obtained his release, got his deportation deferred indefinitely, and is seeking work authorization for him.
- A 29-year-old Guatemalan man who was ordered deported was believed by ICE to be from Mexico. Only through NYID's intervention with both the Guatemalan and Mexican consulates, after intervention with his assigned deportation officer was unsuccessful, was he not deported to the wrong country.
- A 53-year-old Dominican woman decided to accept deportation rather than to stay in detention and fight an uphill battle to maintain her lawful permanent resident status. NYID provided ERO her passport shortly after she was ordered deported to shorten her time in detention before being deported.
- A 52-year-old Mexican man decided to accept an order of deportation when his lawyer told him that he had no valid claim to remain in the United States. He was owed back wages, however. He authorized NYID to represent him in negotiations with his former employer who agreed to pay the client \$1,600 of the \$1,750 he was owed. NYID will forward a money order for that amount to the client in Mexico.

As demonstrated by the work to get deported clients back wages discussed above, NYID endeavors to provide **holistic services** that meet as many of their clients' needs as possible.

- Following his lawyer's negotiating a reduced bond that his family could post, a 27-year-old man from Queens, with two U.S. citizen siblings, went to see his lawyer in her office. His lawyer realized that he was in serious mental distress. A social worker and legal advocate attached to the NYID team went into action, getting him an immediate appointment with a psychiatrist, who determined that the client was suicidal and needed immediate hospitalization. The team then applied and obtained emergency Medicaid coverage for the client who was then admitted to a hospital for a few days. The team continues to ensure that he receives appropriate outpatient mental health services. Without a lawyer, he would have been deported and likely had to fend for himself to deal with his mental health problems in Mexico.
- Even though NYID has already won the right for the 56-year-old lawful permanent resident from Queens to retain his legal status in the United States and his deportation case has been completed, NYID is helping the client obtain a replacement green card from USCIS.

Not only do the above examples demonstrate how much of a difference representation makes, they also demonstrate the superior quality of representation that NYID is providing. Representation of this quality and breadth in the private marketplace would be available only to the wealthy, as it far exceeds what most private practitioners would include in their representation of a deportation case.

Data Analysis and Evaluation

One of Vera's functions pursuant to the grant is to gather and analyze data concerning case outcomes and court processing times and to report relevant data to the City. It is essential to document the successes and efficiencies of NYIFUP to demonstrate the value of the project. With present funding, Vera is able to provide only relatively straightforward data analysis, such as is provided above, but as the project continues, we will be seeking foundation funding for a rigorous social science

evaluation of the project. The evaluation will involve comparing NYIFUP case outcomes and processing times to unrepresented but otherwise similarly situated comparison groups. We will be using EOIR data regarding the comparison groups and, if we can obtain it, ICE detention time data. Even though Vera does not yet have the funding for an evaluation, we are gathering the necessary data from NYID so that it will be available when we do obtain the necessary funding.

One thing that we hope an evaluation will show is that providing counsel for detained immigrants saves ICE money in reduced detention costs—both because more people will be released and because having a lawyer at the inception of a detained case will make it move more efficiently. Since ICE detention costs an average of \$159 per day per person, case processing efficiencies can realize appreciable savings.

If as we expect, we are able to show offsetting detention cost savings for ICE, we would hope that that evidence would be persuasive in getting that federal government to pick up at least some of the costs of representation of detained immigrants in deportation proceedings. That, however, is a long-term strategy that will not come into play until a full-blown evaluation has been completed several years from now.

Conclusion

I believe that my testimony has demonstrated how big a difference NYIFUP is making for the pilot's clients, their families, their employers, their communities, and ultimately for all of us New Yorkers. For a relatively modest **\$5.3 million in Fiscal Year 15**, the benefits of NYIFUP can be extended to the currently unrepresented 700 individuals at Varick Street and the 750 additional New Yorkers whose cases are being heard in Newark and Elizabeth. The Vera Institute submits that such an investment would benefit the City and its citizens many times over.

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KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Testimony of Paula Shulman
before
The Committee on Immigration
New York City Council

**Examining Models for Providing Legal Services for
Immigrants in Deportation Proceedings**

February 25, 2014

Good afternoon, Chairman Menchaca and Council Members. My name is Paula Shulman and I am a law student with the Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law. I am here today with Professor Peter Markowitz, who directs the clinic. For the last two years, the Clinic has been working with the Northern Manhattan Coalition for Immigrant Rights, Make the Road New York, the Center for Popular Democracy, the Vera Institute of Justice and a broad coalition of community-based and legal advocacy organizations, to create the nation's first high-quality universal representation program for detained immigrants facing the deportation: the New York Immigrant Family Unity Project, known as NYIFUP. Prior to that, Professor Markowitz, as part of Judge Katzmann's Study Group on Immigrant Representation, chaired the New York Immigrant Representation Study, which gave rise to NYIFUP.

As you know, the NYIFUP pilot has been operational since November. The pilot was made possible by this Council, and I would like to start by thanking the Council and especially Councilmember Dromm, who as last year's Chair of the Immigration Committee, played a critical role in securing the pilot funding.

We are here today because our city saw that many of our most vulnerable families and communities were facing a grave problem: a lack of access to legal counsel for detained New Yorkers in removal proceedings. A problem so grave that ninety-seven percent of unrepresented

detained immigrants lose in immigration court. A problem so grave that each year two thousand New York City children experience the emotional trauma of having a parent disappear into immigration detention. As I will explain, the NYIFUP pilot is only just the beginning of the movement to provide indigent immigrant New Yorkers with universal access to counsel in the complex arena of immigration law.

As I mentioned, NYIFUP grew out of the New York Immigrant Representation Studies conducted by the Study Group on Immigrant Representation convened by Chief Judge Robert Katzmann of the Second Circuit Court of Appeals. The data from that study revealed that here, in the epicenter of the global legal community, sixty percent of detained respondents in the New York City Immigration Court lacked access to counsel. Moreover, unrepresented detained individuals, many who have language barriers and limited education, have virtually no chance of succeeding in defending themselves in deportation proceedings, where they must litigate against trained government attorney. Indeed, only three percent of detained unrepresented respondents in the study won their cases.

The tragedy is that many of the ninety-seven percent of these people who were deported were actually legally entitled to stay, but simply could not avail themselves of their legal rights and remedies without a lawyer. The study revealed that a lawyer can increase the likelihood of a detained New Yorker's chances of success in immigration court by much as one thousand percent.

The early results of the NYIFUP Pilot support this data. While it is too early to analyze data on case outcomes, the NYIFUP attorneys have identified potentially viable defenses in over half of the cases. Indeed, the first three cases to be litigated to completion have all resulted in the deportation cases being terminated, a grant of legal status, and individuals being reunited with their families. The bottom line is that there is an acute shortage of lawyers available to poor New Yorkers facing deportation and that lawyers make a tremendous difference in the outcome of these cases and, ultimately, in keeping New York families together.

Even in the most straightforward cases, where a person is clearly eligible for some form of discretionary relief, without a lawyer, New Yorkers are hamstrung in collecting and presenting the factual evidence necessary to demonstrate that the immigration judge should exercise his or her discretion to allow them to stay. In the complicated and nuanced cases, New Yorkers have almost no chance of success without a lawyer. *Pro se* (unrepresented) individuals

cannot construct the complex legal arguments necessary to challenge inappropriate charges of removability. *Pro se* individuals cannot do the legal research necessary to litigate a contested claim for eligibility for relief or bond. Indeed, in a significant category of cases—approximately ten percent thus far, though we expect that number to rise—in order to prevail in immigration court individuals must obtain a finding in some sort of collateral tribunal, such as family court, criminal court, or other immigration agencies. Without a lawyer, there is absolutely no way a detained New Yorker could even initiate such collateral proceedings.

Take for example, Oscar Hernandez, whom you have already heard from today, and other young people like him who may be eligible for Special Immigrant Juvenile status, known as SIJ. In order to apply for SIJ in deportation proceedings, an individual has to first obtain a special finding from a family court declaring that the individual has been abused, abandoned or neglected. It is impossible for a detained individual to obtain the necessary family court order without the aid of counsel. Without a lawyer, Oscar and the others like him would not have a chance.

Without access to counsel, the detained immigrant dragged from his or her bed in the middle of the night by ICE officers cannot challenge the violation of his or her Constitutional rights. Without access to counsel, New Yorkers who are illegally detained cannot file a *writ of habeas corpus* in federal district court. Without counsel, an individual removable due to a constitutionally deficient conviction is unable to challenge that underlying conviction. The legal expertise of an attorney is necessary not just to pursue those options, but to identify them in the first place. Even when no relief from deportation exists, legal counsel assures individuals and their families that while they may be giving up the fight to stay here, they are doing so with full knowledge of the ramifications of that decision.

You have heard from the clients, their family members and loved ones, and the attorneys who represent them. They are truly the lucky ones. By chance these individuals had their first immigration court appearances on a Pilot Intake Day. But the one hundred and ninety cases that the pilot is covering represent only about twenty percent of the need at the Varick Street Immigration Court.

Chairman Menchaca, we are so thankful that you were able to come and witness the NYIFUP pilot in action last week. You saw people who woke up that morning and did not know they would have a lawyer and likely did not know they had any relief available to them. The

NYIFUP attorneys funded by the City Council were able to tell them that they were there for them and able to expertly evaluate their cases.

What you did not see is what happens eighty percent of the days at Varick Street, when those who were not lucky enough to win the NYIFUP lottery came to court alone, appeared before the immigration judge alone, and went back to the detention center without the knowledge that he or she had an advocate. One hundred and ninety lucky men and women and their families will benefit from the NYIFUP pilot. But the sad truth is that, based on current funding, over seven hundred immigrants appearing at Varick Street this year will have no counsel and virtually no chance of remaining in New York with their families.

Beyond the New York Immigration Court located at Varick Street, there are an additional seven hundred and fifty New Yorkers who are locked up this year, unable to afford counsel, and facing deportation just across the river at one of two nearby New Jersey immigration courts. Our goal is to bring NYIFUP to scale this year and meet the full need at the New York City Immigration Court and of the New Yorkers in those nearby New Jersey immigration courts. Together, that means serving approximately one thousand six hundred and fifty individuals a year. The current funding level allows us to serve only approximately eleven percent of those individuals.

To give you a sense of what this means for the New Yorkers who are not currently being served by NYIFUP, our clinic met a woman named Ruth a few months ago in immigration detention. Ruth had spent two years locked up in detention fighting her case *pro se* in the New York City Immigration Court. Ruth, a domestic violence victim who came to the United States lawfully, was facing deportation for shoplifting baby clothes—she had a two year old and a five year old at the time she was detained. Ruth spent two years in detention because she was *incorrectly* told she was not legally entitled to a bond hearing. After finally being screened by a pro bono lawyer, the lawyer immediately realized that she was in fact bond eligible and called our clinic. After a thirty minute bond hearing, we won Ruth's release and she was reunited with her children—now ages four and seven.

Had NYIFUP been in place two years ago, Ruth would never have been separated from her children. Until NYIFUP is fully implemented, there will continue to be New Yorkers who are wrongfully detained and deported.

NYIFUP is the first program of its kind in the United States and is the start of a

nationwide movement. New York City is the national leader in protecting and welcoming immigrants. The City Council's decision to fund the pilot program reaffirms that New York City is the most immigrant-friendly city in the nation and is sparking a change that, in time, will ripple across the country. The only way to protect our New York City communities and families from the devastating effects of prolonged detention and deportation is to implement a system of universal representation so that no more New York City families are separated simply due to an inability to pay for an attorney.

Chairman Menchaca, Councilmember Dromm, committee members, and the Council as a whole should be applauded for their leadership and commitment to NYIFUP. The City Council has started a sea change in the quality of justice afforded to immigrants in the United States. We look forward to working with the Council and the Mayor to bring NYIFUP to scale this year. Once we have brought NYIFUP to scale here in New York City, we look forward to working with other cities to replicate the NYIFUP program. Thereafter, we look forward to working with the federal government to ensure that no immigrant in the United States is denied access to justice. It has all started here. Your efforts will be marked in history as the inception of a sea change in the quality of justice afforded to immigrants in the United States.

Thank you Chairman Menchaca, Speaker Mark-Viverito and to all of the committee members. We look forward to working with you and with the Mayor to bring NYIFUP to scale this year.

**Written Testimony of Juan Carlos Guzman Guzman, NYIFUP Client
before the Committee on Immigration
New York City Council**

February 25, 2014

My name is Juan Carlos Guzman Guzman. I am 39 years old and I came to the United States with my green card in 1983, when I was nine years old. I have lived in the United States as an LPR for the past 30 years. My entire family is in New York my father, mother, grandmother, grandfather, my brother, my sister, and my aunt. They are all residents and US citizens.

This past summer I went to the Dominican Republic for a vacation. I was arrested by Immigration at JFK Airport on my way back. They locked me up and are trying to deport me because of two marijuana misdemeanors from 1997 and 1999. I haven't been convicted of any crime since then.

Before going into ICE custody, the last time I spent time in jail was in 1996 when I spent 20 days in jail in the Bronx for a misdemeanor conviction. I am a different person now than I was back in the days I was getting into trouble.

Being detained was scary. I was stopped on October 28th, 2013 at the airport and I was told that old cases came up, and they detained me because of those. They took me to Hudson County Correctional Facility. At first my family didn't know where I was, until a week later when my telephone card came through and I could call them and tell them what was happening.

When I got to the immigration jail I found out that I was not going to get a free immigration lawyer. After I got to call my family, they told me they were going to try to find a free lawyer for me but they couldn't find anyone who could take my case for free. My family does not have the money to pay for a lawyer for me. When I found out that I was going to have to see the Immigration Judge without a lawyer, I lost all hope that I could fight my case. I thought I was going to get deported.

I have mental health problems and being locked up made me feel worse. I had a really hard time emotionally. I had trouble sleeping in a bunk full of 40 other detainees with noises all night long. When I'm not detained, I go to my grandmother's house every day and help her out in any way I can. But besides my grandmother, I prefer to just be alone. Being surrounded by so many other guys in jail all day was upsetting.

While I was in Hudson County, I didn't get to do much. I would stay in bed just to pass the time. There isn't any real outside space, just a handball wall. We would watch TV or play dominoes. I felt surprised that I was locked up for something that had happened so

long ago, that they could hold something that old against me. I felt hopeless while I was locked up. I thought I was going to get deported.

But then on the first day I saw the judge, I met my lawyer, Sarah Deri Oshiro. She works at The Bronx Defenders and is from the New York Immigrant Family Unity Project. I told her about my history and she told me she would help try to get me out of jail and fight my deportation case. She got me released on medical and humanitarian parole even though I was not eligible for bond. She is also helping me apply for a pardon from the Immigration Judge so that I can get my green card back. There was a mistake in my criminal records so at first the Judge said I wasn't eligible to get a pardon. Sarah got proof that there was a mistake in my record and since she got those papers, the Judge agreed that I can apply for a pardon. She told me that the Immigration Judge will get to hear about the mistakes I made in the past and also about what my life is like now, and if they think I deserve another chance in this country, they may let me stay here with my Green Card.

If I hadn't met Sarah I would definitely have been deported by now. I don't know how to fight my case all by myself or get the papers I need for the judge. I worry about what would happen to me in my country without my doctors, my medication, or my family especially because of my mental health problems. Thanks to Sarah and this Project I am back home, feeling stable, and hopeful that I will be able to remain in America with my family.

Testimony of Jennifer Friedman, Director of Immigration Advocacy

before The Committee on Immigration New York City Council

Regarding Examining Models for Providing Legal Services

for Immigrants In Deportation Proceedings

February 25, 2014

Good afternoon, Chairman Menchaca and all of the Councilmembers who are here.

Thank you for this opportunity to testify about the New York Immigrant Family Unity Project (NYIFUP), and thank you for your ongoing support of this important project. My name is Jennifer Friedman and I am the Director of Immigration Advocacy at The Bronx Defenders. I submit these comments on behalf of The Bronx Defenders.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 200 represents 30,000 individuals each year and reaches hundreds more through outreach programs and community legal education. In the Bronx and beyond, The Bronx Defenders promotes justice in low-income communities by keeping families together.

Nearly a third of Bronx residents are not US citizens. To serve this client community, The Bronx Defenders first hired a full-time attorney with special expertise in the immigration consequences of arrest and conviction in 2002. Today, seven full-time immigration attorneys work closely with criminal defense attorneys on integrated teams, providing a full range of services from plea consults to deportation defense. Last year, we preserved the unity of 139

families by preventing the deportation of a parent or child, affecting more than 232 family members, and we obtained lawful immigration status for 52 other clients.

Working in the New York Immigration Defenders consortium with our colleagues at Brooklyn Defender Services as the New York Immigration Defenders, we were selected to provide legal representation to detained immigrants under the NYIFUP pilot project. Since November of last year, we have been representing a segment of all detained New Yorkers in the Varick Street Immigration Court. Under our universal representation model, we represent all financially-qualified, unrepresented individuals who are facing the Immigration Judge on the days we are assigned.

Intake days begin at 8 o'clock in the morning, when we begin meeting clients who are scheduled for first appearances before an Immigration Judge. Unlike in the criminal justice system, most of our clients at Varick Street have already been detained for more than a week—usually an average of 10-14 days—when we meet them. Some of them were transferred into ICE custody directly from a New York City jail or other criminal custody. Others were picked up at home or work, often in the early hours of the morning. Others still were stopped at the airport seeking to reenter the country. The vast majority of them have had some prior experience with the criminal justice system and they are all aware of one crucial difference between immigration and criminal court: they do not expect to be assigned a free lawyer. By the time we meet our clients, many of them have nearly lost hope and are anxious to get deported simply to get out of detention.

At our initial client intake meetings, we engage in a detailed interview and exhaustive assessment of legal options. After that intake, in many cases, we advise our clients that they do

not have a viable application for relief from removal. In those cases, the immigration proceedings conclude the same day with either an order of deportation or Voluntary Departure.

But in some cases, that morning's conversation is the first of many to come with our client, family members, experts, and others as we develop an application for relief. For those clients, we gather documents, develop innovative legal claims, and prepare testimony. Regardless, it all starts at 8am on the fourth floor at 201 Varick Street, where we tell our client that contrary to what they've heard, they will not be standing up alone before an Immigration Judge today.

Having a lawyer matters, even for clients who decide to take a deportation order on their first appearance.

Like a prison sentence, the decision to accept deportation is among the most significant decisions many of our clients make in their lives. For nearly all, it means leaving family, jobs, and community here in New York City. For some it means returning to a country where they no longer have roots or connections, where they may not even speak the language.

To choose to fight a removal case is also a tremendous decision. For most of our clients, it means remaining incarcerated in detention for months or years in order to fight the legal battle. It also comes at great cost—the financial cost to the government of detention and immigration proceedings, and the emotional cost to our client and his or her family.

To stay and fight or to accept deportation—it is absolutely impossible to make this crucial decision without the advice of an attorney and a full understanding of the options. Having a lawyer makes a difference in each and every case, even when our clients take deportation orders at the very first appearance. Having had the chance to tell their story, and with the benefit of compassion and information, our clients are able to move forward with open eyes and without

lingering doubts. They save themselves time in detention by not adjourning their case repeatedly while seeking private or pro bono, serving only to delay the inevitable. They can move on with their lives rather than languishing in detention. And they can save their families from scraping together thousands of dollars for an attorney who can do nothing but deliver the same sad news.

Equally important, we provide critical support for clients who are getting deported or who have accepted Voluntary Departure by explaining the process to family members, collecting travel documents and helping to coordinate removal with Deportation Officers, and helping New Yorkers transition out of our City.

Mr. Lopez provides an example of how our assistance extends even to clients who are being deported. After he was ordered deported, Mr. Lopez's immigration attorney consulted with an employment specialist in the Civil Action Practice at The Bronx Defenders. Together, they determined that Mr. Lopez was owed \$1,600 in back-wages by his employer. Our paralegal then tracked down the employer and convinced him to make good on the payment without legal action. Because Mr. Lopez was not able to receive the payment while in immigration detention, our team of advocates is coordinating the transfer of the funds to Mexico so that Mr. Lopez will receive them when he arrived there. This sum will be crucial to helping him start over in Mexico after twelve years living in the United States.

In another case, DHS sought to deport our client Mr. Garcia to Mexico despite his Guatemalan nationality. After confusion over his country of origin, we succeeded in getting the Immigration Judge to order him deported to Guatemala first with Mexico in the alternative. After that, we worked with the Guatemalan Consulate to establish his citizenship and advocated with his Deportation Officer to help him get back to the right country.

High quality legal defense makes all the difference.

Our representation is comprehensive and holistic, and includes identifying applications for relief, making innovative legal arguments, filing for post-conviction relief in criminal forums, resolving outstanding criminal matters, filing in Family Court, and filing habeas petitions. It involves working with social workers and psychologists where mental health issues are present. It involves advocacy for our clients' release from detention during the pendency of the removal case, through bond hearings and advocacy directly with the Department of Homeland Security, to get our clients back home and back to work.

Mr. Guzman's case illustrates the difference first rate legal defense can make for a family. Mr. Guzman is a Lawful Permanent Resident who has lived in the US for thirty years. When we met him in October, he was facing removal to the Dominican Republic, where he had not lived since he was nine years old. Our immigration attorney spotted a potential error in the government's document alleging that our client had a conviction for an aggravated felony and was therefore ineligible to contest his deportation. She tracked down plea minutes from 1992 that established that the convictions were not Aggravated Felonies. In doing so, she established that our client is actually eligible for Cancellation of Removal, a form of discretionary relief from deportation. We are currently representing him in that pending application.

Then there is Mr. Emmanuel. When we met him in immigration detention, he had given up hope. Despite having lived here for 27 years—nearly all his life—as a Lawful Permanent Resident, he told his immigration attorney he just wanted to get deported to get out of detention. He didn't even want to stay in detention long enough to pursue an application for discretionary relief from removal. Mr. Emmanuel's lawyer struck a deal with him: he would remain in detention for a short window to see if we could prevail in his case quickly. Our lawyer

immediately challenged the sufficiency of the allegations against Mr. Emmanuel, arguing that his convictions did not in fact make him deportable. Two days later he was released from detention and was at home with his family. Shortly after that, the deportation proceedings against him were withdrawn completely.

Existing public defenders are the right home for the immigrant public defenders.

