



Mayor's Office of
Immigrant Affairs
Bitta Mostofi
Commissioner

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Testimony of Commissioner Bitta Mostofi
NYC Mayor's Office of Immigrant Affairs

Before a hearing of the New York City Council Committee on Immigration:

“Oversight – The Need for Legal Representation in Immigration Court under Trump”



Thank you to Chair Menchaca and the members of the Committee on Immigration.

My name is Bitta Mostofi and I am the Commissioner of the Mayor's Office of Immigrant Affairs (MOIA). I am joined today by Commissioner Steve Banks, who will testify about the Department of Social Services/Human Resources Administration's (DSS/HRA's) immigration legal services programs. Thank you very much for calling a hearing on this crucial issue.

The Mayor and the City Council have made historic investments to promote access to justice for immigrant residents. With these investments, and in collaboration with other City agencies, legal service providers, and community partners, MOIA and DSS/HRA's Office of Civil Justice (OCJ) have worked to address the legal needs of immigrant New Yorkers at a time of crisis. As the Trump Administration continues to attack immigrants on all fronts, New York City's investment in immigration legal services—the largest municipal investment in our country's history—stands in stark and proud contrast on the side of immigrants' rights.

While today's hearing is about legal representation in immigration court, the City recognizes that the need for immigration legal services extends beyond immigrants facing deportation. It is also critical to provide representation for immigrants filing family-based applications, applying for citizenship, or seeking affirmative humanitarian relief like asylum, Special Immigrant Juvenile Status, or a self-petition for permanent residency under the Violence Against Women Act. This is so not only because a change in status can provide an avenue to new economic and civic opportunities, but also because naturalization and regularization of immigration status can prevent deportation and protect families from being ripped apart.

In today's testimony, I will speak briefly about the need for immigration legal services in a hostile federal climate, discuss the City's response, and give an overview of the success of MOIA's immigration legal services programs.

The Need for Immigration Legal Services

In this second year of the Trump Administration, we have seen an assault on our immigrant communities and on the immigration system as a whole. Our analysis of the latest ICE data, released just last week, shows that the Trump Administration ramped up its overbroad immigration enforcement actions in 2018, with total civil immigration arrests in the New York City area 88% higher over the last federal fiscal year than in the last year of the Obama Administration. Even more shocking, arrests of individuals in the New York City area with no criminal convictions whatsoever is now 414% higher than in the last year of the Obama Administration.¹ Moreover, through a set of regulatory actions, the Trump Administration has made it more complex and risky for immigrants to apply for immigration benefits. With high processing times at U.S. Citizenship and Immigration Services and an ever-growing backlog in the immigration courts, the federal government's actions have highlighted the fact that our immigration system is broken.

¹ ICE FY2018 Enforcement Report (December 2018), available at <https://www.ice.gov/features/ERO-2018>.

Legal services are crucial for immigrants. But there is no right to appointed counsel funded by the federal government for immigrants, detained or non-detained, in immigration court. Instead, the lion's share of immigration legal services provided in New York City today is funded through the historic investments of Mayor de Blasio and the City Council. Access to high-quality, trusted immigration legal services can be the difference between becoming a citizen and languishing in detention. Immigrants who do not have access to immigration legal services are particularly vulnerable to exploitation and fraud.

The City's Response

Together, the de Blasio Administration and the City Council have invested historic amounts in immigration legal services. These investments and the hard work of our legal service providers and community-based organization (CBO) partners are what make New York City a model for other cities across the nation. Given the scope of the Trump Administration's attack on immigrants, the de Blasio Administration and City Council have focused on funding the provision of a wide spectrum of services, which allows us to respond quickly to the ever-shifting federal landscape.

The investments of the Administration and the Council work hand-in-hand in addressing some of the deep problems plaguing our immigration system. In FY 2018, the de Blasio Administration and the Council dedicated \$48 million in funding, with about \$31 million coming from the Administration, to a continuum of free legal services programs for immigrant New Yorkers, including the provision of crucial and timely information about their rights, support for affirmative applications to adjust immigration status or naturalize, and legal representation to defend against deportation. This includes City programs like ActionNYC, Immigrant Opportunities Initiative, and federal Community Services Block Grant-funded services at HRA, which provide legal representation, advice, comprehensive legal screenings, and assistance, as well as Council-funded programs like NYIFUP, the Unaccompanied Minors Initiative / Immigrant Children Advocates' Relief Effort, and others. This funding structure provides great flexibility for the City to respond to new needs. For example, and as Commissioner Banks will testify, the IOI program's contracting model allows for rapid deployment of staff and resources to address a continuum of legal needs, from brief legal counseling to full representation in removal and asylum cases.

Of course, the City and the Council are not the only funders for immigration legal services. In coordination with the Mayor's Fund to Advance New York City and other sister agencies, MOIA has engaged extensively with private funders to support additional resources for our community of providers and to help address any gaps.

MOIA's Immigration Legal Services Programs

MOIA plays a critical role in the provision of immigration legal services in New York City. MOIA engages with providers, reviews data, and monitors shifts in immigration policy to inform City investments and ensure that resources are being allocated to respond to urgent needs. It is in this role that MOIA is able to provide guidance to and work in partnership with our sister agencies as we survey the immigration legal services landscape. As an example, in the wake of the family separation crisis, MOIA worked closely with DSS/HRA's OCJ to identify further



legal services needs for separated children and their families. In response, the City announced an allocation of \$4.1 million to provide assistance for migrant children, including both unaccompanied minors and separated children in New York City.