The New York Immigration Defenders attorneys are, by training and in our hearts, public defenders. Our attorneys already know how to do high-volume, high quality defense. We come from a culture of taking good and bad cases and fighting for every single client, regardless of how long the odds are or how sympathetic the client is. Our public defense model makes us uniquely qualified to provide the first-ever universal representation in immigration court where there is no screening for cases. Beyond our model, we also bring highly specific expertise on the intersection of the criminal justice system and deportation system that is crucial to successful representation of detained clients. Nearly all of the clients we have met at Varick Street have had prior criminal justice contact that either led directly to their detention or has an impact on the pending removal proceedings. In many cases, that prior criminal justice contact serves as the basis for removal itself, and any applications for relief will hinge on eligibility and discretionary determinations taking that history into account. NYID attorneys help our clients simultaneously navigate the immigration and criminal justice systems, with authoritative knowledge of the intersection between the two.

Most importantly, our NYIFUP clients are the same clients that we serve at The Bronx Defenders and the Brooklyn Defenders Service—the same clients we have served since the day we opened our doors. Whether their last arrest was twenty years ago or they are coming directly

from jail, their legal defense must be coordinated. Our holistic defense model ensures that clients have access to criminal defense, family court representation, civil lawyers, employment lawyers, benefits experts, and social workers all under one roof. When their families are evicted from their home and forced into the homeless shelter system because the breadwinner is detained, our civil attorneys will be there in Housing Court. Our social workers work closely with us in all cases where our clients suffer from mental health problems or substance abuse issues to help assess competency, work with treatment providers, obtain and interpret medical records, identify treatment options, and help get clients established after release from ICE detention. Our benefits experts identify barriers to services and help our clients access the financial support resources to which they are entitled. And where there are outstanding criminal issues, we have expertise in criminal procedure and easy access to relevant records. Our criminal defense attorneys can help us file appeals or post-conviction relief, represent our clients in pending criminal cases, or help vacate warrants.

Mr. Puello's case serves as an example of the importance of holistic defense. While Mr. Puello was detained, in preparation for his application for relief, one of our civil attorneys met with him to start the process of filing back taxes owed to the US government. This will serve as a crucial equity when he appears before the Immigration Judge in his final hearing.

In another case, Mr. Sanchez was released on bond after his attorney negotiated an amount his family could pay. Arriving at our office days before Christmas, his attorney and paralegal became alarmed about his mental health and a social worker and his advocates leapt into action, helping him access in-patient mental health services and emergency Medicaid. Today, Mr. Sanchez's mental health is stabilized and he is receiving on-going outpatient services. Without a lawyer, paralegal, and social worker, Mr. Sanchez would have been

deported without having his mental health issues detected or, after release, would have failed to access the mental health services available to him.

Thank you for the Council's support of NYIFUP and to you and your staff for taking the time to hear about the New York Immigration Defenders, and the impact this project has had on our clients. We are thrilled to be part of a project that is setting a national example and standard of legal defense for people facing one of the most severe consequences in our legal system—deportation. And we hope to have the opportunity to continue to provide these services to more New Yorkers with the City Council's support.

Testimony of Oscar Hernandez — NYIFUP Client

New York City Council Committee on Immigration Oversight Hearing: Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings February 25, 2014

Buenas tardes. Me llamo Oscar Hernández. Nací en 1993 en México, en el estado de Puebla. Tengo veinte años de edad. Yo vivo en Brooklyn, Nueva York. Vivo en Sunset Park, con mis dos hermanas—mi hermana mayor Zuleyma, y mi hermana menor Dulce.

El 12 de noviembre de 2013, caí en manos de inmigración, donde yo perdí todas mis esperanzas y no sabía nada de leyes a mi favor. Yo estaba convencido de firmar mi deportación e irme a México, cuando de pronto me llevaron al edificio en Varick Street y conocí una organización de abogados. Cuando yo llegué, me preguntaron sobre mi situación, y el joven abogado Ruben Loyo empezó a explicar de qué leyes yo podía calificar y me pidió que pealara mi caso. Ya me había convencido a mi mismo de no pelear mis caso, pero el abogado me dijo que lo hiciera porque era una oportunidad única de la vida. El me defendió, y en enero de este año, me ganó la libertad. Hasta hoy día él está trabando con mi caso para que yo pueda quedarme en este país y con mis hermanas.

En México, cuando yo tenía seis años de edad, mataron a mi padre. Hace apenas tres años, mataron a mi hermano mayor también. Es por eso que no me siento seguro en México. Por eso, yo me he acostumbrado a vivir en este país. He estado viviendo en los Estados Unidos, en Nueva York, ahora por más de seis años. En los Estados Unidos, me siento libre y con muchas oportunidades de salir adelante como familia. Por eso yo he prometido a sacar mi GED y aprender el idioma de inglés. He empezado a tomar clases de inglés por eso.

Yo le doy las gracias a la organización de Brooklyn Defender Services y el programa piloto que me ha dado un abogado para defenderme. Conocer a esta organización y este programa fue lo mejor que ha pasado en mi vida. Gracias al país por darme muchas oportunidades. Gracias a todos.

English translation follows ►

English Translation

Good afternoon. My name is Oscar Hernandez. I was born in 1993 in México, in the State of Puebla. I am twenty years old. I live in Brooklyn, New York. I live in Sunset Park, with my two sisters—my older sister Zuleyma, and my younger sister Dulce.

On November 12, 2013, I was taken into immigration custody, where I lost all hope and knew nothing about any laws that might help me. I was convinced I would consent to my deportation and go back to Mexico, when I was brought to the building on Varick Street and got to know an organization of lawyers. When I got there, they asked me about my situation and the young lawyer Ruben Loyo started to explain to me that I qualified for protection under certain laws and asked me to fight my case. I had been convinced I would not, but this lawyer told me I should fight because it was a great opportunity. He defended me, and this past January, I was released from immigration jail. To this day he is working on my case so that I may stay in this country, and with my sisters.

In Mexico, when I was six years old, my father was killed. Just about three years ago, my older brother was also killed. For these reasons I don't feel safe in Mexico. It is why I have become accustomed to this country. I have been living in the United States, in New York, for more than six years now. In the United States, I feel free and with many opportunities to get ahead as a family. For these reasons I have promised to get my GED and to learn English. I have started to take English classes for this reason.

I thank Brooklyn Defender Services and the pilot program that has given me a lawyer who defends me. Knowing this organization, and knowing this program, was the best thing that has happened in my life. I thank this country for giving me many opportunities. Thank you everyone.

Northern Manhattan COALITION FOR IMMIGRANT RIGHTS

TESTIMONY OF NORTHERN MANHATTAN COALITION FOR IMMIGRANT RIGHTS
New York City Council Committee on Immigrant Affairs
Hon. Carlos Menchaca, Chair

"Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings"

A budget allocation that would provide free legal representations for all immigrants detained in New York City through the New York Immigrant Family Unity Project.

February 25th, 2014

Good Afternoon. I want to thank the members of the City Council for this opportunity to speak. My name is Angela Fernandez and I am the Executive Director for the Northern Manhattan Coalition for Immigrant Rights (NMCIR), a 30 year old community based organization that serves 6,000 immigrants a year. The bulk of individuals served by our organization are residents of the Bronx and Manhattan.

NMCIR, together with the Center for Popular Democracy, Make the Road New York, the Vera Institute and the Kathryn O. Greenberg Immigration Justice Clinic at Cardozo Law School, is co-leading a broad coalition of advocacy, legal and community groups that pioneered an unprecedented universal representation pilot program for detained immigrants at Varick Street Immigration Court this year. Firstly, we would like to thank New York City Council for making the pilot program a reality by allocating funding for the program this fiscal year, and, secondly we would like to thank the city council for holding this hearing to learn more about the benefits of this particular program, and why this program should be expanded and made permanent.

In the last three decades we have seen an alarming trend of increased deportation of both undocumented immigrants and legal permanent residents. Thousands from our community, who have been deported, were permanently removed from the United States without a fair hearing and without representation from legal counsel. Many of these individuals had a legal right to stay, but without an attorney to help them navigate one of the most complex areas of law – immigration law – they have since been permanently separated from their families and communities.

The lack of adequate affordable representation in Immigration Court has been recognized as a crisis in New York City and in the United States. Indeed, only yesterday the New York Times's editorial board published a piece about the crisis that the lack of due process protections has wrought on immigrants in our detention and deportation systemⁱ. Unlike in criminal proceedings, immigrants in deportation proceedings can be held in jail and forced to proceed against trained government lawyers alone, without any legal assistance whatsoever. Data that was uncovered by

665 West 182nd Street, NY, NY 10033 (212) 781-0355 ext 300

www.nmcir.org

the Katzmann Study Group on Immigrant Representation demonstrates that it is virtually impossible to win your deportation proceeding if you are detained and unrepresented (only 3% of people in this situation prevail). But lawyers make a huge difference – lawyers can increase success rates by approximately 1000%. In the last five years, over 7,000 New York City children lost a parent to deportation. With a program for appointed counsel, far fewer families would be torn apart, saving the city approximately \$263,000 in reduced foster care servicesⁱ. Additionally, a program of this kind serves as a proactive defense against fraudulent or negligent attorneys who would otherwise prey on detainees and their families who are desperate for legal assistance.

One cannot quantify the cost that deportation exacts on children, the hardship family members will experience or the toll it takes on the detainee who has numerous ties to the US, and may be unfamiliar with his/her country of origin. It also devalues their investment in their community, through business enterprises, military service, property ownership, and tax payments.

At NMCIR we receive countless calls and letters from detainees and their families seeking help in one of the most complex and silencing of systems. Our members consist primarily of people of color, who may not be fluent in English and reside in neighborhoods that have strong police presence. Such is the case of one of our members, Carlos Rodriguez Vasquez who was arrested after an NYPD/Clean Halls sweep inside an apartment building. Even though the charges were dropped, Carlos was transferred to an immigration holding facility and languished in detention for eight months. When Carlos called NMCIR seeking help, we were able to secure legal representation for him through Cardozo Law School's Immigration Clinic. Almost as soon as he received an attorney who could advocate for him, he was released and reunited with his US Citizen wife and US Citizen daughter. Were it not for the call to NMCIR, he would still be detained and possibly deported, but instead, through that call he was provided with representation and released. Most who are detained are not this lucky, and in the case of detention and deportation, luck should not be the primary factor under which one's rights and due process protections are exercised. When a child is wondering when or if they will ever see their father again, luck should not even be part of this equation. This is why a formalized universal representation program for detained immigrants should become a reality for all who are eligible.

We support a budget allocation that would provide free legal representation for all immigrants detained in New York City. Such an accomplishment would further New York's groundbreaking leadership in ensuring that our city is welcoming and protective of immigrants. This much needed program would be the first of its kind in the country and would help restore integrity and due process to our immigration system in the absence of federal reform.

Thank you.

ⁱ http://www.nytimes.com/2014/02/24/opinion/locked-away-in-immigration-jails.html?ref=opinion&_r=0

ⁱⁱ *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers* (New York: Center for Popular Democracy, 2013, Page 9)

BROOKLYN DEFENDER SERVICES

177 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

TEL: (718) 254-0700

FAX: (718) 254-0897

Testimony of Marianne C. Yang, Brooklyn Defender Services Immigration Unit Director

New York City Council Committee on Immigration Oversight Hearing: “Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings”

February 25, 2014

Good afternoon, and thank you—Chairman Menchaca and fellow Councilmembers—for this opportunity to testify before you today. I am Marianne Yang, Immigration Unit Director of Brooklyn Defender Services (BDS) and Co-Director, with Jennifer Friedman of the Bronx Defenders, of the New York Immigration Defenders. As some of you know, BDS is one of the largest public defender offices in New York City, defending more than 40,000 low-income New Yorkers each year. Bronx Defenders, also a public defender office, represents more than 35,000 individuals a year.

Together, as the New York Immigration Defenders, we have been the legal service providers under this pilot program started last November, serving as assigned counsel to defend indigent, detained New Yorkers in deportation proceedings. So far, we have undertaken 132 clients for representation. We are on track to represent a promised total of 190 people before the city’s fiscal year end.

I have been working as a nonprofit immigration lawyer, specifically, in advocating for indigent and low-income immigrants facing immigration detention and deportation, for nearly fifteen years. At BDS, I supervise a team of fourteen immigration lawyers and paralegals who engage in a range of both defensive and proactive advocacy for our immigrant clients—from advising clients and our defense colleagues about the immigration consequences of a criminal

charge and crafting defense strategies to minimize those consequences where possible, to intervening with ICE deportation officers and advocating for their lifting of immigration detainers against clients, and identifying potential immigration relief. When our limited capacity has allowed, we are able to go so far as making affirmative applications for immigration relief for clients and representing some of our clients who are transferred by ICE to immigration jails in their detained deportation cases. Before BDS, I directed the Immigrant Defense Project (IDP), a nonprofit legal resource and training center that promotes, nationwide, fundamental fairness for immigrants at risk of deportation because they have been accused or convicted of crimes.

Over the past several decades, the immigration detention and deportation laws have become increasingly intricate and complex. Therefore, it is difficult, if not impossible, for immigrants and their families to navigate on their own in most cases. These laws are extremely harsh, often mandating deportation and detention for individuals with the most minimal records. And never, not until New York City launched this first-in-nation program last year, was any immigrant ensured the right to assigned counsel in her defense if she could not afford one.

In the absence of a right to counsel, poor immigrants and their families have been left to fend for themselves. I have seen over and over again the results: New Yorkers are unnecessarily separated from their families and communities when they are swept into the immigration detention and deportation system. In the absence of a right to counsel, advocates have made some significant inroads into trying to ensure greater fairness, such as starting Know Your Rights and legal orientation programs, or, like BDS, taking on a few cases for representation where capacity allowed, or relying on pro bono counsel programs from law firms where possible. As important as these developments have been, they cannot substitute, or even come close to meeting the need for, the universal representation that all poor immigrants need. They cannot replace having assigned counsel making the case for indigent immigrants every day, mounting the complex legal arguments, and gathering and preparing substantial evidence and testimony for the case. The bottom line is that to prevent unnecessary deportations and due process violations, each detained indigent New Yorker facing deportation needs a lawyer.

BDS and Bronx Defenders—as the New York Immigration Defenders—are now in our fourth month of this pilot project toward such universal representation. One made possible with New York City's visionary leadership. We cannot express enough how thankful we are to this City Council and this City, for having funded this pilot project as a test case for promoting a

more fair and just process for our immigrant communities. Through this pilot program, we have been able to say to our immigrant New Yorkers that yes, we can represent you if you don't have the means to pay a lawyer. Yes, we can defend you no matter how difficult your case may be, or how long it may take. We will not be able to prevent deportation in all, or even most, cases, because the laws are very harsh. But we will be able to ensure that our clients are aware of their rights and have a knowledgeable, experienced attorney by their side to defend them every step of the way.

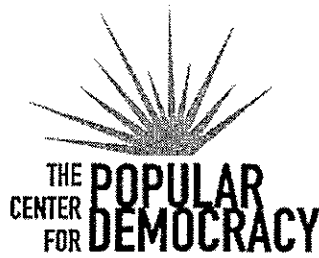
We have now been at the Varick Street facilities and courtrooms day in and day out for close to four months now, interacting with court officers, government trial attorneys, and court clerks. We have been appearing before each of the three Varick Street judges on a regular and frequent basis, pressing the arguments and cases for our clients before each of them. Jennifer Friedman will speak after me about how our legal representation makes the critical difference for immigrants and their families on their individual case bases. But we can also attest to the significant and positive changes that this assigned counsel model—through our constant presence and advocacy, has brought to the overall culture and practice of detained removal proceedings at Varick Street. For example, Varick Street Immigration Judges have acknowledged—both in stakeholder meetings and in off-record courtroom asides—that the New York Immigration Defenders have been “raising the bar” on the standards of legal practice in the courts. We believe we have been raising this bar in a range of ways, including by putting the government to its burden of proof, questioning its positions where they are unfounded, challenging removability, or establishing eligibility for relief with sophisticated legal arguments. We have been mounting bond and merits hearings with well-documented evidence packages, and thoroughly preparing testimony from clients, families, and experts.

As other examples, through our advocacy, our clients are now routinely given copies of important documents in their case, and there has been more simultaneous interpretation in the courtrooms for our non-English speakers. Our constant presence also yields efficiencies and helps us build better working relationships with ICE Chief Counsel, deportation officers, and court clerks. We routinely ask ICE attorneys for additional information or documents in our clients' immigration files, and they have been responsive. Where we prod, they even canceled a charging document after conducting their own investigation in one case, and promptly released

another client after we raised a question as to the whether the client may have derived citizenship.

We believe these and other positive changes to be the natural result—over time—of having competent assigned counsel constantly present and advocating in the courts. BDS and Bronx Defenders—because we are already public defenders in criminal cases—know from deep experience that these cultural shifts are bound to occur when counsel are in the courts day in and day out. Judges become accustomed to lawyers' mounting layers of defenses. Opposing counsel become accustomed to freer flows of communication between the parties, and work with us more frequently to achieve negotiated outcomes for the sake of fairness or efficiency. Court clerks more readily facilitate our requests for to ensure better case flow. And court officers are more open to granting us greater access to detained clients for private attorney-client meetings. We believe these positive shifts in culture and practice—absorbed over the long-term—are an important part of the bigger picture of the difference that a universal representation model can make in deportation proceedings as well.

Thank you again for this opportunity to share with you today how impactful the NYIFUP project has been, from the perspective of its legal service providers.



**Testimony of Brittany Saunders
Supervising Attorney for Immigrant Rights & Racial Justice
Center for Popular Democracy
New York City Council
Committee on Immigration
Hon. Carlos Menchaca, Chair**

February 22, 2014

I. Introduction

On behalf of the Center for Popular Democracy (CPD), I'd like to thank Committee Chair Menchaca and the Council for convening this hearing and inviting us to speak this afternoon. CPD promotes equity, opportunity, and a dynamic democracy in partnership with innovative base-building organizations, organizing networks and alliances, and progressive unions here in New York City and across the country. We build the strength and capacity of democratic organizations to envision and advance a pro-worker, pro-immigrant, racial and economic justice agenda. Through these partnerships, we aim to transform the local and state policy landscape.

CPD has undertaken an ambitious policy agenda in the field of immigrant rights and racial justice. We are working alongside dozens of other City groups to end discriminatory policing. We have joined with other advocates to ensure that the rights of immigrant New Yorkers who come into contact with the criminal justice system are protected. And in coalition with many of the groups present here today, we have advocated for establishment of a bold, progressive municipal identification policy and now look forward to working with the Council and the Mayor to realize this vision.

II. The New York Immigrant Family Unity Project

CPD is incredibly proud to champion the New York Immigrant Family Unity Project ("NYIFUP"), a proposal for funding the nation's first system of universal representation for detained immigrants who are facing removal. Along with the Kathryn O. Greenberg Immigration Justice Clinic at Cardozo School of Law ("IJC"), Make the Road NY ("MRNY"), the Northern Manhattan Coalition for Immigrant Rights ("NMCIR") and the Vera Institute of Justice ("Vera"), CPD has been working over the course of the last year and a half to ensure that New York, with its centuries-long history of welcoming immigrants, becomes the first jurisdiction in the nation to establish a robust public defender system for detained immigrants at risk of deportation.

As our partners will attest, NYIFUP is an exemplary model for providing legal services to immigrants. It is rooted in the values of fairness and due process that underlie our legal system. It draws upon learnings from the New York Immigrant Representation Study, an exhaustive two-year analysis of access to counsel for immigrants. It operates through partnerships with deeply experienced institutional providers of legal services. And it furnishes high-quality representation at a fraction of the cost of the private bar. Most compellingly of all, thanks to the generosity of the Council, it is a model that is already demonstrating tremendous impact through a year-long pilot currently operating at the Varick Street Immigration Court. As multiple Council Members and staff observed at a recent site visit and as my colleagues from the Vera Institute of Justice will make clear, that pilot project is providing high-quality services for immigrant New Yorkers and their families while also producing efficiencies for the courts themselves.

III. An Investment in Fairness for All New Yorkers

We are proud of what the pilot program has accomplished to date, but we are eager to see the benefits of NYIFUP extended to all New Yorker City area residents who are detained and facing deportation. Some 1,650 area residents find themselves in this situation each year. An investment in a program serving all New Yorkers' with cases venued at Varick Street as well as those whose cases are venued at immigration courts in New Jersey will yield positive outcomes for impacted individuals, their families and communities. It will prevent long-term detentions and deportations that separate immigrant New Yorkers from their loved ones as well as emotional and economic harm to family members who remain here.

Detained New Yorkers and their families, however, are not the only ones who will benefit from these critical legal services. Both the City and the state have a tremendous amount to gain from expansion of the NYIFUP program. This fall, CPD partnered with IJC, MRNY and NMCIR to release a report, "The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers." The report identifies six concrete benefits that will arise from full-funding of NYIFUP.

NYIFUP would begin to bring immigration proceedings in line with our deeply-held values of justice, due process and equal treatment, while demonstrating the commitment of the City and state to its families. By furnishing counsel, the program would ensure that detained immigrants are able to put forward the strongest possible arguments in their defense. Individuals with viable claims would no longer confront long-term or permanent separation from their families and communities simply because they do not have the means to retain high-quality counsel.

The program would reduce dramatic disparities in outcomes in removal cases, enhancing the integrity of our current system. Currently, immigrants who are unable to retain counsel are released from detention at significantly lower rates than New Yorkers who are able to secure representation. And even among those who remain detained, counsel makes a dramatic difference. **Our analysis reveals that detained New Yorkers who have counsel are approximately 100% more likely to prevail and avoid deportation than those who are forced to move forward without attorneys.**

NYIFUP would save employers millions in costs associated with replacing employees who are lost due to deportation or detention. When immigrant New Yorkers are detained for long periods of time without counsel, they miss opportunities to communicate with employers through attorneys as well the chance to create the strongest possible case for relief. This increases the likelihood that these New Yorkers will lose their jobs. And when immigrant New Yorkers are deported—in many cases despite having viable claims to remain in the U.S.—employers lose valuable workers. **As a result, Empire State employers face some \$9.1 million in detention and deportation related turnover costs each year.**

A system of universal representation for detained immigrants facing removal would reduce the costs associated with students who drop out of school following the detention or deportation of a parent or caregiver. Some 23% of detained individuals report having U.S. citizen children.¹ When a parent or caregiver is held for an extended period of time or deported, young people are at increased risk of dropping out of school, an outcome that reduces long-term earning potential and tax revenues while increasing costs to state public health insurance programs. Over the course of a decade, this results in over \$31 million in costs to the state, **translating into an annualized cost of \$3.1 million.**

NYIFUP will decrease costs to the State Child Health Insurance Program (SCHIP). When a parent or caregiver is deported, remaining children may lose employer-provided care, forcing them to rely on the SCHIP program. In addition, detention or deportation of a parent has been linked to elevated rates of obesity among children of detained and

¹ Data on non-citizen children is not available, suggesting that the figures cited here underestimate the full savings resulting from investment in NYIFUP.

deported New Yorkers. **We estimate that taken together, these two phenomena result in \$685,000 in costs to the SCHIP program each year.**

Finally, we estimate that full investment in NYIFUP will ease costs related to foster care that result from the detention and deportation of parents and caregivers. With the parents of some 1,200 New York children entering detention each year, New York taxpayers face approximately \$562,000 in related detention and deportation costs.

Our analysis demonstrates that the current system—in which thousands of low-income immigrant New Yorkers each year are forced to navigate high-stakes removal proceedings without representation—creates nearly \$13.4 million in costs for the state of New York and its localities annually. However, an investment in NYIFUP would reduce these costs considerably

- **\$4 million in savings to New York State employers** who would lose fewer workers to long-term detention and deportation;
- **\$1.3 million in savings** as more children of immigrant New Yorkers are able to complete their studies, increasing their long-term earning potential and tax contributions and decreasing reliance on public programs;
- **\$310,000 in savings** to the SCHIP program as fewer young people lose employer-provided benefits and suffer with obesity; and
- **\$263,000 in savings** to the foster care programs as more young people are able to remain with their parents and caregivers and fewer are forced into the system.

Importantly, while these figures reflect savings to the state and its localities, we expect a disproportionate share of these benefits to be realized in the New York City area, where the majority of detained individuals facing reside.

For just \$5.3 million, the City could catalyze these economic benefits to employers and taxpayers. However, the most compelling reason to fund the NYIFUP initiative has nothing to do with financial bottom lines. Rather, an investment in representation for all New York City-area residents who are detained and facing removal is an investment in New Yorkers whose hard work and enterprise helps to drive our economy and in the immigrant families that are at the heart of communities across the five boroughs.

IV. Conclusion

CPD is incredibly grateful that the Council has invested in the NYIFUP pilot program. With new leadership in the Council and the administration, there is a unique opportunity to dramatically increase the impact of the program by creating a robust and lasting structure for the defense of immigrants who are detained and facing deportation. We urge the Council to seize this opportunity, triggering far-reaching benefits for immigrant families, employers and the broader community of New Yorkers.



Testimony of Vicente Mayorga
Immigration Organizer
Make the Road New York
February 25, 2014

Good morning my name is Vicente Mayorga and I am a community organizer with Make the Road New York in Queens. Every day I work with members of our community who don't have documents, who are facing deportation, and many other situations. I can tell you that there is no harder situation in my work than when a mother comes to our office with her husband detained by immigration. It's traumatic. Sometimes that have not spoken in days, they don't know where the person is, they know nothing. Sometimes they are in a state of desperation. These people would do whatever they can to know something, to get their loved one out of detention. They would pay whatever cost to stop the deportation. But sometimes it's impossible.

It's because of these situations that I believe it is crucial to provide legal representation to detained people facing deportation. If the person has representation many things happen. First, the family can breathe a little easier, knowing that they have someone to guide them through the process. This means they won't spend thousands of dollars on lawyers, and lowers the chance of them becoming victims of fraud. It also means that they can make decisions with all the necessary information. If there is a way to win the case, they will find out. But if there is no way to win they will also know. This way they can confront the truth and not spend money and time waiting for a decision that will be even more painful.

It is incredible that people facing deportation, where they could be separated from their families, sent to countries that perhaps they don't know well, are not guaranteed legal representation. Providing these legal services is a good investment of public money. Because that money comes from us in the community, the ones who are outside, waiting, crying, trying to do something for our loved ones. I believe that the council and the city should invest in legal representation in these cases and make it a right for all residents of the New York

Thank you.



Testimonio de Vicente Mayorga
Organizador de Inmigración
Se Hace Camino New York
25 febrero, 2014

A Favor del Proyecto de la Unidad Familiar Inmigrante

Buenos días. Mi nombre es Vicente Mayorga y soy un organizador comunitario para Se Hace Camino New York en Queens. Cada día trabajo con miembros de la comunidad que no tienen documentos, que están enfrentando deportación, y varias otras situaciones. Les puedo decir que no hay una situación más difícil en mi trabajo que cuando una madre entra con su esposo detenido por inmigración. Es traumático. A veces no han hablado en días, no saben donde esta la persona, no sabe nada. Están a veces en un estado de desesperación. Esas personas harían cualquier cosa para saber algo, o para sacar a su ser querido del centro de detención. Pagarían cualquier costo para mantener su familia unida. Pero a veces es imposible.

Por eso creo que es clave por varias razones poder proveer servicios legales a las personas detenidas enfrentando deportación. Si la persona tiene representación varias cosas pasan. Primero, la familia de la persona puede respirar un poco mas profundo, sabiendo que por lo menos tiene alguien que le va guiar a través del proceso. Eso significa que no tienen que gastar miles de dólares en abogados, y baja la probabilidad de una estafa. También significa que pueden tomar decisiones con toda la información necesaria. Si hay una manera de ganar el caso, pues van a saber. Pero si no hay manera, también van a saber. Así pueden enfrentar la verdad y no gastar dinero y tiempo esperando una decisión que va causar más dolor.

Es increíble que personas enfrentando algo tan serio como una deportación, donde podrían estar separados de sus familias, mandado a países que quizás no conocen bien, no están garantizado una representación legal. Proveyendo estos servicios es una inversión buena del dinero de la ciudad. Porque ese dinero viene de nosotros en la comunidad, los que estamos afuera, esperando, llorando, tratando de hacer algo para nuestros seres queridos. Creo que el congreso y la ciudad deben invertir en representación legal en estos casos y convertirlo en un derecho para los residentes de la ciudad. Gracias.

Testimony of The Legal Aid Society

On

“Examining Models For Providing Legal Services for
Immigrants in Deportation Proceedings”

Presented before

The New York City Council’s Committee on
Immigration

Presented by

Jojo Annobil, Attorney-in-Charge
The Legal Aid Society

February 25, 2013



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Thank you for this opportunity to testify regarding the provision of legal assistance to immigrants. This is a critically important issue and we are very grateful for past New York City Council support for The Legal Aid Society's provision of comprehensive civil legal assistance for low-income families and individuals in all five boroughs, including substantial numbers of immigrants. With new leadership in the executive and legislative branches of City government, we are hopeful that funding for essential legal representation for immigrants can be added to the base-line City budget instead of being subject to the annual Council initiative process. Below for your use in considering these issues, we describe the overall legal services that The Legal Aid Society provides and our models for the provision of legal assistance for immigrants, including the comprehensive services that we provide in addition to direct immigration representation.

The Legal Aid Society

The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. The Legal Aid Society has performed this role in City, State, and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 1,100 of the brightest legal minds. These 1,100 lawyers work with more than 700 social workers, investigators, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, the Society provides comprehensive legal services in all five boroughs of the City for clients who cannot afford to pay for private counsel.



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The Society's legal program operates three major practices — Civil, Criminal, and Juvenile Rights – and receives volunteer help from law firms, corporate law departments, and expert consultants that is coordinated by the Society's *Pro Bono* program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is derived from our ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some two million low-income children and adults in New York City and the landmark rulings in many of these cases have a statewide and national impact.

Immigration Law Unit

For more than 137 years, the Society has provided legal assistance to immigrants. Since the 1980s, the Society has operated a nationally recognized Immigration Law Unit. This Unit provides low-income New Yorkers with free, comprehensive, and high caliber immigration services ranging from deportation defense to adjustment of status to legal permanent residence and citizenship applications. The ILU is comprised of an Attorney-in-Charge, two supervising attorneys, nineteen staff attorneys, six paralegal case handlers [three of whom are Board of Immigration Appeals (BIA) partial accredited representatives], and one social worker. The Unit specializes in the intersection between immigration and criminal law. In addition to immigration representation, the Unit works collaboratively with all of the Society's Practice areas to serve our



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diverse immigrant clients through an integrated service model, providing clients with assistance with public benefits and health care, employment and tax matters, and other issues faced by low-wage earners. Unit staff represents immigrants before U.S. Citizenship and Immigration Services (USCIS) and before immigration judges in removal proceedings, the Board of Immigration Appeals, and in federal court on habeas corpus petitions and petitions for review. During the last year, in 2013, the Unit provided direct legal representation and/or comprehensive advice in over 4,000 client matters.

The Society's decades long experience, dedication, and commitment to providing access to justice for immigrants in removal proceedings makes the Society uniquely qualified to provide perspective into models for providing legal services for immigrants in removal proceedings. Federal immigration laws are often inflexible, arbitrarily applied, and excessively harsh, resulting in the deportation of individuals who are making positive contributions to our society. It is undeniable that the immigration laws of this country are flawed. Congress acknowledges this fact, yet does not seem to want to assume the task of repairing the systemic problems. The inherent flaws of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the Anti-terrorism and Effective Death Penalty Act continue to impact the lives of long-time lawful permanent residents. These laws inflict draconian consequences on non-citizens with criminal convictions. Convictions for a broad range of crimes, including relatively minor offenses such as misdemeanor turnstile jumping, non-criminal marijuana violations, and petty larceny can lead to automatic deportation for non-citizens regardless of their legal status, family ties, length of residence in the United States, and long work history. The laws also took away judicial discretion and made immigrants who have committed many crimes subject to mandatory

detention without bond throughout their immigration proceedings, even if they are eligible for relief or waivers from removal.

The impact of these punitive laws has been devastating. Immigrants are being deported for minor and insignificant criminal convictions even if they have U.S. citizen children, are long-term legal residents of the U.S., have serious health concerns, or would be subject to harm in their home countries. These removals/deportations are destroying nuclear families forever. Bread winners who have resided in this country since their infancy are deported to countries they barely know, and whose language they might not even speak, leaving spouses behind to juggle the daunting challenges of single-parenting. Children are left unsupervised and often turn to truancy, as well as delinquency. Families that ordinarily would not access public benefits are being forced to apply for State and City aid, adding to the financial burdens on this City.

The statistics are staggering. Twenty years ago, the daily detention population was 6,784, and immigration authorities deported about 32,512 non-citizens that year because of criminal convictions.¹ As of early 2012, approximately 34,2600 people were in detention on any given day, with an average of 1,305 new people detained every day.² In the 2013 fiscal year a total of 368,644 non-citizens were removed from the country, and 216,810 of those people were deported because of criminal convictions.³

Despite the complexity of immigration laws and of the removal process itself, non-citizens facing removal have no right to government appointed counsel. Since access to free

¹ INS statistical Yearbook 1993, available at <http://www.dhs.gov/xlibrary/assets/statistics/yearbook/1999/tb163.xls>

² United States Immigration and Customs Enforcement, "Fact Sheet: A Day in the Life of ICE Enforcement and Removal Operations," Fiscal year 2012, available at <http://www.ice.gov/doclib/news/library/factsheets/pdf/day-in-life-ero.pdf>.

³ United States Immigration and Customs Enforcement, "FY2013 ICE Immigration Removals" available at www.ice.gov/remval-statistics/.

immigration counsel is very limited, many non-citizens facing deportation are unrepresented and thus unprotected and uninformed throughout their immigration proceedings. Of the immigrants whose proceedings were completed in 2012, 44% did not have counsel. Legal representation makes a tremendous difference in whether a non-citizen is able to avoid deportation.

It is against this backdrop that four of our Immigration Law Unit's nine signature projects are devoted to serving low-income detained and non-detained immigrants in removal proceedings. The models described below were developed based on limited funding sources, our commitment to access to justice, the growing demand for representation, and the complexity and labor intensive nature of removal proceedings. These under-funded project models both define the Immigration Law Unit's work and are the basis for the Unit national reputation for high quality and innovative representation.

Non-Detained Models

The **Immigration Representation Project (IRP)**, a collaboration with Catholic Charities of the Archdiocese of New York and Human Rights First, has provided direct representation at the New York Immigration Court located at 26 Federal Plaza in New York for 22 years.⁴ The Society is the lead agency on the Project, funded, since inception, by the Fund for New Citizens at the New York Community Trust. The collaboration has a widely known reputation as one of the most successful immigration collaborations providing free, high-quality, comprehensive legal services to low-income immigrants in removal proceedings.

This highly adaptable model is unique because it combines the expertise and service delivery models of three organizations to reach a greater number of immigrants. Human Rights First handles cases of asylum seekers and recruits, trains, and provide support to volunteer

⁴ Hebrew Immigrant Aid Society provides only screening services at the IRP.



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lawyers who agree to represent asylum seekers on a *pro bono* basis. Catholic Charities of the Archdiocese of New York handle asylum and immigration violation cases and utilize staff attorneys, accredited representatives, and law students. The Legal Aid Society represent clients with criminal convictions and other immigration violations and leverages resources by using a combination of students, *pro bono* attorneys, and experienced staff attorneys to provide representation. This service delivery model has been replicated in different parts of the country and immigration court judges have lauded the project for both its efficiency and its protection of the due process rights of immigrants.

A majority of the IRP's clients are referred by the twenty-six immigration judges at the New York Immigration Court, where immigrants in removal proceedings are screened by the partners on a rotating basis four days a month during the Court's master calendar session. Prospective clients complete a user friendly multiple page questionnaire in English, Spanish, and French. Screeners review the questionnaires for completeness and make an initial determination of prospective clients' financial eligibility for free legal service in accordance with the Federal Poverty Guidelines. Screeners send questionnaires that include criminal convictions to The Legal Aid Society and all other questionnaires involving other immigration violations to Human Rights First. Human Rights First refers some of the questionnaires it receives to Catholic Charities and a few to the City Bar Justice Center. Follow-up appointments are then scheduled for in depth advice and representation. For cases accepted for representation, all necessary immigration legal services are provided, including legal research, development of relevant evidence, preparation of all necessary application forms, affidavits, motions, and representation at preliminary and final merits hearings. In addition, if a represented client needs legal representation or counseling in



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ancillary matters, such as family law or government benefits matters, the Society as a full poverty law legal services provider, contributes legal services in those areas as well.

The Society's Immigration Law Unit has traditionally been one of the few not-for-profit organizations representing immigrants in removal proceedings because of criminal convictions. Representation of clients with criminal convictions often requires collaboration with the Society's Criminal Appeals Bureau (CAB) to vacate criminal convictions with adverse immigration consequences and thereafter pursue dispositions that allow clients to apply for relief/waivers or to terminate removal proceedings.

For the last three years the IRP has received, on average, approximately 45 to 60 questionnaires per month and is able to give appointments to about 30 prospective clients. Prospective clients who cannot be represented are provided with comprehensive advice and in some cases *pro se* materials. This screening model allows attorney supervisors to conduct triage prior to making appointments, based upon the relative likelihood of relief or waiver availability. For a majority of these clients, the IRP organizations are the only source of representation available to them because they lack the means to pay an attorney. In 2012/2013, the IRP accepted 136 cases for representation, completed 195 matters in immigration court, and provided case consultations to 602 clients. Since inception, the Project has represented individual clients in more than 4,200 cases with positive results in approximately 92% of cases and has provided case consultations in an additional 19,736 cases.

Frequently, the work of the IRP Collaboration does not end once a partner agency achieves a successful outcome for an immigrant client. The IRP partners assist immigrants granted asylum to file for lawful permanent residence after one year, and to file derivative



asylum applications for family members left behind in their native countries. The partners also assist lawful permanent residents who were successful in applying for relief from removal to obtain their permanent resident cards from the Department of Homeland Security (DHS) and later to file for naturalization.

Leveraging Resources

Our representation models have been successful because every year the Immigration Law Unit staff members recruit, train, and co-counsel cases with *pro bono* attorneys from several prestigious New York City law firms including Cleary Gottlieb Steen & Hamilton LLP, Hughes Hubbard, & Reed LLP, Simpson Thacher & Bartlett LLP, Davis Polk & Wardwell LLP, Ropes & Gray LLP, Milbank, Tweed, Hadley & McCloy LLP, and Akin Gump Strauss Hauer & Feld LLP. ILU staff members have created a training manual entitled “Immigration Detention and Removal: A Manual for Volunteer Lawyers and Law Students” which is distributed to law firm associates, interns, and externs at the Society. This unique collaborative model of co-counseling immigration cases has been efficient and effective, and is also recognized in the New York area and beyond as a model to replicate. The firms go beyond simply offering their associates an opportunity to work on removal cases and have developed, with the guidance of ILU staff, their own institutional expertise in this area making them more effective as co-counsel. The firms usually create an internal structure of experienced senior associates and a supervising partner to oversee *pro bono* immigration cases within the firm. Through this collaboration, all the firms have developed expertise in representing immigrants seeking various forms of relief including cancellation of removal for lawful permanent residents and non-lawful permanent residents, asylum, withholding of removal, and protection under the Convention against Torture. These



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collaborations have allowed the ILU to maximize resources and represent more immigrants in removal proceedings

Additionally, the Immigration Law Unit recruits, trains, and mentors highly qualified law students from New York City law schools and law schools nationwide to provide litigation support to staff attorneys working on removal cases. Since 2005, the Attorney-in-Charge of ILU, a supervising attorney, and four senior attorneys have taught semester long courses at Columbia University Law School and New York University School of Law – the Immigrant Defense Externship and Immigrant Defense Clinic, respectively. The law students from the externship and clinic provide legal representation under close supervision of Society attorneys. Each semester, approximately twelve law students working under the supervision of experienced attorneys assist with intake and screening of cases, *Know Your Rights* presentations, follow-up investigations, legal research, preparation of witnesses and affidavits, and preparation of documentary evidence for the immigration case. In 2012, the New York City Council awarded the Immigrant Defense Externship a Proclamation in recognition of the Columbia Law School Externship's work with the immigrant community and the training of students to assist immigrants in New York and throughout the country.

Defending Youth in Removal Proceedings

In 2003, due to the New York immigration court's confidence in the IRP member agencies, the Executive Office for Immigration Review requested the support of The Legal Aid Society and Catholic Charities to participate in a monthly screening on a Juvenile docket, a child-friendly special hearing session. The Docket is currently staffed by four dedicated immigration court judges and is exclusively for youth under age 17½ in removal proceedings

without a parent or legal guardian. In 2003, only thirteen children were scheduled monthly on the Juvenile Docket, and the Society and Catholic Charities alternated in staffing the Docket. Since then, the total number of children appearing monthly on the Docket has increased exponentially resulting in the creation of an additional four dockets.⁵ In 2010-2012, the immigration court scheduled 600 – 700 new cases of unaccompanied minors in a given year. In 2013-2014 the court expects to schedule over 1,000 new cases. At present, there are over 6,000 youth cases pending before the immigration court; a majority has no counsel. To reduce the number of cases on the Juvenile docket, the court has begun to schedule some of these children's cases to other judges on adult dockets.

These unaccompanied children have fled human rights abuses, armed conflict, domestic violence, human trafficking, natural disasters, and economic deprivation or have simply come to reunify with their undocumented parents. New York City is a major destination hub for children who are released from federal custody pending adjudication of their immigration cases. Without the help of an attorney, hundreds of vulnerable children would be forced to appear in immigration court alone, unable to raise a defense to deportation to their countries where their safety and well-being may be at grave risk. Unaccompanied children may be eligible for some type of relief from removal, but are unable to obtain such relief without legal assistance. There is no right to appointed counsel even for minors in immigration proceedings. Before the creation of the Juvenile Docket, there was no mechanism to ensure that this vulnerable population had access to free legal assistance in removal proceedings.

Similar to the IRP model, our Youth Project staff provides monthly screenings on the Juvenile Docket. We anticipate that staff will screen approximately 180 – 240 children and youth



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this year and assume representation in about 50 cases. To maximize resources, the Project has partnered with Chadbourne & Parke LLP, a New York City law firm, to assist with screening and to provide *pro bono* representation. Additionally, the Society has established a semester long “Immigrant Youth Externship” with Columbia University Law School. This externship, which is comprised of a weekly seminar and 15 hours of fieldwork each week, is taught by the attorneys of the Youth Project. The six law students in the externship program will assist with screening of cases on the Docket, performing follow-up interviews, drafting affidavits, filing Family Court motions, and assisting with Special Immigrant Juvenile Status (SIJS) applications. Five other organizations, Catholic Charities of the Archdiocese of New York, The Door, American Immigration Lawyers Association (NY Chapter), Kids in Need of Defense (KIND), and a New York Law School Clinic provide screening and representation to undocumented minors who appear on other weekly juvenile dockets.

The Northern Manhattan Immigrant Defense Project

The Northern Manhattan Immigrant Defense Project began in 2004 and is funded by Columbia University. The Project is comprised of The Legal Aid Society and Northern Manhattan Coalition for Immigrant Rights. The Project provides community-based removal defense advocacy and court representation services to immigrants residing in Washington Heights, Inwood, and the Bronx. Immigration Law Unit staff provide legal assistance and representation to clients of Northern Manhattan Coalition for Immigrant Rights to complement their other critical immigration services. A dedicated Society attorney screens four to six cases bi-weekly and provides representation to those with viable options for relief. Two student interns from Columbia Law School work with the Project each semester. The Project also leverages its



limited resources by co-counseling with attorneys from the law firm of Simpson Thacher & Bartlett LLP on at least three to four cases a year.

Detention Model

The Society's Detention Project, which began in 1997, has evolved over the years and adapted to the numerous changes in the detention of immigrant New Yorkers at the Varick Street Detention Center and the local jails in New Jersey. Prior to 2010, when the Department of Justice awarded The Legal Aid Society a Legal Orientation Program (LOP) contract, Project staff provided weekly *Know Your Rights* presentations, individual screening, direct representation, case referral, and *pro se* workshops to New York immigrants detained at local jails in Bergen, Monmouth, and Hudson County Jails in New Jersey and Orange County Jail in New York. In 2004, the Project developed and published a guide, "Immigration Detention and Removal: A Guide for Detainees and Their Families," which is currently being updated. Additionally, since 2004, with the support of Hughes Hubbard & Reed LLC, the Project has maintained a toll free detention helpline for detainees and their families to call for information and legal assistance. In 2008, when the Department of Homeland Security (DHS) reopened the Varick Street Detention Center, The Legal Aid Society recruited the City Bar Justice Center and the American Immigration Lawyers Association (New York Chapter) to assist with screening, follow-up investigations, and case referrals. This arrangement was discontinued when DHS relocated detainees to the Hudson County jail in New Jersey.