MOIA also operates two immigration legal services programs: ActionNYC and NYCcitizenship.

ActionNYC

ActionNYC is a citywide, community-based immigration legal services program that provides access to legal services for residents, as well as resources for providers to grow the immigration legal services field. Immigrant New Yorkers receive free, safe, and high-quality immigration legal services in their community and in their language. Through its citywide hotline, centralized appointment-making system, and accessible service locations at CBOs, schools, and hospitals, ActionNYC serves as the entry point for New Yorkers seeking immigration legal services. Launched in 2016, the program is operated jointly by MOIA, HRA, and the City University of New York (CUNY) and implemented in collaboration with over 30 CBOs and legal services providers.

For those who need straightforward legal help, ActionNYC provides full legal representation in straightforward immigration matters, including but not limited to citizenship applications, green card renewals, and TPS renewals. When capacity permits, they provide full representation in complex cases such as Special Immigrant Juvenile Status (SIJS) and U visas. For legal cases outside the team's scope of services or capacity, ActionNYC connects clients to other City-funded programs such as IOI. MOIA also provides connections to ActionNYC through outreach and Know-Your-Rights programming.

Responding to the need for immigration legal services among New York City's hard-to-reach immigrant populations, earlier this year ActionNYC selected six CBOs to provide additional services to underserved groups. ActionNYC has also increased local providers' ability to provide high-quality immigration legal services through a capacity-building fellowship started last year.

Demand for ActionNYC services has remained consistently high throughout the life of the program, including in FY 2018. In FY 2018, ActionNYC providers screened about 8,600 clients at community-based sites, schools, and hospitals. Of those clients, we found that the majority had straightforward cases, about a tenth of all cases were complex cases, and about a quarter of screened clients had no relief available. In FY 2018, ActionNYC opened about 5,600 cases, and filed more than 3,200 applications.

NYCitizenship

NYCitizenship provides free citizenship application assistance, including screenings and full legal representation, as well as financial empowerment services. MOIA operates NYCitizenship in partnership with the city's three library systems, DSS/HRA, New York Legal Assistance Group (NYLAG), and the Mayor's Fund to Advance NYC. The program is supported by the Mayor's Office for Economic Opportunity alongside private funders including the Carnegie Corporation of New York, Citi Community Development, the Charles H. Revson Foundation, and Robin Hood.

In FY 2018, NYCitizenship provided services at 12 public library branches across the five boroughs. Through a partnership with DSS/HRA, the program also offered services to vulnerable populations, including seniors and those facing health barriers such as disability. In total, in FY 2018, NYCitizenship provided legal screenings for about 1,700 immigrant New Yorkers.

Conclusion

As I have described, it is crucial to recognize that the need for legal representation for immigrants stretches from removal proceedings to assistance with naturalization applications. Across this entire swathe of need, MOIA has consistently provided important policy guidance and leadership for the Administration to identify needs and trends based on changes in federal law and practice, and we are committed to continuing to do so. My colleague, Commissioner Banks, will speak to the Office of Civil Justice's important work administering additional immigration legal services programs, including the Immigrant Opportunities Initiative and the Council's crucial initiatives.

I want to thank Chair Menchaca for calling this important hearing. I also want to thank the legal service providers and community-based organizations, our partners in this fight against cruel and draconian immigration policies, for the extraordinary work they do day-to-day to protect immigrant New Yorkers. Simply put, this work would be impossible without our partners in the field, many of whom are here today. The Trump Administration's continuous attacks on our immigrant communities have created a deep and enduring need for immigration legal services. Both the Council and Mayor de Blasio have stepped up to help meet this need, and we look forward to working together with our partners in the community and other stakeholders to provide further resources for immigrant New Yorkers.



Human Resources
Administration
Department of
Homeless Services

Testimony of Commissioner Steven Banks, New York City Department of Social Services

Before the New York City Council's Immigration Committee

Oversight: The Need for Legal Representation in Immigration Court under Trump

December 19, 2018

Good Morning. Thank you Chair Menchaca and members of the Immigration Committee for giving us the opportunity to testify today. My name is Steven Banks and I am the Commissioner of the New York City Department of Social Services, overseeing the Human Resources Administration (HRA) and the Department of Homeless Services (DHS).

I would like to thank my colleague Commissioner Mostofi and the Mayor's Office of Immigrant Affairs (MOIA) for her partnership in the essential work this Administration has undertaken to provide legal services for immigrant New Yorkers.

To begin, I would like restate my remarks from Monday's testimony before the General Welfare Committee to address the extremely troubling incident at one of our Brooklyn client locations which culminated in the arrest of an HRA client. What happened at the Human Resources Administration's DeKalb Center on Friday, December 7, 2018, was completely unacceptable and should never happen again in New York City. On behalf of our agency and our dedicated front-line staff in all five boroughs, I apologize to Jazmine Headley and her one-year-old son and to the people of the City of New York for the actions that were taken that day.

- As reflected in the NYPD body worn camera videos, there were multiple points at which this incident could have and should have been defused.
- Last Monday, I placed two HRA Peace Officers on modified duty with no client contact.
- Consistent with their collective bargaining agreement, on Friday I suspended these two officers without pay for the maximum period of time and DSS will file disciplinary charges against them that could result in termination.
- Going forward, unless there is an immediate safety threat, I am directing that HRA Peace Officers shall not request the intervention of the NYPD without first contacting the Center Director or Deputy Director or her/his designee to attempt to defuse the situation by addressing a client need.
- Within the next 90 days, DSS will conduct retraining sessions for all HRA Peace Officers, with an emphasis on techniques for deescalating disputes in HRA Centers. Thereafter, this enhanced training will be a mandatory annual requirement for each officer.
- I intend to attend each of these retraining sessions to speak to the HRA Peace Officers regarding the importance of deescalating disputes.

- DSS has directed the City's contracted security services vendor to provide retraining sessions for all security guards assigned to HRA Centers, with an emphasis on techniques for deescalating disputes in HRA Centers. Thereafter, this training will be a mandatory annual requirement for any contracted security officer assigned to an HRA office.
- In addition to existing DSS customer service staff training, DSS has requested and received an OMB funding commitment to develop implicit bias training for all 17,000 DSS staff members to promote diversity in the workplace and dignity-centered client services.
- Building on its reforms through which 85% of SNAP/food stamps applications and recertifications are submitted online without the need for clients to come into an HRA Center, HRA will continue to move forward with expanding online access for cash assistance clients, subject to any necessary State approvals.
- Together with the NYPD Commissioner, we will take the following actions:
 - The NYPD and DSS will develop a protocol for determining appropriate instances in which HRA Peace Officers in HRA Centers should seek the assistance of the NYPD.
 - The NYPD and DSS will develop a protocol to deploy an NYPD supervisor to be part of the NYPD response team for such HRA assistance requests.
 - The NYPD and DSS will develop a protocol for transferring control of an incident to the NYPD when the NYPD arrives at an HRA Center.

Our Continued Commitment to Immigrant New Yorkers

To begin my testimony today, it is important for me, at a time when the policies of the Trump Administration have become increasingly inhumane and punitive, to unequivocally restate our commitment to ensuring all New Yorkers in need, including immigrants, have access to our agencies' benefits and services. Each year HRA addresses the needs of more than three million low-income New Yorkers, including immigrants.

This Administration, in partnership with the City Council, has made a historic and unprecedented investment in legal services for immigrant New Yorkers, to dramatically increase access to a range of legal supports through a variety of programs. At the same time, the Administration and the Council have created and fostered the infrastructure to allow our City to respond quickly and forcefully to an immigration legal landscape that changes often and to meet emergent legal needs of immigrant families and individuals in New York City. I am happy to report that New York City is a national leader in providing access to justice for people in need. We work in close partnership with our colleagues at MOIA and with legal services providers and community-based organizations (CBOs) to understand the legal needs experienced by immigrant New Yorkers and to design and implement the most effective service to quickly respond to those needs.

One major component of this effort is HRA's Office of Civil Justice (OCJ). The Office of Civil Justice was created in 2015 to oversee, manage and monitor the City-supported civil legal services available to low-income New Yorkers and other residents in need. The establishment of the office coincides with New York City's unprecedented investment in civil legal services programs for New Yorkers at the start of the de Blasio Administration. This fiscal year, the Administration committed \$142 million towards civil justice programs at OCJ.

The de Blasio Administration's investment in civil legal services in Fiscal Year 2019 includes \$31 million for legal services for immigration legal services. This represents a thirteen-fold increase in Mayoral funding for immigration legal assistance programs since Fiscal Year 2013, when it was \$2.1 million. With

this funding the Administration supports programs that address the variety of legal needs of immigrant New Yorkers by providing access to high-quality legal assistance. As you have heard from Commissioner Mostofi, the ActionNYC program provides free, safe, and high-quality immigration legal services to immigrant New Yorkers in need, including free comprehensive legal screenings for possible forms of relief at locations across the City as well as Know Your Rights forums and other outreach efforts designed to widely disseminate accurate and reliable information about the immigration legal system, to reduce fraud, misinformation and confusion in the community.

At HRA, in the Office of Civil Justice, the largest and most expansive of our immigration legal services programs is the Immigrant Opportunity Initiative (IOI). Through this program, which was first established through the award of discretionary funding by the City Council, networks of nonprofit legal providers and community-based organizations conduct outreach in immigrant communities across the city and provide legal assistance to primarily low-income immigrant New Yorkers in matters ranging from citizenship and lawful permanent residency applications, to more complex immigration matters including asylum applications and removal defense work.

Starting in Fiscal Year 2017, following an RFP and a competitive bidding process for multi-year contracts, the Administration increased our funding for immigration legal services through IOI. IOI was initially funded by the Administration at \$3.2 million annually, but in the spring of 2016, after working with the Council, including the Chair, and in recognition of the need for additional quality legal representation for immigrant New Yorkers facing more complicated legal cases, IOI providers received supplemental Mayoral funding of \$2.7 million to provide representation in 1,000 complex immigration cases, including asylum applications, Special Immigrant Juvenile Status (SIJS) proceedings, and U and T visa applications.