Beginning in May 2010, the Immigration Law Unit has provided group and individual orientations as well as *pro se* workshops through LOP to detained immigrants without counsel prior to their first Master calendar hearing at the Varick Immigration Court. In addition to LOP



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services, Project staff members each have a caseload of approximately 25 – 35 direct representation cases, refer cases to the City Bar Justice Center, the New York University Law School Immigration Rights Clinic, and the Cardozo Law School Immigrant Rights Clinic, and also serve as co-counsel on a number of cases with select New York law firms including Milbank, Tweed, Hadley & McCloy LLP, Akin Gump Strauss Hauer & Feld LLP, and Hughes Hubbard & Reed LLC. With more resources, we could handle more cases

Similar to the IRP model, the work of the staff does not conclude with the successful completion of a case. Nearly half of the detained clients we work with have mental disorders including bipolar, schizophrenia, depression, and/or chemical dependency. Our Immigration Law Unit social worker works with these clients when they are detained to get them released on bond or parole while their cases are pending or makes arrangements for them to go into an in or out patient treatment facility when they are released. The social worker also attends to other social service including restoring their housing and disability benefits.

Criminal Defense Model

In 2012, the New York State Office for Indigent Legal Services and New York City established the Criminal Indigent Program to fund criminal defense providers to provide back-up assistance, case consultations, and direct client representation in immigration matters for The Legal Aid Society's Criminal Defense Practice clients. The attorneys work with attorneys in the Society's Criminal Practice, and immigration specialists stationed in the Immigration Law Unit to identify criminal defendants who are at risk of deportation because of a pending case or a prior conviction and to represent them in removal proceedings. Early identification has allowed many immigrant clients to avoid removal proceedings altogether and others to avoid immigration

detention so that can continue receiving important community-based therapeutic services. The five attorneys assigned to the Project represent both detained and non-detained clients at the New York, Varick, and Newark Immigration Courts.

Other Signature Project Models

In addition to this direct representation of immigrants in removal proceedings, the Society's Immigration Law Unit has been designated by the New York City Council, the Robin Hood Foundation, and the New York Community Trust to operate innovative community-based programs to enable front-line immigrants' rights staff in neighborhoods throughout the City to provide assistance to immigrants with backup support and training from Society staff. Complex cases are referred to the Society's Immigration Law Unit for direct representation. These models are as follows:

- **Immigrant Opportunities Initiative (IOI):** Provides citywide training and case consultations for front-line community-based staff in addition to the Society's own direct individual representation and assistance in complex immigration matters and legal assistance to immigrant workers
- **Community-Based Immigrant Legal Services Project:** funded by the Fund for New Citizens at the New York Community Trust, provides training and technical assistance to advocates at Queens Community House, Asian Americans For Equality, and Northern Manhattan Coalition for Immigrant Rights, and legal assistance on complex immigration matters.



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- **Robin Hood/Legal Aid Immigration Initiative:** funded by the Robin Hood Foundation, conducts monthly legal clinics and workshops at 10 community-based organization sites in New York City and provide technical support to advocates from the host organizations.
- **Legal Assistance For Immigrants In The Context Of Comprehensive Client Services:** The Society's overall immigration legal services model operates in the context of the Society's comprehensive services for low-income families and individuals, including immigrants.
- **Comprehensive Criminal Defense Representation:** For example, immigrants charged with crimes benefit from the Society's comprehensive criminal defense program in all five boroughs. The Legal Aid Society's criminal defense program is at the forefront of efforts to address new issues in the criminal justice system, ranging from assisting in the design and staffing of specialized court parts that deal with drug abuse, domestic violence, mental illness, juvenile offenders, and human trafficking to consulting regularly with State and City officials on policy issues of importance to our clients and securing system-wide reform through our Special Litigation Unit. The Society's Special Litigation Unit, for example, litigated the landmark case that established the 24-hour standard for arrest-to-arraignment in New York State. Recent Society systemic law reform efforts include litigation to stop unlawful marijuana arrests resulting from the New York Police Department's stop and frisk policy as well as unlawful trespass arrests of residents and their guests in New York City Housing Authority developments.

In addition to criminal defense trial offices in each of the five boroughs, our overall Criminal Practice includes a citywide Appeals Bureau and a citywide Parole



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Revocation Defense Unit, which have played a leadership role in successful appellate and post-conviction representation to reverse wrongful convictions and improper sentences. The Society's Parole Revocation Defense Unit was the first program in the nation to provide legal representation and social work diversion services specifically to persons who have been paroled from State prisons. The Legal Aid Society also deploys paralegals directly on Rikers Island who provide innovative assistance to the clients of other providers and individual 18-B attorneys in addition to The Legal Aid Society's clients.

Within our criminal defense trial offices in all five boroughs, we provide the following services and programs to enhance legal assistance for clients:

- Special representation for clients with mental health and chemical addiction needs, including deploying social workers directly at arraignments in all five boroughs, that has been singled out for support by the Langeloth Foundation, the van Ameringen Foundation, and the New York State Division of Criminal Justice Services;
- Innovative representation for victims of human trafficking that has been praised by the American Bar Association as one of two initiatives in the United States that is addressing this issue;
- Targeted representation of juveniles charged as adults in criminal cases as well as youthful offenders that has been recognized by the New York City Council as part of its initiative to address gun violence;
- Enhanced representation in DNA matters through a newly formed citywide unit that is the first of its kind in New York and draws on similar DNA initiatives in public defender offices in other parts of the United States, and through which Unit staff is deployed to

provide expert and more cost-effective representation as co-counsel in individual cases in each county;

- Immigration services for which the Society has a national, statewide, and citywide representation for excellence;
- A staff training and continuing legal education program which the New York University School of Law's Brennan Center has recognized as a national model for institutional providers; and
- Social work services integrated with criminal defense representation which the Society pioneered nationally in the 1970s.

Moreover, The Legal Aid Society is able to provide these unique and essential additional services to enhance criminal defense representation:

- Comprehensive collateral civil legal assistance provided in each borough through the Society's nationally recognized Civil Practice; and
 - Legal aid for clients under the age of 21 who have juvenile justice or child welfare needs provided in each borough through the Society's nationally recognized Juvenile Rights Practice.
- **Comprehensive Civil Practice Representation:** Likewise, immigrants receiving immigration representation at The Legal Aid Society benefit from our legal assistance for a broad range of often related legal problems because the Society's Immigration Law Unit is part of the Society's Civil Practice, which provides comprehensive civil legal assistance to help vulnerable clients. In each of the five boroughs, in addition to immigration assistance, the Society's Civil Practice provides legal assistance with these kinds of legal problems:



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housing, foreclosure and homelessness, income and economic security assistance (such as federal disability benefits, public assistance, and food stamps), health law, education law, employment law and low-wage worker matters, tax law for low-wage workers, consumer law and economic justice, opportunities to help clients move out of poverty, immigration, HIV/AIDS and chronic health problems, family law and domestic violence, elder law, and reentry and reintegration matters for clients returning to the community from correctional facilities.

The impact of the Society's comprehensive civil legal assistance for immigrants is illustrated by a major case that the Society's Employment Law Unit just settled on behalf of immigrant low-wage workers. As the *New York Times* reported, in *Cano v. DPNY, et al.*, the Society's Employment Law Unit, along with *pro bono* counsel Shearman & Sterling LLP, represented pizza delivery workers in a class action lawsuit in federal district court against a franchise that operates four Domino's Pizza stores, its owners and managers, and the corporate franchisor. The Domino's workers came to the Society through an organization the Society has worked closely with in several cases: the National Mobilization Against Sweatshops, ("NMASS"), a workers' organization that was founded in New York City in 1996. The Legal Aid Society and NMASS have worked together to support and represent workers in a wide variety of industries, including garment workers, domestic workers, restaurant workers, and workers who did clean up following the 9/11 disaster.

The allegations in the case against Domino's involved systemic wage theft by forcing workers to work off the clock and removing work hours from their time records. The claims were for unpaid minimum wage and overtime, violations of the tip credit rules, and

retaliation against workers who complained about these practices, among others. After conditional certification of a collective action was granted, the claim grew to include more than 60 current and former delivery workers from countries as diverse as Mexico, Bangladesh, and Burkina Faso.

Although the case was originally brought only against the franchise and store managers, the Society gathered sufficient evidence in discovery to seek to amend the complaint to include corporate Domino's, the franchisor. Holding a franchisor responsible for wage violations of its franchisees is not often litigated, but was critical in this case because the defendant franchise filed for bankruptcy. Based on the Plaintiffs' allegations of corporate Domino's involvement in training local store owners, collecting and maintaining payroll data, and establishing policies and procedures that governed the working conditions of workers, the court allowed Plaintiffs to amend their complaint to include corporate Domino's as a defendant.

A settlement in the case has now been approved by the bankruptcy court. As outlined in the documents submitted to the court, the settlement provides a total of \$1.282 million to be paid by defendants, with almost \$1.2 million of that amount going to the workers, who will receive compensation in proportion to the number of weeks they worked at the stores. In addition, the settlement includes some prospective components – most critically, the franchise will now pay the full minimum wage to its delivery workers instead of a lower “tipped” wage. Under the settlement, corporate Domino's is contributing to the settlement amount by forgiving an interest payment the franchise owed to Domino's, lowering its interest rate on some payments, and deferring payments owed by the franchise until after the



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workers are paid. Defendants began making the first round of payments to the workers at the end of December.

The Legal Aid Society's litigation on behalf of immigrant low-wage workers like the Domino's case benefits both individual immigrant workers involved in a particular case and many others in entire industries. With additional resources, we could bring additional cases like this on behalf of immigrant low-age workers.

Conclusion

The deepening crisis in immigration representation continues to separate and destroy immigrant families. For the past two decades, legal services providers have built representation models with limited funding sources to partially meet this urgent crisis. The discussion of existing models should be carefully examined and where possible expanded and financed to serve more low-income immigrants. Although immigrant detainees and unaccompanied minors are a uniquely vulnerable population, any funding for representation should also be extended to non-detained immigrants who cannot afford an attorney. We look forward to working with the Council to address these urgent matters. Thank you for considering our testimony.

Catholic Charities of the Archdiocese of New York
Testimony to the Committee on Immigration of the Council of the City of New York

**Oversight: Examining Models for Providing Legal Services
for Immigrants in Deportation Proceedings**

February 26, 2014

Good afternoon, Honorable Chairperson and committee members. My name is Raluca Oncioiu and I am the Director of Immigration Legal Services and of the New York State New Americans Hotline (formerly known as the New York State Immigration Hotline) of Catholic Charities Community Services, Archdiocese of New York. For more than four decades, Catholic Charities Community Services has helped foreign nationals fleeing persecution find protection in the United States and immigrants to reunite with their families, obtain work authorization, apply for naturalization, and learn English and civics. Our staff works with many vulnerable immigrant populations, including victims of domestic violence and other serious crimes, and New Yorkers who face deportation in our immigration courts. Of special concern to us is the growing population of unaccompanied immigrant minors to whom we provide legal orientations, screenings, and legal services while they are being held in the custody of the Office for Refugee Resettlement at two facilities in Westchester County, and with whom we continue to work once they are released to custodians in the New York area.

New York has a progressive and visionary community of immigration advocates – many of whom are present here today - who have done much to improve the situation of those in need. However, more can and must be done to expand and build services for all those who face removal proceedings, be they detained or non-detained. Several years ago, Judge Robert Katzmann of the U.S. Court of Appeals for the Second Circuit, convened the Study Group on Immigrant Representation – a collaboration of immigration scholars and law professors, private immigration lawyers, nonprofit agency representatives and practitioners, bar association members, and federal court and immigration judges – first, to document the lack of access to representation by foreign-born New Yorkers in removal proceedings and second, to propose a solution to this crisis. I had the honor and the privilege to serve on the Study Group that worked over one year to develop the solution: a public defender model for foreign-born New Yorkers who are detained and face removal proceedings. As you know, this model became a reality last fall, with the launch of the New York Immigrant Family Unity Project.

The recommendation I would like to share is that in developing a comprehensive model for providing legal services to all New Yorkers – detained and non-detained – in removal proceedings, the Committee should convene a similar group drawn from nonprofits, Board of Immigration Appeals accredited agencies, pro bono immigration programs, immigration law clinics, the private immigration bar, bar association immigration committees, and federal and immigration courts. The group should be charged with considering existing programs and developing an immigration representation model that is responsive to the need, is financially feasible, is sustainable, and builds upon and incorporates the programs that already exist. Existing programs – including the

Immigration Representation Program, the juvenile dockets, the Legal Orientation Program, the Legal Orientation Program for Custodians, and many others - have much to offer, including:

- Expertise in particular areas of removal defense, or in working with specific populations, such as asylum-seekers or unaccompanied minors;
- Knowledge about what works and what does not in the provision of legal representation to immigrants in removal;
- Established relationships with the local immigration courts and the Department of Homeland Security, for example through on-going, regular liaison meetings;
- Economies of scale and systems for leveraging scarce resources to serve more immigrants, for example through law students or pro bono programs;
- Effective screening mechanisms, such as the Immigration Representation Program at 26 Federal Plaza, the juvenile dockets, or the Legal Orientation Program;
- Other funding streams – including federal and private funding – that should be incorporated into, not replaced by, a comprehensive model.

I would also like to take the opportunity to briefly describe one of the existing models for providing legal services to immigrants facing removal/deportation proceedings: the Immigration Representation Program (IRP), which has been in existence for more than two decades at New York Immigration Court. The IRP – a collaborative that includes Catholic Charities Community Services, Human Rights First, the Hebrew Immigrant Aid Society and the Legal Aid Society – was established in 1992 with generous funding from the New York Community Trust to begin to address the unmet legal representation needs of low-income immigrants facing removal proceedings in the New York Immigration Court.

For more than two decades, the IRP project has provided screenings one week per month in the Pro Bono Room located on the 12th floor of the Immigration Court at 26 Federal Plaza, in accordance with a schedule shared with the Court Administrator, immigration judges, and non-profit agencies. Immigration judges use the IRP schedule to refer low-income immigrants, who cannot afford to retain private attorneys and thus appear at court hearings without legal representation, to the Pro Bono Room to be screened by a representative of one of the four IRP agencies. In the Pro Bono Room, agency staff members meet one-on-one with each immigrant, answer questions, explain court procedures, and assist with the completion of a questionnaire – available in English, Spanish and French – which elicits information about the type of relief from removal each immigrant may be eligible for. The questionnaires and court-related documents are then triaged by the agencies and appointments for in-depth consultations and representation consideration are set up for some who present – at least on the face of the questionnaires and available documentation – a viable claim for relief from removal.

Catholic Charities Community Services, Human Rights First and the Legal Aid Society accept cases for representation based on the screening questionnaires. Based on current levels of funding, the IRP partners accept at least 120 new cases each year, while continuing to work on hundreds of cases undertaken in previous years. For the first 22

years of its existence, the IRP has provided screenings and brief legal advice to more than 19,700 immigrants and has represented more than 4,200 low income New Yorkers facing removal proceedings. Between June 1, 2012 and May 30, 2013 – its last funding cycle – the IRP accepted 136 new cases for representation, completed 195 cases retained in previous years, and provided more than 600 legal consultations.

The IRP collaborative model brings together nonprofit agencies with different areas of expertise – Human Rights First: asylum; the Legal Aid Society: immigration consequences of criminal convictions; Catholic Charities: family-based immigration, ten-year cancellation of removal, Violence Against Women Act, etc. – and different service-delivery models – in-house representation, pro bono programs, law clinics, law student interns, volunteer attorneys – to create a representation system that covers almost every type of removal defense case and leverages staff resources in different ways to ensure continued capacity to conduct screenings and accept new cases. The partner agencies work together to tweak the IRP model to respond to new developments and meet periodically with the immigration judges and the Department of Homeland Security attorneys to resolve issues that affect work in the courtroom. The program is well-respected in the New York Immigration Court and judges refer a constant stream of unrepresented immigrants who cannot afford private counsel to the Pro Bono Room to be screened by our representatives.

The IRP model can be enhanced, expanded, replicated or incorporated into a larger scale model for providing legal services to low-income New Yorkers in removal proceedings. The experience gained by the collaborating agencies over the two decades of the project's existence should be closely examined and considered in any discussions about a removal defense system.

Thank you again for the opportunity to testify at today's hearing, which we hope will be a first step in the development of a publicly-funded removal defense representation model, the first one of its kind in the nation.



**AMERICAN IMMIGRATION LAWYERS ASSOCIATION
NEW YORK CHAPTER
2013-2014**

February 25, 2014

Executive Committee

ELIZABETH BRETTSCHEIDER
Chair
Daryavani & Bland PC
430 W. 14th St., Suite 305
New York, NY 10014
Tel: 212-431-5576
Fax: 212-431-6468
Email: erb@dbvisa.com

NEENA DUTTA
Vice Chair
Dutta Law Firm, P.C.
11 Broadway, Suite 615
New York, NY 10004
Tel: (646) 253-0512
Fax: (212) 480-8560
ndutta@duttalawfirm.com

AMY FALLON
Secretary
Fragomen, Del Rey, Bernsen & Loewy, LLP
7 Hanover Square
New York, NY 10004-2756
Tel: 212-230-2846
Fax: 212-480-9930
AFallon@fragomen.com

STEPHANIE DIPIETRO
Treasurer
Christophe Law Group, P.C.
2 Wall Street
New York, NY 10005
(212) 344-3800
(212) 344-3212 (fax)
stephanie.dipietro@christophelaw.com

Past Chapter Chairs

Elizabeth Barna
David Katona
Alexis S. Alexrad
Janet Henner
Jan H. Brown
Gayle Oshrin
Cheryl R. David

Melissa Mark-Viverito, Speaker
The New York City Council
250 Broadway
New York, NY 10007

Re: **Oversight - Examining Models for Providing Legal Services
for Immigrants in Deportation Proceedings**

Dear Speaker Mark-Viverito:

We are submitting this testimony on behalf of the New York Chapter of the American Immigration Lawyers Association (AILA), the nation's largest professional organization of immigration lawyers. We thank you for the opportunity to contribute to this forum.

The AILA New York Chapter commends the New York City Council for considering and examining models for providing legal services for immigrants in deportation proceedings. We applaud the City Council for its leadership on this issue, especially for allocating \$500,000 in seed money to the New York Immigrant Family Unity Project (NYIFUP), which was launched in 2013 as the country's first "public defender system" for detained immigrants in deportation (also known as "removal") proceedings.¹ We believe that ensuring high quality legal representation for foreign nationals in immigration court will help keep families together, strengthen New York's economy and ensure that immigrants have a fair day in court.

**There Is A Significant Need For Quality Representation In Immigration
Court**

As stated in our testimony of December 17, 2013, immigration law is a highly complex, specialized practice involving many agencies, many forms, many possible benefits, many penalties and many grounds that trigger those penalties, and many regulations, statutes, agency manuals, memoranda, and abstract legal

¹ For information on this project, see Vera Institute of Justice, Center on Immigration and Justice, New York Immigrant Family Unity Project, at <http://www.vera.org/project/new-york-immigrant-family-unity-project>.



concepts and principles that govern every aspect of the practice. An immigration case may involve a great deal of time and money, and an adverse result can result in banishment from the U.S., permanent separation from family, and removal to potentially life-threatening conditions. Thus, the U.S. Supreme Court has therefore also stated that the ability to remain in the United States may be more important than any potential jail sentence,² which is why legal representation in criminal proceedings must now include immigration advice.³

The need for quality, accessible legal representation for immigrants is critical in New York. With the increase in federal immigration enforcement, the number of New Yorkers facing deportation has risen significantly. As reported by a widely-used online immigration court backlog tool, as of January 2014, there were 49,539 cases pending in New York immigration courts, representing almost twice the number of cases at the end of the 2008 fiscal year (26,952).⁴ As documented by a report issued by the New York Immigrant Representation Study in 2011, nearly 15,000 New Yorkers in removal proceedings—27 percent of those who were not detained and, even more dramatically, 60 percent of those who were jailed in detention—did not have counsel by the time their cases were completed.⁵ However, the report found that **those who receive legal representation are ten times more likely to obtain a successful outcome in immigration court.**⁶

Quality Representation Will Keep Families Together, Help The City's Economy & Reduce Backlogs In Immigration Court

The absence of quality, affordable representation can have a devastating effect on New York families, many of which are mixed status, e.g., where one or more family members are undocumented while others are U.S. citizens. A second report issued by the New York Immigrant Representation Study in 2012 found that, from 2005 to 2010, the parents of more than 7,000 U.S. citizen children in New York City were removed from the U.S.; a staggering 87 percent of those cases involving such children ended in deportation.⁷ The corollary effects resulting from the deportation of immigrant New Yorkers for family members who are left behind include the loss of the family's primary breadwinner and children of deported parents ending up in foster care. In addition to the social costs of this lack of representation, there can be significant economic losses for the city. According to the New York Immigrant Family Unity Project, an estimated that \$4.1 million of

² *INS v. St. Cyr*, 533 U.S. 289, 323 (2001)

³ *Padilla v. Kentucky*, 130 S. Ct. 1473, 1480 (2010)

⁴ TRAC Immigration, *Immigration Court Backlog Tool* (through January 2014), at http://trac.syr.edu/phptools/immigration/court_backlog/.

⁵ NYIR Study Steering Committee, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings*, New York Immigrant Representation Study Report: Part I, 33 *Cardozo L. Rev.* 357, 363-364, 368, tbl. 1 (2011).

⁶ *Id.* at 363-364.

⁷ 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.



turnover costs to New York State employers, could be avoided by providing counsel to immigrants who could establish a right to remain.⁸

While the lack of quality immigration representation has had a devastating impact on New York families, the potential effects of poor advice can be equally calamitous: immigrants can lose substantial amounts of time and money; they potentially miss out on opportunities for immigration benefits for which they may actually be eligible; they may be placed into removal (deportation) proceedings; they may be held in federal detention facilities, where they lack many of the constitutional protections granted U.S. citizens; or they may miss their immigration hearings, resulting in an order of removal. Families are often torn apart, and there is often little that can be done to repair the damage. Providing counsel to these individuals will help ensure that they have a fair day in court.