Baseline Mayoral funding for immigration legal services programs was dramatically increased for Fiscal Year 2018 and the outyears to include \$16.4 million in additional baseline funding to respond to the pressing need for representation in removal proceedings, support assistance with seeking alternate forms of immigration relief for Dreamers and other immigrant New Yorkers, as well as to meet the increasing challenges posed by a shifting landscape for federal immigration law and policy. With this investment the Administration has been able to continue our support for legal representation in complex cases as well as dramatically increase the availability of free legal representation in removal proceedings.

The flexibility of the IOI program has enabled the City to provide additional funding to a variety of legal services providers including community- and borough-based nonprofit law offices and groups. These partners specialize in providing legal services to vulnerable populations such as children and domestic violence survivors, as well as citywide legal provider organizations, allowing for a rapid increase in much-needed service capacity. Particularly in light of the ever-changing federal immigration policy landscape, it is more important than ever to have a nimble structure that allows us to stand up legal services where they are most needed. The contracts with the IOI service provider consortia that HRA administers through OCJ allow for rapid deployment of funding, staff and resources to assist the immigrant community across the continuum of services, from brief legal counseling to full legal representation in cases like removal and asylum matters.

In total, the City's IOI program is funded at \$22.1 million in Fiscal Year 2019, including \$19.5 million in Administration funding as well as \$2.6 million in Council discretionary grants, and funds over fifty different nonprofit organizations and legal providers serving immigrant communities across the city. This funding is expected to provide legal services in over 10,000 immigration matters this year, including

legal representation in approximately 2,500 removal cases in defense of immigrant New Yorkers ensnared in the Trump Administration's deportation machine.

The Administration's support for IOI includes a dedicated \$4.1 million in Mayoral funding this year to help address the legal needs of unaccompanied youth here in New York City facing the threat of removal, including legal help for those children separated from their parents or loved ones at the southern border by the Trump Administration. This funding was finalized this fall following the rapid response to the border crisis and it has allowed us to partner with legal services providers to:

- Further increase capacity for legal defense in deportation proceedings for over 900 separated and unaccompanied immigrant youth;
- Increase funding for social work and case management resources to address the acute needs of these children; and
- Provide resources to address legal screening and risk assessment needs of family members seeking to be sponsors of separated children in facilities in the custody of the federal Office of Refugee Resettlement (ORR) in New York City, facilitating their release from ORR facilities.

In addition to IOI, HRA manages immigration legal services programs funded through federal Community Service Block Grants totaling \$2.1 million, administered in partnership with the Department of Youth and Community Development (DYCD). With CSBG funding, legal services organizations provide a range of services such as legal assistance to help immigrant adults and youth attain citizenship and lawful immigration status, as well as services targeted at groups such as immigrant survivors of domestic violence and human trafficking, low-wage immigrant workers at risk of exploitation and violations of their employment rights, and immigrant youth in foster care.

In addition to the Administration's commitment, I want to again acknowledge the ongoing commitment of the City Council, Speaker Corey Johnson and this Committee to expanding access to justice by funding legal services. HRA also oversees immigration legal services programs funded through Council discretionary grants. This year, in addition to the Council's \$2.6 million allocation for providers through IOI, the New York Immigrant Family Unity Project (NYIFUP) is funded by a City Council discretionary grant providing legal representation for low-income detained immigrants facing removal at the Varick Street Immigration Court. This year, NYIFUP is funded at \$10 million and is expected to serve approximately 1,600 individuals in deportation proceedings.

HRA also administers the Unaccompanied Minors Initiative (UMI) / Immigrant Children Advocates Relief Effort (ICARE) which was developed by the City Council in partnership with the Robin Hood Foundation and the New York Community Trust to provide legal and social services to address the surge of immigrant children living in New York City. The program provides unaccompanied immigrant and refugee children in New York City with counsel, the opportunity to apply for relief from removal, and the opportunity to receive much-needed social, medical and mental health services. Many of these children are eligible for a range of statutory protections, including asylum, for those fleeing past and future persecution; Special Immigrant Juvenile Status (SIJS) for children who have been abused, neglected, or abandoned; U or T visas for those who have been victims of certain crimes or human trafficking and other relief. With \$2 million in City funding for FY19, the program is expected to serve approximately 550 immigrant youth facing removal.

In all, the City's total investment in legal assistance programs for immigrants exceeds \$48 million in FY19, an exponential increase from just \$7 million in FY13.

Moving Forward: Continued Citywide Collaboration

As Commissioner Mostofi aptly laid out in her testimony, this City has much to be proud of regarding the accomplishments in our efforts to provide a continuum of legal services to immigrant New Yorkers, whether they need accurate and reliable legal advice on their options, help with adjusting their status, expert guidance in the naturalization process, a defender in their removal proceedings or emergency legal assistance in immigration court. Still, there is more work to be done and we remain committed to working closely with partner agencies, legal service providers, and community-based organizations to build on our progress to maximize the effectiveness and efficiency of these programs.

New York City is a proud city of immigrants and we will do everything we can to mitigate the impact of the federal government's divisive actions and rhetoric. We are committed to continue providing services that evolve with the ever-changing federal policy landscape to address the most pressing needs of immigrant New Yorkers. With the partnership of this Council, our unprecedented investments to these programs continue to place New York City as the leader in ensuring that low-income New Yorkers have access to justice. Thank you for the opportunity to testify today, and I look forward to your questions.

Testimony of Immigrant Justice Corps

on

THE NEED FOR LEGAL REPRESENTATION IN IMMIGRATION COURT UNDER TRUMP

Presented before

The New York City Council
COMMITTEE ON IMMIGRATION

Presented by:

Immigrant Justice Corps
Jojo Annobil, Executive Director

December 19, 2018



Testimony of Immigrant Justice Corps on The Need for Legal Representation in Immigration Court under Trump

December 19, 2018

Immigrant Justice Corps is delighted to have the opportunity to submit testimony regarding the need for legal representation in immigration court under Trump. We are very grateful to the New York City Council for its unwavering support for New York City immigrants and for providing funding for high quality legal counsel and other critical services. Now, such support is more essential than ever as the Trump administration attacks immigrants and seeks to eviscerate due process rights by means of policy memos and decisions that make it exceedingly difficult for immigrants to navigate the immigration court without qualified legal representation.

Organizational Information

Immigrant Justice Corps (IJC) is the country's first and only fellowship program dedicated to meeting the need for high-quality legal assistance for immigrants seeking a path to lawful status, citizenship and fighting deportation. IJC's goal is to use legal assistance to lift immigrant families out of poverty – helping them access secure jobs, quality health care and life-changing educational opportunities. Inspired by the Katzmman Study Group on Immigrant Representation, IJC brings together the country's most talented law school and college graduates, connects them to New York City's best legal and community institutions, leverages the latest technologies, and fosters a culture of creative thinking that produces new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity. Now in our fourth year, IJC has trained and placed 175 Justice Fellows (law graduates) and Community Fellows (college graduates) in support of our mission to increase both the quantity and quality of immigration legal services. All our fellows are lawyers, law school graduates, Department of Justice accredited representatives, or in the process of becoming accredited representatives.

General Comments

Since IJC's founding in 2014, our fellows have provided legal services to over 45,000 immigrants and their families and have been able to help immigrants to secure lawful status or avoid deportation in 93% of these cases. Our fellows are intimately familiar with the New York Immigration Court and are witnessing profound changes as the Trump administration attempts to deport more immigrants, force immigration judges to process cases faster, and change the substantive immigration law to make it harder for immigrants to access relief.

Immigration law and court procedures were always challenging for unrepresented respondents to navigate, but now the barriers to justice are even more pronounced and qualified legal

representation is desperately needed to protect the fundamental rights of immigrants. The City Council has taken great strides and set an example for the nation in providing universal representation to detained immigrants from New York City. A tremendous need still exists and has intensified for qualified legal representation for immigrants who are not detained but fighting deportation in immigration court.

The Number of Cases Pending in the Immigration Courts is at an All Time High as the Trump Administration Aggressively Tries to Deport More People

As of November 6, 2018, total pending immigration court cases amounted to 1,098,468 nationwide.¹ This is more than double the number of cases that were pending at the beginning of FY 2017. The New York Immigration Court had 100,559 cases pending as of September 2018.² These shocking numbers have various causes which compound the already existing historic backlog of cases.

On May 17, 2018, then-Attorney General Jefferson B. Sessions decided *Matter of Castro-Tum*,³ a case he certified to himself by means of a seldom used mechanism of the immigration law which allows the Attorney General to substitute his opinion for a decision of the Board of Immigration Appeals, in effect changing the law unilaterally. The *Castro-Tum* decision curtailed immigration judges' ability to administratively close cases to manage their already overwhelming dockets. In response to *Castro-Tum*, the Department of Homeland Security ("DHS") returned some 330,211 cases nationwide, which had previously been administratively closed and thus deemed "completed," to the pending immigration court docket, further exacerbating the backlog of cases.⁴ These cases had been closed, often many years ago, for a variety of reasons including prosecutorial discretion decisions and mental incompetence of the person facing deportation. Here in New York, our fellows have seen cases returned to the calendar and have been coordinating with other immigration legal services providers to develop arguments to protect clients from this sharp reversal. These previously completed cases now need immediate attention and creative strategizing to fight deportation where relief may now be limited or unavailable.

In addition, we expect that even more new cases will be added to the docket as DHS becomes increasingly aggressive in seeking to deport immigrants who affirmatively come forward to regularize their status. On June 28, 2018, DHS issued a new Notice to Appear ("NTA") policy memorandum which governs when the United States Citizenship and Immigration Services ("USCIS") can start the process to deport someone whose affirmative application has been denied.⁵ As of October 1, 2018, USCIS can start the deportation process if it denies an application for lawful

¹ TRAC Immigration, Immigration Court Backlog Surpasses One Million Cases, November 6, 2018, <http://trac.syr.edu/immigration/reports/536/>.

² TRAC Immigration, Immigration Court Backlog Tool, http://trac.syr.edu/phptools/immigration/court_backlog/.

³ 27 I&N Dec. 271 (A.G. 2018).

⁴ TRAC Immigration, Immigration Court Backlog Surpasses One Million Cases, November 6, 2018.