Another benefit of providing assigned counsel for immigrants in removal proceedings is that it will serve the interest of judicial economy by reducing backlogs in immigration court. In a 2012 report prepared for the Administrative Conference of the United States, the authors argued for an expansion of the availability of non-government funded legal representation and advice in removal proceedings, based on the assumption that no additional government appropriations would be forthcoming. Of the 166 immigration judges who responded to a survey question about the quality of representation, 92% agreed that such proceedings could be accomplished “more efficiently and quickly” if each individual had a competent attorney.⁹

A Massive Effort Is Needed To Meet The Growing Needs Of Indigent Immigrants

AILA members have a long and respected history of being generous with their time by providing pro bono services to their communities. The increasing fallout from flawed policies and a robust immigration enforcement system has brought about an unprecedented need for immigration legal assistance that continues to grow. In recognition of this need, in 2008, AILA’s Board of Governors established a national program encouraging its members to provide a minimum of 50 hours of pro bono legal services for indigent immigrants annually. Since that time, members have donated hundreds of hours of legal assistance to address the victimization of immigrants by notario fraud and the unauthorized practice of immigration law, and to organize and participate in efforts—often in collaboration with nonprofit organizations—to assist unrepresented individuals who may be eligible for prosecutorial discretion or other forms of relief.

Unfortunately, the pro bono efforts of AILA and other organizations are insufficient to meet the needs of indigent immigrants. However, there have been positive steps taken in recent months to expand the scope of services offered. We hope that the City Council will continue to support such initiatives, such as the one that was recently launched in New York State through the NYIFUP, which guarantees universal, quality legal

⁸ *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers* 10-11 (Nov. 2013), available at http://populardemocracy.org/sites/default/files/immigrant_family_unity_project_print_layout.pdf.

⁹ Lenni B. Benson and Russell Wheeler, *Enhancing Quality and Timeliness in Immigration Removal Adjudication*, Report for the Administrative Conference of the United States, June 7, 2012.



representation for New Yorkers who are detained and facing deportation.¹⁰ Established in 2014, Immigrant Justice Corps is the nation's first fellowship program that recruits talented lawyers and college graduates from around the country and partners them with

New York City's leading non-profit legal services providers and community-based organizations to offer a broad range of immigration assistance.¹¹ We also note the large number of unemployed or underemployed recent law school graduates as another potential source of immigrant defense lawyers.

Finally, we propose establishing a program to engage attorneys in pro bono representation such as a panel of city-funded private lawyers equipped to provide reliable legal services to needy immigrant families (similar to the 18-B model used in New York City family courts). This program could be patterned after the NYIFUP and the Immigrant Justice Corps.

In all cases, AILA-NY's members can serve as mentors and trainers to inexperienced lawyers. We would be delighted to work with law schools, non-profit organizations, private law firms, the City Council and others ensure that high quality legal services are available to those most in need.

Protecting Immigrants By Fighting Back Against Immigration Fraud

While providing quality lawyers to immigrants in deportation proceedings is critical to ensuring that they receive a fair day in court, we also urge the City Council to do all it can to help keep immigrants out of immigration court in the first place. We applaud the City Council for its stance on immigrant detainers. Given the complexity of immigration law and the consequences of bad advice, we also believe that it is crucial that New York take action to better protect its residents from immigration fraud and the unauthorized practice of law. Barriers such as cost, language, and uncertainty of who can help leave immigrant New Yorkers vulnerable to predatory individuals who have ties to the community and are in a position to exploit immigrant communities with false or misleading promises. In far too many tragic cases, these immigrants end up applying for benefits for which they are not entitled or submitting applications that are guaranteed to be denied, which ends up landing them in deportation proceedings.

We therefore encourage the City Council to urge the New York State Legislature to bring New York State law in conformance with federal law, which allows only licensed lawyers or BIA-accredited representatives to select, prepare, or otherwise advise on how to answer questions on immigration forms, or to provide advice as to what immigration options a person might have. Such a law would

¹⁰ Vera Institute of Justice, *supra*, note 1.

¹¹ Kirk Semple, "Seeking Better Legal Help for Immigrants," *New York Times*, January 28, 2014, <http://nyti.ms/1fajaZB>.



provide the benefits of: 1) providing clarity as to whom immigrants can turn to for legal assistance regarding their immigration matters; and 2) bringing New York State in line with federal law, which takes precedence over state and local immigration laws.¹²

We also urge the City Council to consider local legislation that would abstain from using such confusing terms as “immigration services” and would instead adopt the definition utilized by the Code of Federal Regulations and by USCIS for “legal advice.” Such legislation, by accurately defining immigration fraud, would make it easier to educate immigrant communities, aide local enforcement, resolve conflicts with federal law, and provide assurance to immigrants that the person giving legal advice has legal training, can be disciplined, and can have his or her license revoked for not following professional rules of conduct and ethics. It would further raise the standard of representation offered to immigrants by encouraging non-lawyers with a genuine interest in helping foreign nationals to obtain federal accreditation.

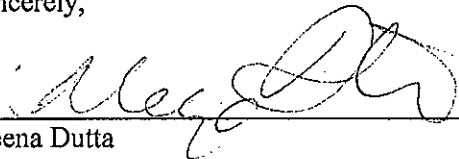
Finally, we urge the City Council to follow through on its December 17, 2013 hearing on immigration fraud and the unauthorized practice of law by revisiting the relevant local laws.

Conclusion: Good For Families, Good For The Economy, Good For New York

AILA-NY joins immigrants and their families, the City Council, and the other groups and individuals testifying today to urge the City to expand funding for immigrant representation projects, support the establishment of a panel of city-funded private attorneys that would provide quality immigration legal assistance to indigent New Yorkers, and brainstorm creative ways of utilizing under-worked or out of work attorneys on this crucial mission. Doing so will help keep families together, strengthen New York’s economy and ensure that all immigrants receive a fair day in court. AILA-NY remains committed to offering our resources and expertise to the City Council as it continues its vital work to increase both the *quantity* and *quality* of legal services for immigrants.

Thank you for your consideration.

Sincerely,



Neena Dutta
Vice-Chair

¹² *Arizona v. United States*, 132 S.Ct. 2492 (2012).



American ideals. Universal values.

Contact: Lori Adams – (212) 845-5241 – adamsl@humanrightsfirst.org

TESTIMONY OF LORI ADAMS, MANAGING ATTORNEY, HUMAN RIGHTS FIRST

**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

**OVERSIGHT HEARING: EXAMINING MODELS FOR PROVIDING LEGAL
SERVICES FOR IMMIGRANTS IN DEPORTATION PROCEEDINGS**

February 25, 2014

My name is Lori Adams, and I am the Managing Attorney in the Refugee Protection Program at Human Rights First. I submit these comments on behalf of Human Rights First, and thank the City Council for the opportunity to testify.

I would like to highlight three effective models for providing legal services for immigrants in removal proceedings in New York City. First, the *pro bono* model – Human Rights First uses this model to bring attorneys from leading law firms together with indigent asylum-seekers who need representation and we mentor the law firm attorneys in that representation. Second, the collaborative model – we partner with other legal service organizations to run a screening and legal representation program at the New York Immigration Court; through the collaboration we can help with a broader range of types of cases than any one of the organizations could handle independently. Third, the fellowship model – through a two-year renewable fellowship, we created a screening and legal representation program just for asylum-seekers at the New York Immigration Court, and this model is successful because it works within our existing program in terms of case support and because of the support of a small group of law firms who have committed to taking the cases that result from that more targeted screening. Each of these is a different model for the screening of cases and the provision of legal services, but for any case accepted by Human Rights First, the attorneys who volunteer their time for the representation are provided with training, mentoring and support until the successful resolution of the case.

Human Rights First is a non-profit, nonpartisan international human rights organization that challenges America to live up to its ideals. We run one of the largest *pro bono* legal representation programs in this country for asylum seekers and other immigrants. We bring volunteer lawyers together with indigent refugees to protect their human rights by representing them in their asylum proceedings. Our unique approach—which combines helping asylum seekers and other immigrants gain protection and legal status while also pressing for fair and humane national asylum and immigration laws and policies—has proven to be highly effective in saving lives

and bringing about sustained and positive change in refugee protection and human rights. Working in close coordination with our dedicated *pro bono* attorneys at top law firms, we have historically won asylum in over 90% of our cases, many of which are venued in the New York City immigration courts. Our model for providing free high-quality legal services to indigent asylum-seekers in the Immigration Court system is a model that works.

Since 1992, with the support of the Fund for New Citizens at the New York Community Trust, we have also been running a legal services and referral project at the New York Immigration Court. It is known as the Immigrant Representation Project (IRP). Human Rights First collaborates with other legal service organizations—namely, The Legal Aid Society, Catholic Charities, and the Hebrew Immigrant Aid Society—to provide comprehensive screenings of individuals in removal proceedings and then to provide free legal representation to a number of those individuals. This is the longest-running screening project of its kind in the country. The immigration judges and administrative staff at the New York Immigration Court recognize the value of the IRP and so they provide space on the same floor as the immigration courtrooms for these screenings to take place one week of each month. Following the screening week, we conduct in-depth intake interviews at our respective offices with a select number of those immigrants to evaluate their cases for *pro bono* legal representation.

One of the many strengths of the collaborative model is that each of the participating organizations has a slightly different model and brings expertise on different types of immigration cases, so we can effectively serve a large number and wide variety of clients. Human Rights First uses a *pro bono* mentoring model in which our in-house asylum experts vet cases, match asylum clients with volunteer lawyers at the large law firms, and then train and mentor the volunteer lawyers in that representation. Our focus on asylum and related forms of protection-based immigration helps us to stay at the cutting edge of this area of law and to maintain our very high success rate in those cases. Catholic Charities uses a direct representation model in which staff attorneys, accredited representatives, and law students working under their supervision litigate a range of immigration cases including cancellation of removal, family-based immigration, filings under VAWA (for immigrant victims of domestic violence), and humanitarian parole for immigrants who need access to emergency medical care in the United States. The Legal Aid Society uses a direct representation model in which attorneys in the immigration law unit represent immigrants, many of whom are long-time lawful permanent residents, who are in removal proceedings because of criminal convictions. When needed, the Legal Aid Society also calls upon the resources in its other units, including the criminal defense unit, to provide representation in ancillary legal matters which may otherwise prevent a successful outcome in the immigration case. With the resources and expertise in the four legal service organizations that conduct screenings, and the three which provide representation through the IRP, we maintain a high rate of success in a range of immigration cases venued at the New York Immigration Court. Of course there is a huge need for free and low-cost legal services in the immigration court system and we cannot take every case. The thorough screenings that we conduct in the *pro bono* room at the New York Immigration Court allow us to make effective referrals, when needed, to other legal service organizations who may be able to help.

Human Rights First is proud to have participated in the IRP collaborative for over two decades. The support of the Fund for New Citizens at the New York Community Trust has made it possible, through the IRP, to provide legal representation to a great many indigent asylum-seekers in New York City who would not otherwise have been able to afford legal counsel. For

the first 22 years of its existence, the IRP has provided screenings and legal advice to more than 19,700 immigrants and has represented more than 4,200 low income New Yorkers facing removal proceedings.

Asylum is the first step on their pathway to permanent residence and eventual U.S. citizenship. The grant of asylum also gives hope to their families because our volunteer lawyers, once asylum is granted, continue working to reunite their asylee clients with their families by filing petitions to bring spouses and children to the United States. Without legal representation to help prove the merits of their claims, asylum seekers have little hope of being granted asylum protection and are at risk of being sent back to countries where they are in danger. Those who try to navigate the asylum system without counsel are up to six times more likely to have their claims rejected, and many of those who are unsuccessful in their asylum claims remain separated from their families abroad, some of whom may also be in danger of persecution or torture.

Our work with the IRP depends on the volunteer lawyers who are recruited and trained through our *pro bono* legal representation program. Through the years Human Rights First has trained thousands of attorneys to represent indigent asylum-seekers. In the process, our model has been replicated by other organizations throughout the country and earned us a first-rate reputation for professionalism and effectiveness. By securing high quality *pro bono* legal representation for indigent asylum seekers, we play a leading role in safeguarding the rights of refugees and other immigrants whose cases are pending before the New York Immigration Court.

Human Rights First recruits, trains, and supervises volunteer lawyers from the nation's top law firms in New York City and elsewhere. Each year through our program over 1,000 lawyers (both newly trained and longtime volunteers with our program) contribute over 60,000 pro bono hours valued at almost \$30,000,000 to represent indigent asylum seekers who have come to the U.S. to escape persecution and abuse. We also provide legal consultations to hundreds of other asylum seekers, and provided general information and legal referrals to thousands of others. Our cases are based in New York, New Jersey, and the Washington DC area. Human Rights First will soon open a new office in Houston, Texas to provide representation for asylum-seekers there as well. While I am focusing my remarks today on our work in the New York Immigration Court, it is worth noting that Human Rights First also represents asylum-seekers who are detained at government expense in immigration detention centers located in New Jersey and elsewhere. We represent asylum-seekers with cases on appeal to the Board of Immigration Appeals and the U.S. Courts of Appeal. We also represent a large number of asylum-seekers with cases before the Asylum Office. High-quality representation before the local Asylum Offices can make a tremendous difference in the outcome of those affirmative cases. Each case that is granted at the Asylum Office is one fewer case that might otherwise have been referred into the already overburdened Immigration Court system.

Each year, through the IRP collaborative, Human Rights First takes new asylum cases for individuals who are in proceedings at the New York Immigration Court while also continuing to work on hundreds of cases that were accepted in prior years. These include cases that are still pending in the court system, as well as cases in which asylum was granted and our volunteer lawyers are helping with post-asylum benefits or are working to bring the clients' families to safety in the U.S. as derivatives of the asylum grant.

The success of the IRP has made it a collaborative model worth replicating. I am a member of the Study Group on Immigrant Representation, led by the Honorable Robert A. Katzmann, Chief Judge of the U.S. Court of Appeals for the Second Circuit. With his encouragement, we discussed with the Study Group the possibility that we might expand upon the IRP to provide legal services to more indigent asylum-seekers in the New York Immigration Court.

In 2011, with the support of the Leon Levy Foundation, Human Rights First launched a project called the Asylum Representation Project (ARP). The funding allowed us to hire an experienced attorney for a fellowship to increase the number of asylum-seekers in proceedings at the New York Immigration Court who can benefit from our *pro bono* mentoring model. The ARP provides one additional day of screening at the New York Immigration Court each month, and from that screening Human Rights First takes on additional asylum cases for *pro bono* legal representation. Five law firms which are active in the Federal Bar Council have committed to taking those cases for *pro bono* representation. The firms are Cleary Gottlieb Steen & Hamilton LLP; Fried, Frank, Harris, Shriver & Jacobson LLP; Morrison Foerster LLP; Sullivan & Cromwell LLP; and Wilmer Cutler Pickering Hale and Dorr LLP. We are grateful for the commitment of these law firms, and to the other law firms which have also taken cases through the IRP and ARP for *pro bono* representation.

All client representation, including on cases screened and accepted through the IRP and ARP, is supervised by experienced Human Rights First attorneys. After a match is made between the client and the attorney who will represent the client, my colleagues and I at Human Rights First work closely with the *pro bono* attorneys to bring the case to a successful conclusion. Unlike many organizations that simply make the match, Human Rights First takes an active role in the case at every stage. Due to overcrowded dockets caused in part by the lack of funding for the hiring of new immigration judges, asylum seekers with cases pending at the New York Immigration Court face delays of up to three years before their cases will be heard and adjudicated. Human Rights First mentors the *pro bono* attorneys for as long as it takes until the cases reach a successful resolution.

Our collaboration with law firm attorneys gives many the confidence and satisfaction they need to continue taking on asylum cases after they complete their first case, which over time builds a cadre of more experienced attorneys who can help to support the work of their more junior colleagues on other asylum cases. New York City has always welcomed immigrants with open arms. We are confident that law firms in this city will continue to demonstrate support for our immigrant neighbors by providing *pro bono* legal representation to those who are indigent when that representation is supported by careful vetting of cases and experienced immigration attorneys who can mentor the *pro bono* attorneys in that representation.

The federal government does not provide universal government-funded counsel in immigration proceedings, and so there is a huge need for *pro bono* legal representation in this area. Without legal service providers to take the cases, many asylum seekers and other immigrants in removal proceedings face the harsh prospect of being removed from the United States simply because they cannot afford to pay for quality legal counsel. Although they may be eligible for asylum or other forms of relief, many are deported because they lack resources to pay for counsel who can help them navigate the complex U.S. immigration laws and procedure. Legal service providers who can provide high-quality free representation can make a real impact in these situations and can even save the lives of the immigrants they represent.

In 2011, the Study Group on Immigrant Representation issued *Accessing Justice*, a report that revealed the stark difference that legal representation makes in immigration cases. On one end of the spectrum, only 13% of unrepresented non-detained immigrants reach a successful outcome in their cases. That number jumps to 74% when the immigrant is represented. In the most recent five-year period analyzed by the report, there were nearly 15,000 unrepresented immigrants in the New York Immigration Courts, and many who had lawyers received poor quality representation. Those with any representation at all will have a greater likelihood of success in their immigration cases, and those with high-quality representation will be even more likely to win their cases.

As *Accessing Justice* explains, the capacity of under-resourced and over-stretched legal service organizations to provide representation for these immigrants cannot meet the tremendous demand. The predictable result is that thousands go without legal help and are sent back to countries where they may be separated from their families and at risk of persecution. The potential for creative solutions to this problem is huge. As Judge Katzmann explained before the Leon Levy Fellowship was created, “There is much that can be done *pro bono* by law firms and nonprofit organizations. . . . it would be useful if there were a system of referral for representation of noncitizens with plausible claims of relief, as determined by [a] screening.” We are grateful to be able to provide the screenings, referrals, and support to *pro bono* counsel that the IRP and ARP make possible so that some indigent asylum seekers have the high-quality *pro bono* representation that they so desperately need.

It would be interesting to explore whether additional sources of funding might make it possible to hire more attorneys to further expand on the collaborative model of the IRP and ARP. Government funding might allow some of our partner organizations to expand their work on behalf of immigrants in removal proceedings. Human Rights First does not accept government funding, but this is an idea that may be of interest to foundations or private donors as well. Regardless of the source of funding, with capacity to hire additional staff attorneys or fellows, the organizations may be able to expand the schedule to provide more screening days each month at the New York Immigration Court.

Of course, screening is just the first step in the successful representation of an asylum case. These cases are complex, and given the backlogs in immigration court adjudications, they can take years to make their way through the system to a successful resolution. It would be crucial for any expansion of the IRP and ARP model to make sure that the legal service organizations received financial support for the hiring of experienced immigration attorneys to train the screeners and to provide the representation or train and mentor *pro bono* attorneys in that representation over the long term.

In summary, there is a dire need for funding of legal services for indigent immigrants who are in removal proceedings in New York City. Human Rights First has, for decades, been running an effective *pro bono* mentoring program for asylum-seekers who could not otherwise afford high-quality legal representation. Through our participation in the IRP collaborative, and more recently through our ARP work, we know the value of a comprehensive screening and representation model which involves stable funding and effective partnerships between legal service organizations. We know that there is no single model that will fully address the need and we recognize the strength in collaborative efforts which match the type of immigration case with the type of representation that will be most effective. It is our hope that any future initiatives to provide legal services to immigrants in the city will be developed in consultation with the legal service providers that are already working together in such collaborations. Our immigration laws and procedures are

complicated and effective representation of immigrants in removal proceedings requires the sustained commitment of attorneys who have developed expertise in this area. Any funding for a representation model which includes the screening of potential clients and the provision of direct or *pro bono* legal services must also include funding for the hiring of attorneys who are immigration experts and can sustain the model in the long-term.

We are grateful to the New York City Council and its Committee on Immigration for the opportunity to testify about effective models for providing legal services to indigent immigrant in proceedings at the New York Immigration Court and we look forward to further discussion of this important topic. Thank you.

**Testimony Submitted to the New York City Council
Committee on Immigration**

**Re: Oversight: Examining Models for Providing Legal Services
for Immigrants in Deportation Proceedings**

Tuesday, February 25, 2014, 1:00 p.m.



Good afternoon. My name is Lynn Ventura and I am a senior staff attorney with Manhattan Legal Services. With me is Laurie Izutsu, a senior staff attorney from Brooklyn Legal Services. Both our office are part of Legal Services NYC (LS-NYC), the largest provider of civil legal services for the poor in the country. We have offices in every borough and each office provides assistance in the area of immigration law, as well as a wide range of civil legal services. We welcome this opportunity to present testimony regarding the Examination of Models for Providing Legal Services for Immigrants in Deportation Proceedings.

Because removal (deportation) proceedings are considered civil in nature, there exists no right to court-appointed counsel, despite the often catastrophic consequences of deportation. This issue is not a new one, and certainly not limited to New York City, but it is an ongoing tragedy for many individuals who, because of limited resources, are not able to mount a defense to their own removal from the U.S. Many are left to represent themselves in cases involving an area of law so complex that even esteemed members of the federal bench find it difficult to comprehend. In *Young v. Holder*, a 2012 decision issued by the U.S. Court of Appeals for the Ninth Circuit, the court itself confused two different defenses to deportation, "cancellation of removal for non-permanent residents" and "cancellation of removal for permanent residents." And in his concurrence to the Supreme Court's 2010 decision in *Padilla v. Kentucky*, Justice Samuel Alito described a well-known immigration text as "dizzying." If these justices find immigration law difficult to absorb, what possible hope can someone who might not even know how to speak English fluently, let alone understand a complex legal system, have to present a case capable of prevailing?

The numbers are staggering. As documented in a 2012 report by the New York Immigration Representation (NYIR) Study Group:

- 27 percent of non-detained immigrants do not have legal representation by the time their cases are completed;
- 60 percent of detained immigrants do not have counsel by the time their cases are completed;
- Individuals in deportation proceedings in New York immigration courts who are represented by an attorney are 500 percent as likely to win their cases as those who are not represented.

The following are two examples of individuals in removal proceedings who were represented by LS-NYC attorneys and who ultimately prevailed in their cases:

Legal Services NYC
40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Raun J. Rasmussen, Executive Director
Joseph Steven Genova, Board Chair

- Ms. C is a single mother of a teen-aged son who was severely abused by her former husband. Although her husband had initially filed a petition on her behalf so that she could obtain a green card, he deliberately sabotaged the green card interview. As a result, Ms. C's application was denied and she was placed in removal proceedings that resulted in a final order of removal. Subsequently, Ms. C was able to cobble together some funds using what little savings she had to hire a private attorney who helped her file a VAWA self-petition and a new green card application. While the self-petition was approved, Ms. C could not afford to continue paying the private attorney. Ms. C came to Legal Services seeking assistance with her green card case and the removal order against her, and fearful that she could be deported at any time because U.S. Citizenship and Immigration Services (USCIS) had closed Ms. C's green card case in light of the outstanding removal order. Brooklyn Legal Services successfully filed motions to reopen and to stay the removal, as well as to terminate proceedings so that Ms. C could file a new application for permanent residence. Once the motions were granted, Legal Services filed a new permanent residency application on Ms. C's behalf, and Ms. C is now awaiting an interview on that application.
- Mr. K was a legal permanent resident who was being represented by Manhattan Legal Services in a citizenship case. Mr. K passed his citizenship exam and had every expectation that he would soon become a citizen. However, USCIS wrongfully accused him of having obtained his green card through fraud, and placed him in deportation proceedings. He was in real danger of being separated from his pregnant wife and toddler. Manhattan Legal Services represented him in the proceedings and succeeded in getting the deportation case terminated and the citizenship case approved. Mr. K is now a U.S. citizen, and is in the process of petitioning for his wife to become a permanent resident. Without the intervention of our office, it is very possible that Mr. K would have been deported and separated from his family, all because of an overly zealous mistake by USCIS.