⁵ Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, USCIS Policy Memorandum, June 28, 2018, <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>

permanent residence or to extend or change nonimmigrant status.⁶ As of November 19, 2018, USCIS can also start the deportation process based on denials of T visa applications (available to victims of human trafficking); U visa applications (available to victims of crime who have assisted law enforcement authorities); self-petitions under the Violence Against Women Act (available to victims of domestic violence); self-petitions based on being a Special Immigrant Juvenile (available to abused, abandoned and neglected children), as well as other applications.⁷ The impact of this new NTA policy is compounded by another recent change in policy which, as of September 11, 2018, allows USCIS to deny affirmative applications summarily without giving the immigrant the chance to provide additional supporting evidence or challenge an intent to deny the application.⁸ With USCIS now conscripted into enforcement and empowered to adjudicate even humanitarian-based applications much more harshly, the numbers of people who will face deportation and need to fight their case in immigration court will rise dramatically.

Finally, another case decided by then-Attorney General Sessions on September 18, 2018, also under the certification procedure, eliminated immigration judges' exercise of independent discretion to terminate removal proceedings.⁹ This means that more cases that could be decided by USCIS in a non-adversarial setting will instead remain in immigration court where they will be litigated by DHS attorneys. A greater number of qualified legal representatives is needed to protect the rights of the increasing number of immigrants facing DHS as an adversary.

Each Case is More Challenging Due to the Administration's Attempts to Unilaterally Change the Law to Disadvantage Immigrants

Concurrently with the vast increase in immigration court cases pending, many individual cases now demand extra attorney preparation hours as well as additional strategizing and creativity to counter the administration's efforts to make it harder for immigrants to secure relief from deportation.

On June 11, 2018, then-Attorney General Sessions issued a decision in yet another case he certified to himself, *Matter of A-B-*,¹⁰ which purported to overturn decades of settled law in order to limit the ability of individuals fleeing intrafamily and gang-related violence to seek asylum in the United States. The distinctly anti-Central American focus of this decision reveals that it was a political response to the humanitarian crisis causing mass flight from Honduras, El Salvador and Guatemala rather than a reasoned legal conclusion. *Matter of A-B-* is currently being challenged in federal court.¹¹ Now though, legal representatives handling previously strong asylum cases which are affected by *Matter of A-B-* must explore alternative case theories and assiduously develop the

⁶ See information on USCIS website regarding Notice to Appear Policy Memorandum: <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>

⁷ See *id.*

⁸ Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b), USCIS Policy Memorandum, July 13, 2018, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FI_NAL2.pdf

⁹ *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018).

¹⁰ 27 I&N Dec. 316 (A.G. 2018).

¹¹ *Grace v. Sessions*, Case No. 1:18-cv-01853, D.D.C., filed August 7, 2018.

record in immigration court to preserve their clients' ability to appeal to the Board of Immigration Appeals and federal courts.

Additionally, in the last month, Acting Attorney General Matthew Whitaker¹² has certified two additional cases to himself. In one he questions whether being part of a family unit, a longstanding, accepted ground for asylum, can continue to be the basis for such relief.¹³ Like *Matter of A-B-*, this certification appears particularly aimed at Central American migrants who are targeted by transnational criminal organizations on account of their relationship to a family member. The other case concerns whether convictions for driving under the influence should prevent an immigrant from being able to secure cancellation of removal – a type of relief only available in immigration court that allows undocumented individuals with long term residence in the United States and U.S. citizen or lawful permanent resident close family members to obtain lawful permanent residence.¹⁴ Though there is no decision yet on either case, these new certifications fit into the administration's pattern of limiting relief to try to multiply deportations. In this increasingly hostile environment, the need is dire for legal representatives in immigration court to vigorously advocate, present creative arguments to circumvent these certified decisions, and develop the trial record for appeal.

The Immigration Courts Are Now Being Forced to Move at a Faster Speed that Threatens Due Process

While there are more cases pending in immigration court and decisions specifically designed to disadvantage immigrants seeking relief from deportation, the administration is also trying to force immigration judges to decide cases more quickly, a clear threat to due process.

In Spring of 2018, then-Attorney General Sessions put into place quotas and performance standards for immigration judges that became effective on October 1, 2018.¹⁵ As employees of the Department of Justice, all immigration judges ultimately report to the Attorney General meaning that failure to comply with these standards may affect their continued employment. The new standards require immigration judges to complete 700 cases per year and to maintain a remand rate – reversals by the Board of Immigration Appeals or Circuit Courts – of less than 15%. This translates to completing roughly 3 cases per day not even accounting for additional time immigration judges must spend conducting master calendar hearings, bond hearings, attending trainings and reviewing case files before hearings. Additionally, performance review metrics require that immigration judges make decisions on bond, motions, credible fear and the individual merits of immigration cases within an extremely short timeframe. These unrealistic quotas and standards create a huge risk of hurried and incomplete consideration of substantive and procedural issues.

¹² The validity of the process by which Matthew Whitaker was appointed is the subject of dispute and current federal litigation but for purposes of clarity, we will refer to him as the "Acting Attorney General" here.

¹³ *Matter of L-E-A-*, 27 I&N Dec. 494 (A.G. 2018).

¹⁴ *Matter of Castillo-Perez*, 27 I&N 495 (A.G. 2018).

¹⁵ EOIR Performance Plan, Adjudicative Employees, <http://cdn.cnn.com/cnn/2018/images/04/02/immigration-judges-memo.pdf>; see also, Justice Department rolls out case quotas for immigration judges, Tal Kopan, CNN, April 2, 2018, <https://www.cnn.com/2018/04/02/politics/immigration-judges-quota/index.html>.