Both these individuals would likely have encountered terrible obstacles to remaining in the U.S., and both had strong defenses that they could not have asserted on their own. Without the legal representation our offices afforded these clients, it is uncertain whether they would have prevailed against their deportation.

Despite the daunting statistics mentioned earlier, there are steps that can be taken to address the problem, and the model that would best do so is the criminal court model – access to competent counsel for all individuals in removal proceedings. While this may seem overly ambitious, there simply is no other way to resolve the problem other than to recognize that immigrants in removal proceedings who lack the proper resources cannot hope to avoid deportation if they don't have competent legal assistance, and to boldly set right-to-counsel as the ultimate goal toward which to work. This commitment should also contemplate the following:

- Culturally-competent and knowledgeable representation, in the client's native language;
- Special attention and priority given to survivors of crime and domestic violence, and the disabled (especially individuals with mental disabilities);
- Individuals in proceedings would be provided with a single point of contact in order to access legal assistance. (A sheet of paper with a list of nonprofits is nowhere near sufficient.);
- Cooperation among local nonprofit legal services offices willing to participate in such a program, with agreement on how to administer the project;
- Funding to achieve these goals; and
- Community Education about how to avoid becoming deportable.

(I mention survivors of domestic violence and crime specifically because these individuals may be too traumatized to disclose their status, and because of the remedies that are available to them in terms of VAWA and U Visa applications. And the disabled, especially the mentally disabled, are at a distinct disadvantage in terms of being able to present any defense to their deportation.)

In closing, the need for legal services in the area of immigration law, especially with regard to the very vulnerable people in removal proceedings, is both great and unmet. Despite our organization's desire to represent as many individuals as possible, our resources are limited and our offices cannot represent every client who needs assistance. Accordingly, we would like to encourage the Committee to consider allocating funding to legal service providers to develop a right-to-counsel model that would afford legal representation to all individuals in removal proceedings. The result would be the prevention of needless suffering on so many New Yorkers, and a more just city for all of us.

We thank the Committee for scheduling this hearing and for affording our organization the opportunity to present this testimony.

Respectfully Submitted,



Lynn Ventura
Senior Staff Attorney
Manhattan Legal Services
One West 125th Street, 2nd Floor
New York, New York 10027
tel. and e-fax: 646-442-3129
lventura@mls.ls-nyc.org



Laurie Izutsu
Senior Staff Attorney
Brooklyn Legal Services
1360 Fulton Street, Suite 301
Brooklyn, New York 11216
tel. and e-fax: 718-237-5501
lauriei@sbls.org

Testimony of the New York Immigration Coalition
Before the New York City Council
February 25, 2014

Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings.

The need for quality representation in immigration courts is undeniable. Recent reports have shown that the vast majority of New Yorkers detained by ICE are deported, even though up to a third may qualify for relief. More devastating is the discrepancy in success rates for represented individuals vs. non-represented individuals, and for detained individuals vs. non-detained. While having legal representation dramatically increases the likelihood of an individual's ability to remain in the United States, only a small fraction of detained immigrants are represented before the judge. Most recent numbers show that 60% of detained and 27% of non-detained New Yorkers in removal proceedings are not represented by attorneys during their removal proceedings. Ninety-four percent of detained, non-represented individuals lose their deportation cases. By contrast, 74% of non-detained but represented individuals win theirs.

There are numerous factors that contribute to this enormous difference in outcomes for immigrants in removal proceedings. First, in the case of detained immigrants, more often than not the detained individual is the major, if not the only, breadwinner in the family. The family is therefore left not only with the inability to afford a lawyer, but also to travel and meet with attorneys while also juggling family care and an urgent need to increase work hours. This problem is exacerbated by the fact that attorneys are often not located in immigrant communities, but rather in central locations that require travel nonetheless.

Second is the lack of competent representation in and of itself. Representing individuals before immigration courts requires an investment of time and learning. Immigration Courts are fast-paced environments where cases nonetheless stretch out for an average of two years. The issues presented are complex, and the practice mode daunting. Many experienced immigration attorneys will not venture into this area of practice, and few organizations have the necessary funding and support to take on defense of removal work. Detained cases are even more complex and time consuming, which narrows the already small pool of available, qualified legal assistance.

Nonetheless, competent representation is directly tied to the ease with which a case will go through the immigration court system, and to the chances of success. A recent survey shows that 92% of immigration judges believe that competent representation allows them to handle more effectively. Moreover, despite being civil in nature, with prolonged detention, denial of relief, and potential exile out of the United States on the line, the stakes in immigration court cases can be higher than even in criminal court.

Given the dramatic differences in outcomes between represented and non-represented individuals, and given the terrible consequences on families and communities when a member is deported, we commend the New York City Council for looking into ways to provide this assistance to needy New Yorkers. For the reasons outline above, we strongly believe that a

holistic, all-encompassing approach be taken in determining how to best provide representation to detained immigrants. Providers should be well-trained, have access to necessary resources to assist them in their representation, and should be placed within the communities for ease of access and sensitivity to the issues faced by clients.

The New York Immigration Coalition is an advocacy and policy umbrella organization for nearly two hundred multi-ethnic, multi-racial, and multi-sector membership groups across the state. Moreover, for over a decade, through its Training and Technical Assistance Program, the NYIC has offered a full range of services to help its members develop and maintain their competency in immigration law. The *Immigrant Concerns Training Institute (ICTI)* currently offers a full calendar of trainings at our offices in New York City to help legal service providers offer top-notch legal services. Staff of member agencies can also contact the Training & Technical Assistance Program to receive one-on-one legal advice to help them resolve immigration legal questions.

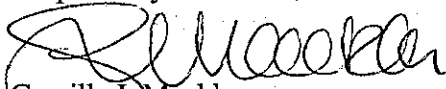
As such, we have a unique experience in seeing how collaborative work throughout the boroughs and the communities can build and help provide quality services throughout the City. Moreover, we also have a clear understanding of the training needs and challenges of legal service providers in New York City.

Our experiences have taught us that the best model for legal representation includes:

- Legal representatives that are in the communities needing assistance so that trust will be pre-existent and families may approach without fear.
- Training on issues specific to immigration law and immigration detention issues; and
- A support network where representatives can request assistance for difficult cases

We urge the City Council to increase funding for programs such as the New York Immigrant Defenders and to support an adequate training and technical assistance structure so that as many New Yorkers as possible may obtain adequate representation, and to protect our families and communities from further harm caused by the current immigration system.

Respectfully submitted,



Camille J. Mackler
Director of Training & Technical Assistance
New York Immigration Coalition

Testimony of Robert A. Katzmann,
Chief Judge, U.S. Court of Appeals for the Second Circuit

New York City Council Oversight Hearing:
Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings

February 25, 2014

I thank the New York City Council Committee on Immigration for inviting me to participate in this hearing and applaud the City Council for its essential work to improve the availability and adequacy of counsel for immigrant New Yorkers. The City Council has led our city to become the first in the country to create a system of institutionally-provided counsel to immigrants facing deportation and a great example of the good that can be accomplished when public, private, and non-profit sectors work together.

I am here today to speak briefly about the crisis of representation that exists in our city and to discuss some of the efforts underway to help mitigate that problem. I should note that I do not speak on behalf of the Court, but rather in an individual capacity. We as judges are permitted—in fact encouraged—to contribute to the law, the legal system, and the administration of justice so long as our impartiality is not comprised.

The subject matter of today's hearing—what can be done to enhance immigrants' access to justice—is critically important. We live in a city of immigrants, whose contributions have been vital to who we are and hope to be; as the son of a refugee from Nazi persecution and grandson of Russian immigrants, I can attest, as all of you can, to how immigrants have made this great city even greater.

As a judge, I am often called upon to resolve immigration cases. While there are multiple players in immigration cases and they have different roles, I think that all would agree that

deficient representation frustrates the work of courts and ill serves litigants. All too often, courts across the country addressing immigration matters must contend with the absence of adequate legal representation—a breakdown of crisis proportions, a breakdown of profound human consequences that has tested the federal courts’ ability to render justice.^{1 2}

Immigrants are often vulnerable individuals and families who come to this country in the hopes of a better life, who often do not know the English language or American culture, lack economic resources, and live in fear. The problem they face in seeking representation is two-fold. First, there is a dearth of affordable, competent attorneys to represent people facing deportation. Nationwide, only forty percent of noncitizens in deportation proceedings have representation—and that percentage is even lower for people who are detained. Second, the quality of counsel is substandard in all too many deportation cases. Immigrants are easy prey for unscrupulous lawyers, who gouge their clients out of scarce resources and provide shoddy legal services. Indeed, we have seen increasing recognition of this problem in New York, as efforts to combat fraudulent legal services have ramped up in recent years.

In all too many immigration cases, I have seen deficient representation. For example, all too frequently, I have had cases in which briefs are boilerplate submissions; there have been cases before me where lawyers failed to ensure that documents are filed on time, and where attorneys had failed to show up at immigration court hearings. For immigrants, the stakes could not be higher; these cases determine whether they can remain in the country or whether they will be separated from their loved ones—often their children—and barred from returning for many years. In all too many cases, I had the feeling that if only the immigrant had competent counsel at the very beginning of immigration proceedings, where the record is made and the die is cast,

the result might have been different, and the noncitizen might have secured relief that would have allowed her to remain in the United States.

For New Yorkers, the impact is devastating. At this moment, over 500,000 noncitizens and their children are living in poverty in New York City and, although immigrants in deportation proceedings face the equivalent of exile, many cannot afford an attorney. Indeed, approximately 3,500 people face deportation without counsel each year in the city. This has serious consequences for our entire community. When noncitizen New Yorkers are deported, families lose critical wage-earners and caretakers, making them significantly more likely to turn to public benefits and community support. Having a lawyer significantly increases non-citizens' likelihood of prevailing in legal proceedings. This means that by providing representation, we can help thousands of New Yorkers each year access justice, keep their families together, and protect their basic rights to live and work in our city.

Hoping to raise awareness and to effect change, I started a working group, the Study Group on Immigrant Representation, along with the counsel of several outstanding lawyers. The Study Group is made up of some fifty lawyers from a range of firms, non-profits, bar organizations, immigrant legal service providers, immigrant organizations, law schools, and federal, state and local governments, along with some judicial colleagues. Our work is focused on the subject at issue today—increasing the availability of competent counsel for noncitizen New Yorkers and creating models of representation that can be used in other cities and states.¹ I

¹ A review of the Study Group's activities can be found in Robert Katzmann, *Bench, Bar, and Immigrant Representation: Meeting an Urgent Need*, 15 N.Y.U. J. PUB. POL'Y & LEGIS. 858 (2012), available at <http://www.nyuylpp.org/wp-content/uploads/2013/01/Katzmann-Bench-Bar-and-Immigrant-Representation.pdf>. Additional information and publications by Study Group members can be found at *Symposium, Innovative Approaches to Immigrant Representation: Exploring New Partnerships*, 33 CARDOZO L. REV. 331-619 (2011), available at http://www.cardozolawreview.com/index.php?option=com_content&view=article&id=188&Itemid=7; 78

will briefly describe two of our current, complementary initiatives that together mark a significant step in resolving this crisis of representation in New York City.

You have will hear about one of the projects—the New York Immigrant Family Unity Project—in more detail today from the outstanding people that have helped launch that project. The groundwork for that project was a Study Group initiative, the New York Immigrant Representation Study, which was a two-year project that documented the areas of the most urgent representational needs of indigent noncitizens facing removal in New York with the goal of advancing recommendations as to resources and strategies to meet these needs.³ We sought this information because, in the immigration law field, it was a common refrain that having an attorney makes a significant difference for people who are at risk of being deported. But, as a great mentor of mine, Senator Daniel Patrick Moynihan, said “Everyone is entitled to his own opinion, but not to his own facts.” We needed some hard facts. The study resulted in two reports that provide, for the first time ever, comprehensive data about the scope of the immigrant representation challenge in New York and a plan for addressing it.⁴

I want to pause for a moment to describe a few of the striking findings from the 2011 report because they powerfully show the depth of the problem with which we are all concerned.

First, it showed that a striking percentage of immigrants appearing before the New York immigration courts do not have representation. Twenty-seven percent of immigrants who were not detained during the pendency of their deportation proceedings did not have counsel by the time their cases were completed. And a full sixty percent of immigrants who were detained during the pendency of their deportation proceedings did not have counsel by the time their cases were completed. According to the providers surveyed, cases in which noncitizens are held in

Symposium, *Overcoming Barriers to Immigration Representation: Exploring Solutions*, FORDHAM L. REV. 453-640 (2009), available at <http://law.fordham.edu/fordham-law-review/15905.htm>;

detention during the deportation proceedings are least served by existing immigration attorneys, particularly non-profit or pro bono resources.

The two most important variables affecting the ability to secure a successful outcome, which means either a grant of relief or termination of the deportation case, are having representation and being free from detention. The absence of either factor in a case—being detained but represented or being unrepresented but not detained—decreases the success rate dramatically. When neither factor is present, the rate of successful outcomes decreases even more substantially. If a person is represented and released or never detained, 74% have successful outcomes. People who are unrepresented but released or never detained have successful outcomes 13% of the time. People who are represented but detained have successful outcomes 18% of the time. And, at the bottom of this range, people who do not have attorneys and who are detained are successful only 3% of the time. Given these facts, I think we can all agree that having a lawyer, preferably a good one, makes a substantial difference.

The report next found that grave problems persist in regard to deficient performance by lawyers providing deportation-defense services. A survey of New York immigration judges revealed that the judges rated nearly half of all legal representatives as inadequate in terms of overall performance. This means that the attorneys did not investigate the case, could not respond to questions about the facts or the law, did not meet deadlines to file documents, and sometimes even failed to appear in court.

The study also showed that the two greatest impediments to increasing the availability and adequacy of legal services for immigrants are a lack of funding and a lack of resources to build a qualified core of experienced attorneys who can provide deportation defense. These

dramatic findings underscored the immensity of the task before us and helped us understand where to focus resources most immediately.

The second part of the New York Immigrant Representation Study, released in November 2012,⁵ was devoted to developing concrete proposals to address the immigrant representation crisis in New York. The resulting proposal set forth a blueprint for a system of public-defender-type universal representation to indigent detainees facing deportation, which is the basis for the New York Immigrant Family Unity Project. Our other speakers will tell you more about this project, but I want to note the City Council's critical role in this endeavor: in July of 2013, in an historic action of governmental commitment to fund legal services for immigrants, the City Council announced funding of \$500,000 for the New York Family Unity Project, the nation's first assigned counsel system for immigrants.⁶ Since then, our group has been contacted by organizations across the country that are interested in following New York City's example by implementing our model in other cities and states.

The second major initiative that I want to speak about is the Immigrant Justice Corps (IJC), a recently-launched fellowship program that I proposed, that will allow young college graduates and lawyers, as well as senior lawyers of retirement age, to provide pro bono legal services to immigrants.

Begun last month with an initial seed grant from the Robin Hood Foundation, the IJC, led by Executive Director Nisha Agarwal, will address a critical challenge—aiding immigrants facing permanent exile from their families.⁷ The concept borrows from other fellowship program models that call young people to public service. Each year, 25 of the most talented and promising young lawyers will be selected for two- to three-year fellowships providing a wide range of legal services for poor immigrants. Moreover, each year, 15 talented college graduates

will be awarded two-year fellowships to serve the immigrant community in community-based organizations. By its third year in existence, Corps fellows will have served over 15,000 clients and supported several dozen community-based organizations in New York City; at full strength, the IJC will double the capacity of non-profit providers of immigrant legal services in the city. Training will occur in a boot camp of intensive courses on immigration law, with the aid of non-profits and law school clinics. IJC lawyers/community fellows will then be placed in clusters at some of the city's leading legal services and community-based organizations. Ultimately, IJC hopes to move from a full-scale version of the project in New York to a national effort.

The benefits of such a program are many. It will make a fundamental difference in the lives of immigrants and their families. These fellows will touch the lives of thousands of New Yorkers, keep our families together, and help our city prosper. The Corps' very existence is already raising awareness of both the crisis of representation and the efforts to meet that crisis. These fellows will facilitate the resolution of cases and promote the fair and effective administration of justice, thereby aiding already busy courts. As a model of efficient legal services delivery, the IJC could provide new ways of thinking about how to maximize public dollars. By populating the field of immigration law with a cadre of dedicated advocates, the Corps will change the immigrant representation arena in much-needed ways. It will create leadership for the next generation to help meet the legal and policy challenges in the years ahead. Most importantly, the Corps will make all the difference to those without resources, those who seek to realize the American dream and contribute to this nation's vitality.

The IJC and the New York Family Unity Project represent different, but highly complementary strategies to address the acute shortage of competent attorneys willing and able to represent poor immigrants facing deportation. IJC lawyers will surely serve the Family Unity

Project. We are fortunate that the New York Family Unity Project and the IJC are both located in New York City, as this creates efficiencies, such as opportunities for joint training and empirical study, and important synergies, like coordinated placements and the ability to focus our resources where the need is the greatest and where we can have maximum impact.

In sum, the challenges posed by this crisis are many, but so too are the solutions. The volume of immigration cases before the courts is largely beyond our control. The litigation docket will be affected by choices made by Congress and the executive branch. Regardless of what choices they make, the need for effective counsel will only increase in the years ahead. If there is comprehensive immigration legislation, the imperative of having an expanded pool of quality counsel will be greater because virtually every person eligible for relief will need legal assistance. The importance of access to justice, and therefore the need for representation, will not change. It is for this reason that I am so pleased to know that many in our city are exploring solutions to the current crisis of immigrant representation. If we care about our community and our justice system, we have a responsibility to seek to ensure its fairness and effectiveness. The City Council has been a leader in the effort to facilitate representation for immigrants. As we all recognize, much more needs to be done. I look forward to the next steps in the years to come.

¹ For a review of the Study Group's activities, see Robert A. Katzmann, *Bench, Bar, and Immigrant Representation: Meeting an Urgent Need*, 15 N.Y.U. J. Pub. Pol'y & Legis. 858 (2012), available at <http://www.nyuylpp.org/wp-content/uploads/2013/01/Katzmann-Bench-Bar-and-Immigrant-Representation.pdf>. For additional information and publications related to Study Group colloquia, see *Symposium, Innovative Approaches to Immigrant Representation: Exploring New Partnerships*, 33 Cardozo L. Rev. 331-619 (2011), available at <http://cardozolawreview.com/volume-33-issue-2.html>, and *Symposium, Overcoming Barriers to Immigration Representation: Exploring Solutions*, FORDHAM L. REV. 453-640 (2009), available at <http://law.fordham.edu/fordham-law-review/15905.htm>.

² Apart from the representation problem are issues relating to the functioning of the immigration adjudication system itself, a subject worthy of its own examination. See, e.g., Lenni B. Benson and Russell R. Wheeler, *Enhancing Quality and Timeliness in Immigration and Removal Adjudication* (2012), available at <http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-72012.pdf>; Russell R. Wheeler, *Practical Impediments to Structural Reform and the Promise of Third Branch and Analytical Methods: A Reply to Professors Baum and Legomsky*, 59 DUKE L.J. 1847-82 (2010); Am. Bar Assoc. Comm'n on Immigration, *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases* (2010), available at http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf.

³ New York Immigrant Representation Study Steering Comm., *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings (New York Immigrant Representation Study Report: Part I)*, 33 CARDOZO L. REV. 357-416 (2011), available at http://www.cardozolawreview.com/content/denovo/NYIRS_Report.pdf (“Accessing Justice I”).

⁴ New York Immigrant Representation Study Steering Comm., *Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings* (2012), available at http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf (“Accessing Justice II”); NYIRS Steering Committee, *Accessing Justice I*.

⁵ See *Accessing Justice II*.

⁶ Press Release, Office of Commc'n, N.Y.C. Council of the City of New York, Speaker Quinn, Council Members & Immigrant Rights Groups Announce Pilot Program Providing Legal Counsel For Immigrants Facing Deportation (July 19, 2013), available at <http://council.nyc.gov/html/pr/071913nyifup.shtml>.

⁷ More information about the IJC can be found at justicecorps.org.



moving victims of violence from crisis to confidence

**Testimony of
Safe Horizon, Inc.**

**Oversight: Examining Models for Providing Legal Services for
Immigrants in Deportation Proceedings**

**Immigration Committee
Hon. Carlos Menchaca, Chair**

New York City Council

February 25, 2014

Introduction

Thank you, Chairman Menchaca, and members of the Committee, for the opportunity to testify before you today on the importance of providing legal services for immigrants in deportation proceedings. My name is Bitta Mostofi, and I am a Senior Staff Attorney for Safe Horizon's Immigration Law Project. Safe Horizon is the nation's leading victim assistance organization and New York City's largest provider of services to victims of crime and abuse, their families and communities. Safe Horizon creates hope and opportunities for hundreds of thousands of New Yorkers each year whose lives are touched by violence.

We are grateful the City Council is taking a look at this important issue, and asking community-based organizations like Safe Horizon to comment on our experiences. I would like to share with you the nature of our work, the population we serve and the importance of providing representation in immigration proceedings.

Background

Safe Horizon has over twenty-five years of experience providing services to New York City's immigrant community with a specialization in assisting immigrant victims of domestic violence, child abuse, torture, and other crimes. Since 1987, our **Immigration Law Project (ILP)** has provided free and low-cost services to victims of crime, torture and abuse in immigration proceedings. With help from the New York City Council's Immigrant Opportunities Initiative and other funders, ILP offers direct legal assistance to over 1,000 clients each year in many areas of immigration law, including Asylum, VAWA self-petitions, U visas, work authorization, Deferred Action for Childhood Arrival, naturalization and representation in

deportation and removal proceedings. In 2013 alone we provided consultations, referrals, hotline assistance and direct representation to over 5,000 individuals. Our long-standing partnership with the New York City Council includes providing expert legal assistance to constituents referred to us by City Council members across the five boroughs as well as submitting testimony on important policy matters that affect our clients, including the support of VAWA reauthorization and mitigating the impact of the federal Secure Communities policy on innocent New Yorkers.

ILP specializes in assisting victims of crime and is unique in our community for serving domestic violence victims as well as victims of child abuse, assault and torture. Clients come to us in many ways. As mentioned earlier, some are referred to us by members of the City Council and other legislative bodies. Others are referred by federal immigration officials and our partners in Federal, State and local law enforcement. Still others come to us through the network of community based social service providers, including many from within the continuum of services offered by Safe Horizon. In fact, the model of our agency is such that we strive to provide a more holistic and immediate response to our client's needs through inter-agency referrals to our shelters, caseworkers, counselors, and providers of legal services. This model allows us to attend to and complete cases in a more timely and efficient manner.

However clients find us, it takes enormous courage to self-identify as undocumented victims of crime. This is particularly true since the implementation of Secure Communities which puts victims of crime at significant risk of adverse immigration proceedings. And while Safe Horizon's Immigration Law Project does all it can to meet the needs of our clients, we are

unable to meet the tremendous need for competent legal representation that exists in New York City. By way of example let me tell you about my client Diana.

Case Story

In 2012, Diana*, an immigrant from Colombia, was a witness to a brutal murder. When the killers realized what she had seen, they chased her until she was forced to jump out of a second story window. She then ran for her life and hid under a truck until she felt she could go to the police. After reporting what she saw, she was placed under 24-hour police protection and stayed in the precinct for 8 days while she continued to provide a detailed account of what happened, including identifying the perpetrators. Due to the fact that only two of the four murderers were arrested, Diana was forced to move because she feared retaliation. Additionally her father, a politically vocal professor was murdered in Colombia and she did not feel safe returning home.

When Diana came to us, after years of incompetent representation before the immigration judge, she was in deportation proceedings. Our office worked over the course of several months with the District Attorney that prosecuted the murder case and eventually secured a U-visa certification based on Diana's cooperation and witness to murder as an indirect victim. We further motioned the court to return the case to the Judge's master calendar and receive a continuance for her U-visa application to be decided. In December, her U-visa was approved and her deportation case was terminated, and she is now working, safe, and prospering in New York City.

Our client Guillermo* suffered years of abuse in his home country of Ecuador because of his sexual orientation. But after he was raped by police officers he knew he would not survive if he remained there. He traveled to New York on a visa for work and confided in a friend he met about what happened. Guillermo was then introduced to a so-called immigration expert, who assisted him in filing an asylum case at the asylum office. The case was then referred to the Immigration Court and due to the poor quality of the filing, the client was placed in removal proceedings. The so-called expert told him he could no longer assist him in the case. Guillermo was referred to Safe Horizon's Immigration Law Project by the Immigration Court. We worked with Guillermo for months to prepare his asylum case and referred him to our Safe Horizon Counseling Center for counseling. We won his asylum claim and the removal proceedings were terminated. Guillermo has since become a legal permanent resident and is living and working happily in New York.

** = All names have been changed to protect the identity of the clients.*

Recommendations

We are very encouraged that City Council has asked to hear from immigrant legal service providers and recognizes that we must address the urgent need for competent and low cost representation in removal proceedings. The bottom line, however, is there is simply not enough funding to address the more than 46,000 cases currently on the non-detained removal docket. As a result, New Yorkers may be waiting years for the immigration judge to hear their case. As the City Council knows, there is no mandatory representation of counsel in immigration proceedings and there is very little funding for legal representation of indigent clients. The New York Immigration Representation Study, spearheaded by Judge Robert Katzman found that "the impact of having counsel cannot be overstated: people facing deportation in New York

immigration courts with a lawyer are 500 percent as likely to win their cases as those without representation.” Competent attorneys and efficient representation would contribute greatly to the reduction of this backlog and to the protection of our immigration community’s rights and safety, as evidenced by Diana and Guillermo’s cases described to you today.

The community we serve in immigration proceedings range from legal permanent residents who have been in the United States with their citizen children and spouses for years to those who are seeking the safety of our city be it from domestic abuse, sexual assault or child abuse, or persecution in their home countries. Without sufficient resources for immigration legal services, families are broken up, people have lost their livelihoods, and in some cases the safety of our client is in danger. We are truly a city of immigrants and can and must do better when it comes to the care and protection of our communities.

Thank you again for allowing us to testify here today, and I’d be happy to answer any questions you may have.

February 25, 2014

**Examining Models for Providing Legal Services for Immigrants in
Deportation Proceedings**

Before the New York City Council, Immigration Committee by Irina Matiychenko, the
New York Legal Assistance Group, Immigrant Protection Unit

Dear Members of Immigration Committee,

My name is Irina Matiychenko. I am the Director of the Immigrant Protection Unit of the
New York Legal Assistance Group, NYLAG. I want to thank the members of the Immigration
Committee for holding this important hearing and inviting NYLAG to present testimony today.

Founded in 1990, NYLAG is one of the largest providers of free legal services in New
York. Services include direct representation, impact and class action litigation, consultation,
community education, and advocacy. NYLAG represents a number of clients in removal
proceedings in Immigration Courts and before the Board of Immigration Appeals.

Introduction

Unlike defendants in criminal proceedings, respondents in removal proceedings have no
Sixth Amendment right to counsel. However, they enjoy protection of the Fifth Amendment due
process clause that mandates that the deportation hearing be fundamentally fair. Aliens in
removal proceedings have a statutory right to retain counsel, and they are entitled to protection of
their due process rights, but only "at no expense to the Government." 8 U.S.C. § 1362.
Therefore, an individual has a clear and absolute right to be represented by counsel of his or her
own choice, where the individual can afford to pay that attorney. In cases where an individual is

indigent and cannot afford to retain counsel, his right to due process guaranteed by the Fifth Amendment is meaningless because if the individual is indigent and cannot afford private counsel, he has no right to ask the Immigration Court to appoint counsel.

Every year the United States deports hundreds of thousands of aliens. For many of them the consequences of removal can be extremely harsh: long-time immigrants are sent to a homeland to which they have no ties, where they may be persecuted, where they have no families left. In *Bridges v. Wixon*, 326 U.S.135(1946) the U.S. Supreme Court recognized that deportation may deprive an immigrant of “all that makes life worth living” and that “meticulous care is required to ensure that the deprivation of liberty meet the essential standards of fairness”.

Despite the harsh consequences of removal and extreme complexity of the immigration law, half of those who face the severe sanctions of deportation are not represented in immigration proceedings because they are indigent and are not able to retain counsel. A recent New York study led by the Honorable Robert Katzman, a Second Circuit Court of Appeal Judge, found that 97 percent of non-represented detainees lost their deportation cases, while 74 percent of non-detained, represented non-citizens had succeeded (See New York Immigrant Representation Study Report: Part II, *Accessing Justice II, A Model for Providing Counsel to New York Immigrants in Removal Proceedings* 19 (2012) available at http://www.cardozoreview.com/content/denovo/NYIRS_ReportII.pdf.

As the New York City Bar Committee on Immigration and Nationality Law has pronounced”.. a right to appointed counsel is necessary, so that the outcome of removal cases does not turn on a respondent’s ability to afford counsel, but rather on the merits of his or her claim.”ⁱ

The first and very important practical step towards acknowledgment of the right of indigent Respondent to appointed counsel happened just recently when in a landmark ruling Federal District Judge Dolly M. Gee ordered the federal government to provide representation for immigrant detainees who have serious mental disabilities and are unable to represent themselves in immigration court. This is a historic decision — it is the *first ever* to recognize the right to appointed counsel in immigration proceedings for a group of immigrants. The court's ruling will begin to change this unjust system by providing essential protections for an extraordinarily vulnerable group — immigrants with serious mental disabilities whom the government detained while their cases remain pending. As Judge Gee found, the appointment of a legal representative for such individuals "serves only to level the playing field by allowing them to meaningfully access the hearing process."

Although the rationale for appointed counsel is especially compelling for some, such as those with serious mental disorders, or unaccompanied children, the requirements of fundamental fairness must be assessed in all cases in light of the complexity of immigration law, the role of government prosecutors, and the severity of the harm caused by deportation.

To sum up, the due process rights are only preserved and the principle of fundamental fairness is actually guaranteed when all indigent noncitizens in removal proceedings have a right to be represented by appointed counsel. Hereto the best model of representation of noncitizens may be achieved with establishment of a right to government-funded counsel in removal proceedings for all indigent individuals.

NY Pilot Program As the First Step in the Right Direction

In the meantime, thanks to the Second Circuit Judge Robert Katzman's initiative and his group's two reports—"Accessing Justice and Accessing Justice II, immigrant representation crisis was, at least, partially addressed in New York.

In 2013 the New York Immigrant Family Unity Project (NYIFUP), the first in the country institutionally-provided public defender program for immigrants facing deportation, was created. NYIFUP is the nation's first government-funded deportation defense system, providing basic rights to justice for New Yorkers and helping to ensure the unity of New York families. NYIFUP provides poor immigrant detainees with court-appointed attorneys from the Bronx Defenders and Brooklyn Defender Services. We applaud New York City Council for funding this pilot program and being pioneers in promoting justice and fairness for immigrants in deportation.

We believe that in the future, NYIFUP should become a model for other jurisdictions, as well as the model for creating similar programs in New York to represent other vulnerable groups of not-detained indigent immigrants, such as children, the mentally disabled, victims of sex trafficking, refugees, torture survivors, and legal permanent residents in removal proceedings.

New York City Council has an opportunity to further enhance its role as a leader in promoting due process rights and fairness to all indigent immigrants in removal proceedings.

What Can Be Done To Improve Model of Representation of Indigent Nonimmigrants in Removal Proceedings

At present the following steps can be undertaken to improve current situation with representation of indigent immigrants in removal proceedings:

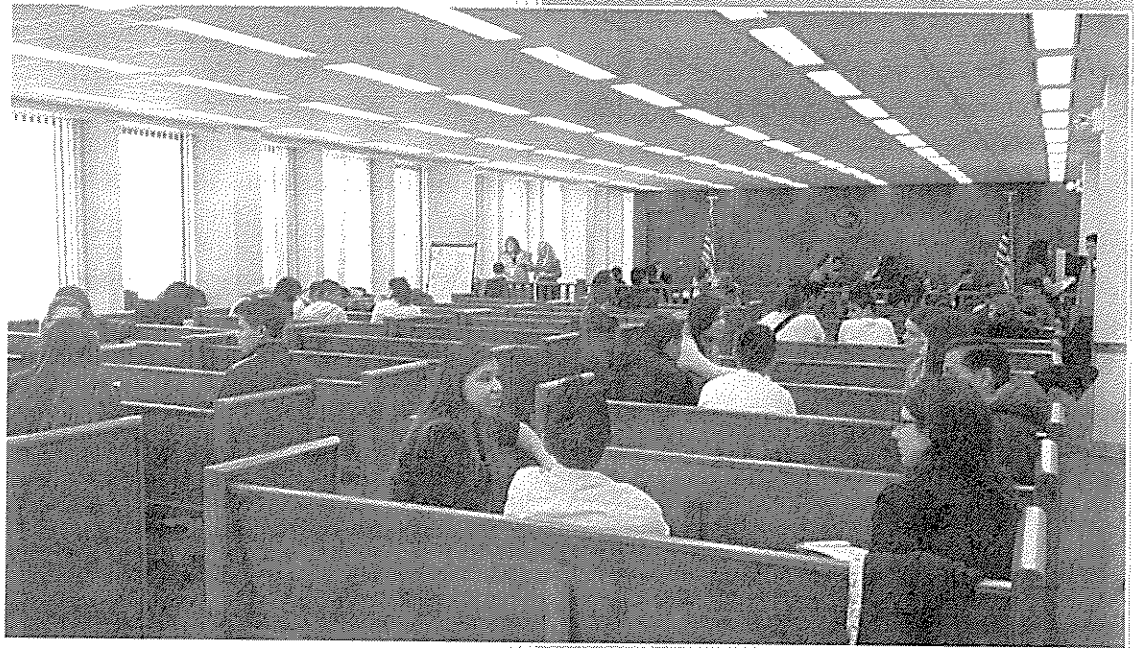
- Better utilization of services of pro bono attorneys and law students;
- Expanding the Legal Orientation Program (LOP), which provides detainees in some facilities with basic information about immigration court and their legal rights, to cover all immigrant detainees;
- Working in cooperation with the key institutional participants such as the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR). EOIR regulation and individual immigration judges should promote transparency and professionalism in Immigration Court proceedings. According to Immigration Judge Benchbook 1:8:1.D.5, Judges must bear in mind their duty to protect an alien's right. This is especially important not only when Respondents appear pro se, but also when Judge has reasons to believe that the Counsel is ineffective;
- Collaboration among current removal defense providers in NYC – as of today there is no formal meeting place/forum and very limited opportunities to exchange ideas among providers. Creating a more tightly knit network of removal defense providers including low bono amongst the non-profiteers.

Conclusion: The ultimate goal should include government appointed counsel for all indigent immigrants in removal proceedings.

ⁱ Association of the Bar of the City of New York, Committee on Immigration and Nationality Law, *Report on the Right to Counsel for Detained Individuals in Removal Proceedings* (August 2009)

NEW YORK

SAFE PASSAGE PROJECT



Testimony for New York
City Council Hearing on
Models to Provide
Immigration Representation
in Deportation Proceedings

Standing Alone: Children in Removal Proceedings

Miguel is seven. The Customs and Border Patrol apprehended him at the Southern border of the United States. The adult smugglers who were bringing him to the U.S. escaped and Miguel and several other children were abandoned to the care of the Department of Homeland Security (DHS). Miguel is taken to a juvenile detention center and the federal government interviews him and learns his father is living in New York City. They contact Miguel's father, José. After several weeks, they release Miguel to his father and hand them a packet of papers explaining that Miguel is in removal proceedings and will receive a letter that tells him when he must appear at the Immigration Court in Manhattan. These papers explain that if Miguel does not attend, DHS can order him deported.

The day of Miguel's hearing arrives. He and his father travel to downtown Manhattan at 8:30 a.m. Miguel is in the courtroom. He wears his best shirt and his jeans are clean and pressed. He tightly grips the arms of the courtroom chair. He is so small his feet do not touch the courtroom floor. The Immigration Judge is speaking to him slowly and kindly but Miguel turns his small face up to look only at the court's Spanish speaking interpreter. The judge is asking "Are you here alone today?" Miguel responds, "No, I am here with my father." "Where is your father?" the Judge asks. Miguel pauses. He looks at the judge. He turns his head to the left and looks at the government prosecutor from Immigration and Custom Enforcement. He turns to the interpreter. Slowly he says, "I don't know. He is outside?" The judge tells Miguel that she needs to talk with his father and that he needs to come inside the court building. She asks again, "Is anyone here with you today?" Miguel shakes his head, no and then yes. He looks to the back of the crowded courtroom. "My dad's friend is here." The judge sighs with relief. She asks the friend to come forward and to take Miguel downstairs and to bring his father back to the courtroom. The friend speaks quietly, "He has no papers. He is afraid to come inside." The judge explains that Miguel's father must come to the court because he is Miguel's "sponsor." The friend asks, "Judge, what does that mean? I know his father is trying to find an attorney." The judge asks again patiently, "Please, go and bring Miguel's father and we will explain the procedure."

This scene is repeated with small variations every day at the New York Immigration Court. The Executive Office for Immigration Review (EOIR) is an administrative tribunal that is a division of the Department of Justice. The Immigration Judges see many unrepresented people in the courts but now, a growing percentage of the people facing deportation are children.

DHS apprehended more than 24,000 children in fiscal year 2012. This number is triple the prior year's apprehensions and the DHS is publically predicting that more than 60,000 children will be apprehended this year. Some of these children will be detained

and most will be released to family members or to family friends. Despite the vulnerability of these children, federal law does not provide them with free counsel. The EOIR and community based non-profit organizations are trying to fill the gap. Over 12% of the New York Immigration Court's docket – more than 6,000 cases- involve juveniles. The number of children placed in removal proceedings is growing in other parts of the country as well.

Professor Lenni Benson at New York Law School created the Safe Passage Project in 2006 to address the unmet legal needs of indigent immigrant youth living in New York State. Safe Passage believes that no child should stand alone in immigration court and that all children, regardless of their country of birth, are entitled to legal representation. Yet the right to free counsel is not guaranteed to immigrants, even those under the age of twenty-one. Under current law, unaccompanied immigrant children are not entitled to any government-provided legal representation in immigration proceedings. The Safe Passage Project tries to fill this gap. In 2008, the New York State Bar recognized the Safe Passage Project and presented an award to New York Law School for an innovative *pro bono* project. The Safe Passage Project continues to train, mentor, and support *pro bono* work and it has greatly expanded to help cover the increasing number of children in removal proceedings in Immigration Court. In 2013, the American Immigration Lawyers Association (AILA) awarded the Safe Passage Project with its “Pro Bono Hero” award for the northeast region.

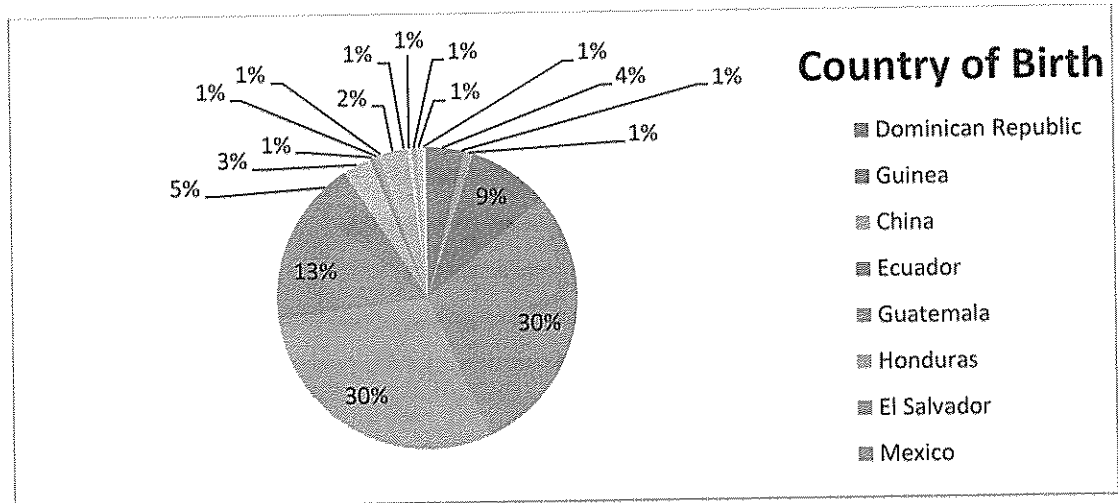
A model for expanding representation in Removal Proceedings

In 2012, Safe Passage Project began to cover the juvenile removal docket at the New York Immigration Court one day a month. In the past 18 months, we have assisted more than 250 children to obtain *pro bono* legal counsel and secure their immigration status in the United States. We bring volunteer attorneys, interpreters and law students to the Immigration Court on our juvenile removal docket day.

We are one of five organizations trying to help provide some guidance to children and their families on different juvenile removal docket days at the New York Immigration Court. Not only do we at the Safe Passage Project appear as a “Friend of the Court” on behalf of the child, but we interview each child and prepare an assessment memorandum that we then use to find *pro bono* representation for the child. We assist every child that appears on the juvenile docket and who asks for our assistance. A small number of children are helped by other organizations and a few of the children have families who have retained private counsel. The vast majority of the children in the New York Immigration Court on our juvenile removal docket day would have no one helping them in Immigration Court if Safe Passage Project did not assist them. Without Safe Passage, many of the children would have experiences like Miguel's, the young man in the opening story, who was alone and confused in Immigration Court.

In addition to serving over 250 immigrant children in removal proceedings, Safe Passage mentors *pro bono* attorneys, other non-profit organizations, teachers, social workers, and foster care agencies about the various forms of legal relief available to undocumented youth. Safe Passage works closely with a Public School in Washington Heights and a Foster Care agency in Queens to make sure its children's legal needs are met. Because we help all children on our day covering the juvenile removal docket, regardless of where in New York state they reside, the Safe Passage Project has expanded east beyond New York City into Nassau and Suffolk Counties and north to Westchester, Rockland, Orange and Putnam Counties. Safe Passage currently has active cases in 12 different New York counties. In addition, the children are from 18 different countries.

COUNTRIES OF BIRTH OF SAFE PASSAGE PROJECT CHILDREN



SAFE PASSAGE PROJECT: TOTAL CASES

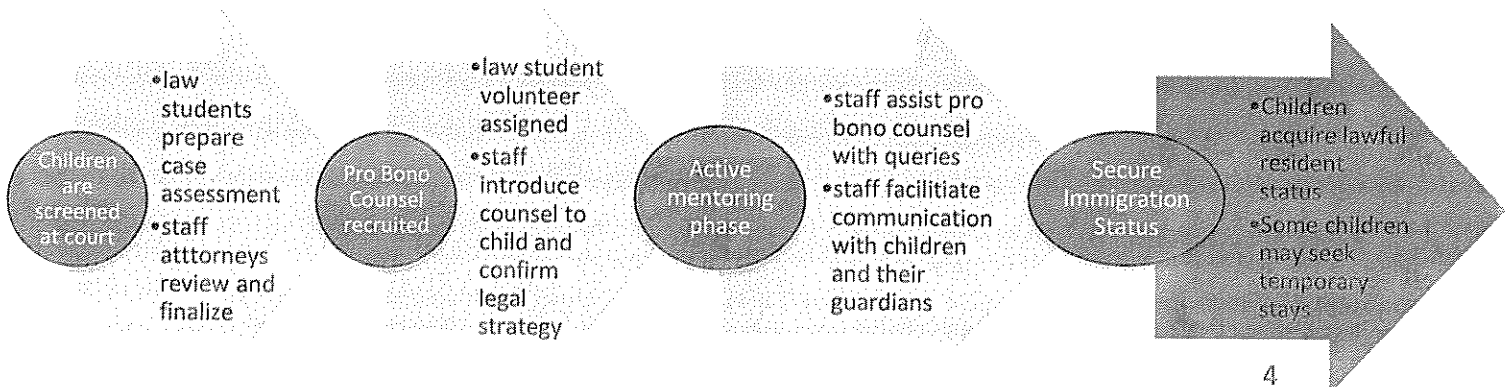
	Total Cases Screened	Active Cases	Represented by Safe Passage Pro bono Counsel	Inactive
Court Docket	215	205	112	10
Public School Screenings	24	17	17	7
SCO Foster Care Screenings	14	4	14	10



Safe Passage Project helped two young men to secure Special Immigrant Juvenile Status. Photograph of Brian and Deivy at their USCIS interview with Staff Attorney and Abbey Center Legal Fellow, Guillermo Stampur. Photograph used with permission

Flow Chart of the Safe Passage Project

The Safe Passage Project staff works closely with the child and his or her *pro bono* attorney and volunteer law student throughout the duration of the case. Each case varies in length, but Safe Passage remains involved until the legal plan is fulfilled. This role includes providing sample pleadings, reviewing court documents prior to filing, translating documents and dissecting relevant case law as well as communicating frequently with both the client and the *pro bono* counsel to answer questions and monitor progress. The Safe Passage staff also may organize follow up meetings between client and counsel and accompany the parties to court. Throughout the duration of the case,



careful attention must be paid to establishing whether the client's goals have remained the same. Our project actively trains and involves law students to assist in all of our work.