When faced with a judiciary whose independence is under attack and who is subjected to unreasonable case completion pressures, qualified legal representatives in immigration court play a vital role. Legal representatives can challenge improper attempts to speed up proceedings, demand thorough consideration of legal and factual issues, and create a clear record of judicial error for appeal. In short, legal representatives in immigration court are on the front lines of the fight to protect immigrants' due process rights.

On top of these quotas, on November 19, 2018, the Director of the Executive Office of Immigration Review ("EOIR") instructed immigration judges to impose a new heightened standard for continuances requested by immigrants seeking asylum.¹⁶ According to the memo, it is the policy of EOIR to complete adjudications of asylum cases within 180 days of the date the asylum application was filed. Just a few days earlier, on November 16, 2018, the Director of EOIR also issued a memo about tracking and expediting "Family Unit" or "FAMU" cases in ten immigration court locations, including New York.¹⁷ The term "family unit" is a label imposed by DHS upon apprehension of a noncitizen adult who enters the U.S. with his or her own noncitizen child. Many cases of previously separated families fall within this designation. The memo states that FAMU cases are expected to be completed within one year. In contrast, many immigration judges in New York Immigration Court are setting non-FAMU cases for final merits hearings in late 2021.

Our fellows have already seen potential clients with designated FAMU cases receive a four-page hearing notice in English at their first master calendar hearing which simultaneously (1) scheduled the second and final master calendar hearing for a little over a month away at which point the immigrant must be prepared to respond to all charges from the government, (2) set a date by which an application for relief and all supporting evidence must be submitted within approximately 3 months of the second master calendar hearing and (3) set final merits hearing date for approximately 4 months after the second master calendar hearing. The notice states that any request for deviation from the schedule must be submitted to the court in writing as a motion.

In addition to other dire concerns about the expedited nature of this schedule, our fellows also report that the potential clients did not understand that a final hearing – at which deportation would be ordered if relief is unsuccessful – had already been scheduled for them. In light of the disparaging remarks that DHS has made about parents bringing children to the U.S. to shield themselves from detention and deportation, this new EOIR initiative appears designed to make it more difficult for families fleeing persecution to avoid deportation.¹⁸

These tremendously accelerated timeframes coupled with unclear communication of scheduling are certain to lead to removal orders entered in the absence of the respondent as well as denials of meritorious cases for unrepresented immigrants. Access to counsel becomes even more important where a final decision in immigration court could be made in the timeframe it commonly takes a

¹⁶ Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii), James R. McHenry III, Director of EOIR, November 19, 2018, <https://www.justice.gov/eoir/page/file/1112581/download>.

¹⁷ Tracking and Expedition of "Family Unit" Cases, James R. McHenry III, Director of EOIR, November 16, 2018, <https://www.justice.gov/eoir/page/file/1112036/download>.

¹⁸ "7-year-old migrant girl taken into Border Patrol custody dies of dehydration, exhaustion," by Nick Miroff and Robert Moore, Washington Post, December 13, 2018, https://www.washingtonpost.com/world/national-security/7-year-old-migrant-girl-taken-into-border-patrol-custody-dies-of-dehydration-exhaustion/2018/12/13/8909e356-ff03-11e8-862a-b6a6f3ce8199_story.html?noredirect=on&utm_term=.85a951dc44f8.

low-income immigrant to find an attorney. Qualified legal representatives are essential to raise legal challenges to these attempts to short circuit due process, make well-supported motions for continuances where needed, work with clients to help them present their stories clearly and effectively, secure physical and psychological evaluations to document harm, coordinate the gathering of evidence from the country of origin and argue in court about the fast-evolving law, all on an expedited basis.

Even for cases which are not specifically expedited by EOIR guidance, the ability of immigration judges to grant continuances in removal proceedings has been drastically curtailed by yet another certified decision by then-Attorney General Sessions issued on August 16, 2018.¹⁹ Without a continuance from the immigration judge, an immigrant who has an application pending which is subject to a long waitlist, like U visas or Special Immigrant Juvenile Status, or who is challenging a plea in criminal court which was unconstitutional for lack of immigration advice under *Padilla v. Kentucky*,²⁰ may not be allowed to complete the procedures out of immigration court which would make relief available in immigration court. It is essential to have qualified legal representation to assist in the uphill battle to secure continuances and to ensure a clear record for appeal where continuances are denied.

It is Exceedingly Difficult for Immigrants to Find Counsel Because Legal Service Organizations are Overwhelmed

Due to all the challenges described here, along with enforcement tactics that have provoked a climate of fear in immigrant communities, immigration legal services organizations are overwhelmed. With IJC fellows in placements with over 30 different host organizations throughout New York City, we see firsthand the struggle to meet the need for qualified legal representatives. For all the reasons outlined today, immigrants need legal representation in immigration court more than ever and yet ethical obligations limit attorneys' ability to increase their individual caseloads to respond to this crisis. Immigrants in removal proceedings are being turned away for lack of capacity. Reinforcements are needed. Though low-income immigrants may try to seek representation from the private bar, most often the expense is too much to bear. Private attorneys who are not paid may withdraw from representation in the middle of a court case, which puts immigrants at a tremendous disadvantage in terms of finding alternate free or low-cost representation because the case is mid-stream. The desperation caused by this crisis also makes immigrants vulnerable to unscrupulous immigration service providers such as "notarios" who may charge immigrants for unlawful or wholly inadequate assistance.