CHILDREN OFTEN QUALIFY FOR IMMIGRATION RELIEF

The Safe Passage Project finds that nearly 80% to 90% of the children we meet qualify for some type of immigration relief if the children have adults who are willing to assist them to secure such status. When Safe Passage staffs the juvenile removal docket at the New York Immigration Court each month, we bring approximately ten law students, ten volunteer interpreters, and ten to fifteen volunteer attorneys to interview the children. Based on these and follow-up interviews, the Safe Passage Project then recruits and mentors *pro bono* counsel who try to secure immigration status for the child. The Safe Passage Project was incredibly successful in its first full year, during which time it screened 215 children and placed over 60% with *pro bono* counsel. *Pro bono* counsel are currently representing children in Family Courts throughout the five boroughs and in Westchester, Putnam, Orange, Nassau, Suffolk, and Yonkers Family Courts.

Most recently, a Safe Passage *pro bono* attorney obtained Special Immigrant Juvenile Status on behalf of a 7 year-old Honduran girl named Angel who traveled alone to the United States in order to reunite with her aunt. In Honduras, she lived with her grandparents because her parents could not take care of her. She considered her aunt to be her mother. Her aunt traveled between the United States and Honduras regularly to make sure her niece was provided for. Safe Passage not only helped this young girl obtain legal permanent residence, but also helped her aunt to become her legal guardian and to terminate the young girl's removal proceedings in Immigration Court.

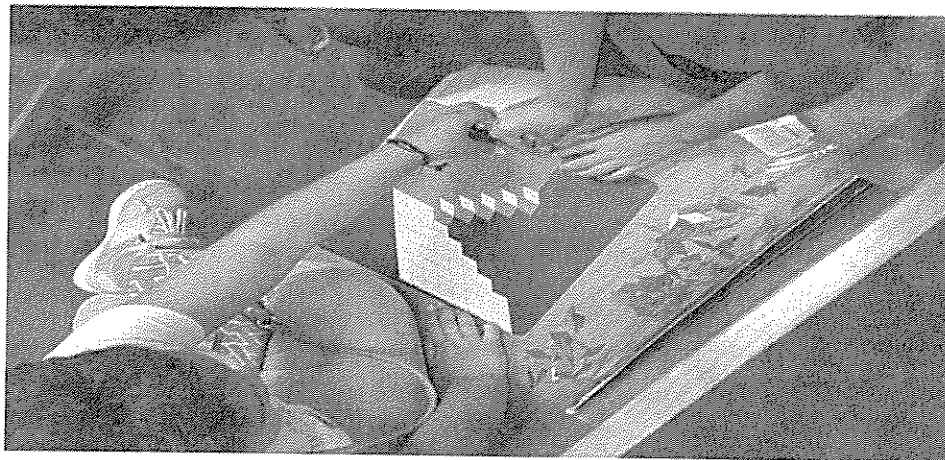
According to Safe Passage Pro Bono Attorney Janet Porro "Angel was Angel – she won over the judge's heart. When the judge granted the Petition for Guardianship and my Motion for Special Findings there was not a dry eye in that court room. Even the Court Attorney and Court Officer (who rarely smiled) – were overwhelmed with emotion by this little girl. The judge was totally transformed.

That child was so sincere, genuine and proud of her accomplishments in school it warmed everyone's heart. I wish you could show a videotape of what went on today to prospective volunteer attorneys. To see that child's face today in court made all our efforts worthwhile. She is so happy to be in this country and is working so hard at it."

- Janet Porro, Safe Passage Pro Bono Attorney



Children's art work made in the court screening room.



SAFE PASSAGE DESIGNED AND PARTICIPATED IN MULTIPLE TRAININGS AND EDUCATIONAL PROGRAMS

In 2012 and 2013, Safe Passage Project, in conjunction with New York Law School or other non-profit organizations helped to design or presented multiple trainings. In some cases, staff of the Project went to private law firms to conduct trainings for small groups of attorneys. For example in November of 2013, Professor Benson conducted a three-hour training for *pro bono* attorneys at the law firm of Gibney, Anthony and Flaherty, LLP. This firm has committed to providing *pro bono* immigration attorneys at the upcoming court dockets throughout the year. Attorneys in the firm are already handling several *pro bono* cases.

Other examples of trainings included: In September of 2012, Safe Passage hosted a free CLE for more than 250 participants that included a simulated immigration court removal proceeding and family court hearing for a child seeking Special Immigrant Juvenile Status. 2013 trainings include: a February CLE on advanced topics in immigration representation; a March CLE at the Immigration Court with NY area non-profits; and April CLE on more advanced immigration topics, presentation to the Westchester Bar Association (with Board Member Susan Henner), Pace Law School, The New York City Bar Association, and The NY County Bar Association. In August of 2013, Professor Benson held an open training for law student volunteers, assisted by Professor Melynda Barnhart. More than 200 students as well as several attorneys attended this training.

In the autumn of 2013, Safe Passage Project assisted in presenting trainings within the Family Courts in Brooklyn, Bronx and Manhattan. Safe Passage Project is trying to help deepen the knowledge of the family court attorneys about the eligibility of immigrant youth for remedies such as special immigrant juvenile status that require the family court to accept jurisdiction over a decision involving the custody or placement of a child. Safe Passage Project also assists *pro bono* counsel to help a child apply for political asylum and other forms of immigration relief.

This month, Safe Passage Project invited four other non-profit organizations to co-host a CLE entitled "Best Practices in Representing Children before the Asylum Office." This educational event was free to *pro bono* attorneys and featured senior asylum officers and experienced practitioners explaining the special procedures for children's asylum adjudications. More than 130 people registered for the February 20, 2014 event.

MORE SUPPORT IS NEEDED

While New York Law School offers generous support to the Safe Passage Project by providing faculty time, space, and administrative support, Safe Passage's success means that it must grow to continue to ensure that the children receive quality *pro bono* representation. Not only must the attorneys taking on these cases become experts in immigration court procedure, they also must master the intricacies of several areas of immigration relief and they often must be able to help the child find a willing adult to seek a guardianship or custody order in family court. Safe Passage Project has found that

there is a gap in New York's representation of children in family court. Unless a child is in the custody of foster care or is in juvenile delinquency proceedings, the child is not appointed counsel in family court until a petition has been lodged with the family court. While the family court is able to appoint counsel once a guardianship proceeding or custody proceeding has commenced, there is not a straight forward path for the appointment of counsel for the child or his or her indigent proposed guardian or custodian until a proper filing is made. Safe Passage helps fill this gap and address the disconnect in New York's appointment of counsel for indigent children in family court by guiding *pro bono* counsel and trying to assist *pro se* adults who are willing to seek guardianship or custody over these children.

City Council support matters. Financial support would allow non-profit organizations to, engage in the mentoring of *pro bono* attorneys and deepen the skills of the 18-B appointed panel attorneys or lawyers for children. Strengthening Safe Passage Project would make a huge difference in providing competent representation for immigrant youth in New York.

This area of law-- where children may need attorneys who are experts in family law, immigration law, and international questions of custody and guardianship- means that it is unlikely that any of our existing programs is adequately funded to help these children and their families navigate jurisdictional and procedural barriers. As such, programs like the Safe Passage Project are essential to bridge these gaps.

We believe our model of recruiting and training *pro bono* attorneys, partnering these attorneys with law students and working closely with a law school is cost effective and successful in expanding resources for these vulnerable children.

We are happy to provide more information or more detailed testimony about the issues. We urge the City Council to remember these children

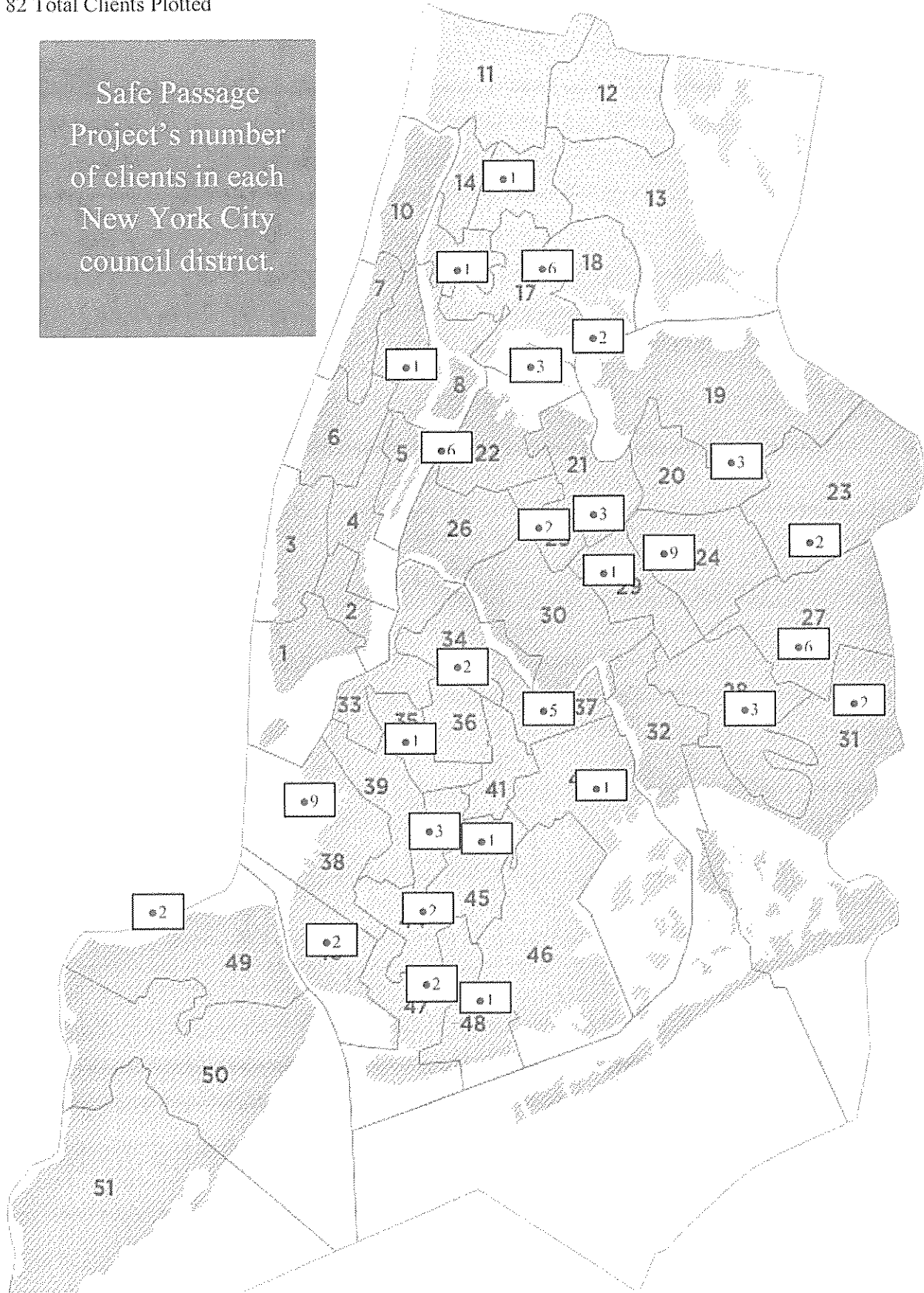
Respectfully submitted,

Lenni Benson
Professor of Law
Director, Safe Passage Project
President, Safe Passage Project Corporation

Claire R. Thomas
Staff Attorney
Safe Passage Project

82 Total Clients Plotted

Safe Passage Project's number of clients in each New York City council district.





Testimony of Nisha Agarwal
Executive Director, Immigrant Justice Corps

New York City Council Oversight Hearing:
Examining Models for Providing Legal Services for Immigrants in Deportation Proceedings
February 25, 2014

Thank you to the New York City Council Committee on Immigration for inviting me to testify today on the vital need to provide high-quality legal services for immigrants in deportation proceedings. I am Nisha Agarwal, the Executive Director of the newly-launched Immigrant Justice Corps (IJC), an organization dedicated to bringing new lawyers and legal advocates into the field of immigration in New York City. I want to congratulate the New York City Council for the work you have already done to make the City a national leader in ensuring access to justice for detained immigrants facing deportation through your funding last year of a pilot of the New York Family Unity Program (NYIFUP). I would also like to urge you to expand upon this important work and ensure that all detained New Yorkers—as well as low-income immigrants in the City generally—are afforded the legal counsel they need to avoid deportation and build the foundations for a successful future for themselves and their families.

Deportations are devastating for immigrant communities. Families lose breadwinners, and children lose parents. Indeed, between 2005 and 2010, 7,000 U.S. citizen children in New York lost their parents to deportation. Losing a parent has concrete costs: it forces children into

foster care and takes a well-documented emotional and psychological toll on children. The New York Immigrant Representation Study convened by Chief Judge Robert Katzmann of the Second Circuit Court of Appeals found that the devastation caused by the federal deportation system arises, in part, because there is no appointed counsel for immigrants facing removal proceedings. Immigration law is especially complex and without expert representation it is difficult for individuals to successfully defend themselves against deportation, particularly if they do not speak English well or face other hurdles. This creates a tremendous disparity in the outcome of the legal process, which disproportionately impacts the most vulnerable and indigent immigrants in the community. Those who are able to find and afford a lawyer and who are not detained during the course of their proceeding achieve successful outcomes in their immigration cases 74 percent of the time. Meanwhile, immigrants who are detained without a lawyer prevail only 3 percent of the time.

This egregious disparity in access to justice need not persist in New York City. We are lucky to have a rich infrastructure of non-profit and pro bono legal services providers who are able to provide high-quality legal assistance to immigrant communities at low or no cost. At the moment, these service providers are stretched to the limit, turning away three cases for every one that they take, in part due to inadequate resources to grow their staffs. My organization, the Immigrant Justice Corps, was launched to help relieve some of these constraints. We recruit the top law students and college students from around the country and award them fellowships to work as immigration lawyers and paralegals in the City's top legal services offices and community-based organizations. A segment of the 40 fellowships we offer annually will be focused on deportation defense, but for a major and meaningful impact to be made on the

disparities in outcomes we see in the removal context the City must be a partner in bolstering the removal defense bar in New York.

When the City Council funded the NYIFUP last year, allocating \$500,000 toward a pilot program at the Varick Street detention facility, it took a critical first step in the right direction, enabling over 150 detained individuals to obtain high-quality representation from two of the City's leading non-profit legal services organizations. Now, you have the opportunity to expand NYIFUP even further and ensure that that *all* low-income, detained New Yorkers are able to access the highest quality representation to defend themselves against deportation – a true universal representation system. Nothing like this exists anywhere else in the country. Successfully implementing a universal representation system for detained immigrants in New York City will make the City, as it often has been, a national leader on immigrant rights and access to justice, at a time when the federal government has been unable to make headway on these issues.

Ensuring access to counsel in the immigration context is not only important from the perspective of due process and fair play; it is also critical in fighting poverty and reducing the massive economic inequalities that exist in our City. Immigration status is directly linked with economic well-being. Immigrants and their children make up nearly half of those living in poverty in New York City – more than 800,000 people – and non-citizens experience poverty at much higher rates than the city overall. Legal assistance provided by lawyers or by trained and supervised non-lawyer advocates is the most direct intervention available to improve the economic prospects of immigrant families. Legal assistance can prevent deportation and also facilitate immigrants' transition to valid legal status, which enables them to obtain lawful employment, receive financial aid and in-state tuition to go to school, access health insurance,

and obtain temporary benefits such as food and income supports. Preventing detention and deportation keeps immigrant children from being funneled into foster care or suffering educational and other disruptions.

On behalf of the Immigrant Justice Corps, and, in particular, the thousands of clients our Fellows will serve and the dozens of non-profit organizations we support and partner with, I urge you to expand the New York Immigrant Family Unity Program, which will ensure that all low-income, detained immigrants in New York have access to the expert legal support they need to fight permanent exile and build a strong future for their families.

Thank you for your time. Please do not hesitate to contact me if you have any questions or would like further information: nagarwal@justicecorps.org or 212-844-3538.

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: BITTA MOSTOFI

Address: 50 COURT ST, 8TH FLR, BROOKLYN, NY

I represent: SAFE HORIZON IMMIGRATION LAW PROJECT

Address: 2 LAFAYETTE, NY

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Name: Ujju Anubisil

Address: Legal Aid Society

I represent: Legal Aid Society

Address: 100 W 4th St NY NY 10038

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Date: 2/26/14

(PLEASE PRINT)

Name: RALUCA ONCIU

Address: 80 MAIDEN LANE

I represent: Catholic Charities

Address: 80 Maiden Lane

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Date: 2/25/14

(PLEASE PRINT)

Name: Juan Guzman

Address: 2989 Marion Ave.

I represent: myself

Address: _____

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Date: 2/25/14

(PLEASE PRINT)

Name: Jennifer Friedman

Address: 360 E. 161st St., Bronx NY 10451

I represent: The Bronx Defenders / NYIFUP

Address: same

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Date: 2/25/2014

(PLEASE PRINT)

Name: Lori Adams

Address: 333 Seventh Ave, New York, NY 10001

I represent: Human Rights First

Address: _____

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(PLEASE PRINT)

Name: NEENA DUTTA

Address: 11 BROADWAY, STE 615, NYC

I represent: AILA - NY

Address: 11 Broadway, Ste 615 NYC

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Date: 2/25/14

(PLEASE PRINT)

Name: Camille MACKLAP

Address: 137-139 W. 25th St. NYC, NY

I represent: NYIC (NY Immigration Coalition)

Address: _____

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Date: 2/25/14

(PLEASE PRINT)

Name: Claire R. THOMAS

Address: Safe Passage Project, New York Law School

I represent: Safe Passage Project 185 W. Broadway 10013

Address: 185 W. Broadway, 10013

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Date: _____

(PLEASE PRINT)

Name: Anne Fitzbury

Address: 240 Hooper ST

I represent: Brooklyn 1121

Address: Central American Legal Assistance

THE COUNCIL w/ Peter
THE CITY OF NEW YORK Markowitz

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in favor in opposition

Date: 2/25

(PLEASE PRINT)

Name: Paula Shulman

Address: 63 Wall St. Apt 1917 NY, NY 10005

I represent: Cardozo Immigration Justice Clinic

Address: 55th 5th Avenue, 11th floor NY NY 10003

THE COUNCIL w/ Paula
THE CITY OF NEW YORK Shulman

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in favor in opposition

Date: 2/25

(PLEASE PRINT)

Name: Peter Markowitz

Address: Cardozo Law 55 Fifth Ave

I represent: Cardozo Immigration Justice Clinic

Address: _____

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 in favor in opposition

Date: 2/25/14

(PLEASE PRINT)

Name: Robert Katzmann

Address: 40 Foley Square New York NY 10007

I represent: for Judge - represents himself

Address: _____

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Date: 02/25/14

(PLEASE PRINT)

Name: IRINA MATIICHENKO

Address: 7 Hanover Sq. 18 Fl. New York

I represent: Legal Assist - Green

Address: NYC (Please call me)

Please complete this card and return to the Sergeant-at-Arms Brook

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Date: 2/25/14

(PLEASE PRINT)

Name: Marc Noferi

Address: 215 Smith St, #1

I represent: New York City Bar

Address: 44 W. 44th St. NY, NY.

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Date: 2/25

Name: CYNTHIA CARRION (PLEASE PRINT)

Address: 14 BOGDANSKI PI NY 10040

I represent: Northern Manhattan Coalition for Immigrant Rights

Address: 152 ST

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in favor in opposition

Date: 2/25/2014

Name: LYNN VENTURA (PLEASE PRINT)

Address: LS-MYC 1 W 125 ST NY 10027

I represent: LEGAL SERVICES NYC

Address: 40 WORTH ST #606 NY NY 10013

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in favor in opposition

Date: 2/25

Name: LAURIE ZWITSU (PLEASE PRINT) *speaking with Lynn Ventura of Manhattan Legal Services*

Address: 1360 FULTON ST SUITE 301 BROOKLYN NY

I represent: BROOKLYN LEGAL SERVICES / LEGAL SVCS NYC *11216*

Address: 1360 FULTON ST STE 301

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in favor in opposition

Date: 2/25

(PLEASE PRINT)

Name: Vicente Mayorga
Address: 283 St. Nicholas Av. Ridgewood NY
I represent: Make the Road New York
Address: 92 10 Quaderell AV.

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Oren Root
Address: 233 Broadway, 12th floor, NY, NY 10279
I represent: Vera Institute of Justice
Address: 233 Broadway, 12th floor, NY, NY 10279

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in favor in opposition

Date: 2/25/2014

(PLEASE PRINT)

Name: Marianne C. Yang
Address: 177 Livingston St, 5th Fl, Brooklyn NY 11201
I represent: Brooklyn Defender Services
Address: 177 Livingston St, 5th Fl, Bklyn NY 11201

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 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Ruben Loyola
Address: Brooklyn Defender Services
I represent: 11 11
Address: 177 Livingston 7th Fl Bk, NY

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Date: _____

(PLEASE PRINT)

Name: Oscar Hernandez
Address: 245 43rd St. 3rd Fl Brooklyn NY
I represent: myself 11232
Address: _____

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in favor in opposition

Date: 2/25/14

(PLEASE PRINT)

Name: Jarah Burr

Address: 45 Grace Court, Brooklyn, N.Y.

I represent: Self

Address: _____

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Brittany Saunders 106 Prospect Pl.

Address: 802 Kent Ave. Brooklyn NY

I represent: Center for Popular Democracy

Address: 802 Kent Ave, Bk, NY

11205

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