We commend the City Council for its continued leadership in funding essential immigration legal services. We urge the City Council to expand this funding specifically for non-detained removal defense representation. A possible way to expand representation is to fund teams of fellows who can focus on removal defense representation under the supervision of more experienced attorneys. Also, funding fully accredited DOJ representatives to handle removal defense cases with robust supervision from attorneys could help to fill the need for representation in immigration court. We urge the City Council to consider these and other creative solutions to

¹⁹ *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018).

²⁰ *Padilla v. Kentucky*, 559 U.S. 356 (2010).

ensure due process for immigrants in removal proceedings and thereby fight against the anti-immigrant rhetoric and actions of the Trump administration.²¹

Submitted by,

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December 19, 2018

Immigration Equality Testimony before the New York City Council - Committee on Immigration
Regarding the Need for Legal Representation in Immigration Court under President Trump

Thank you for the opportunity to testify today. My name is Bridget Crawford, and I am the Legal Director for Immigration Equality. Immigration Equality is one of the leading LGBTQ immigrant rights organizations in the country. Since 1994, Immigration Equality has advocated for and represented thousands of LGBTQ and HIV-positive immigrants seeking freedom from persecution. We are headquartered in New York City, and approximately half of our clients are proud New Yorkers. Most are asylum seekers.

In nearly 80 countries, it is a crime to be an LGBTQ person. Many more countries are fundamentally unsafe. Many of our clients have faced the most horrific persecution imaginable – they have been beaten, raped, tortured, even set on fire. Our clients come to New York City in search of the life they cannot have anywhere else. But when they reach the U.S., they are often met with near insurmountable obstacles when interacting with our immigration system.

Under President Trump, the Justice Department has worked doggedly to make it as difficult as possible for people fleeing violence and persecution abroad to find relief in the U.S. Because of this, having a lawyer is more critical than ever for people seeking refuge here.

Major policy shifts like the recent presidential proclamation barring asylum for those who do not enter the country through a port of entry have sowed confusion and uncertainty among vulnerable immigrants, further complicating the immigration process. In the immigration courts, the Trump administration has recently established strict quotas and benchmarks for immigration judges that will force them to prioritize volume rather than taking the time necessary to reach fair and just decisions. This compromises judicial independence and poses a serious threat to the due process rights of immigrants facing deportation – especially those immigrants who are without the assistance of counsel. Because of these and other new policies – along with the recent decision by former Attorney General Sessions that severely curtailed eligibility for asylum to survivors of domestic and gang violence – denial rates are on the rise.

The situation is particularly dire for LGBTQ and HIV-positive immigrants. We regularly find that judges require additional briefing and education in order to make a fair decision in an LGBTQ person's case. For example, judges are often unfamiliar with transgender identity and conflate it with being gay, wrongly finding that a transgender woman does not qualify for asylum because it is relatively safe for gay men in her country of origin. But this is simply wrong and puts our clients at grave risk. The Obama administration had planned to address such issues with LGBTQ competency trainings for immigration judges, similar to the trainings Immigration Equality provides for new refugee and asylum officers. However, no such trainings have taken place under the Trump administration.

It can be challenging for experienced counsel to convey these important concepts to judges under tight time constraints. It is nearly impossible for English language learners who do not know the law and may not have the vocabulary to explain these nuances, especially in the context of an adversarial proceeding.

For those in immigration detention, justice is regularly denied. Involuntary transfers to open beds rip New Yorkers away from their communities, their families, and their attorneys. For LGBTQ and HIV-positive immigrants, detention is exceptionally dangerous. A recent study by the Center for American Progress found that LGBTQ people in immigration detention are 97 times more likely to experience sexual assault in detention than non-LGBTQ people. In our experience, this bears out. Roughly half of our transgender clients who have been in immigration detention report physical or sexual violence.

It is difficult for experienced practitioners to know what to expect in this constantly changing legal landscape; it is nearly impossible for pro se litigants. In short, legal representation is more critical than ever under the Trump administration. An asylum seeker is five times more likely to win her case if she is represented by an attorney. Having an attorney raises asylum seekers' odds by 1000%. We know this is true, because we have a 99% success rate. But, unfortunately, we find that we cannot meet the need. While we represent more than 600 indigent immigrants, we hear from thousands more people needing help each year.

With additional funding, we could help hundreds more deserving people win asylum, which, for our clients, is the difference between life and death. With your support, we can ensure that more LGBTQ and HIV-positive people have the chance to live safely, freely, and openly.



**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION**

OVERSIGHT: PRELIMINARY BUDGET

**TESTIMONY BY FRANCO TORRES, ESQ.,
SPECIAL PROJECTS SUPERVISING ATTORNEY,
IMMIGRANT AND REFUGEE SERVICES,
CATHOLIC CHARITIES COMMUNITY SERVICES,
ARCHDIOCESE OF NEW YORK**

DECEMBER 19, 2018

I. INTRODUCTION AND OVERVIEW

Good afternoon, Honorable Chairperson and committee members. My name is Franco Torres and I am a Special Projects Supervising Attorney at Immigrant & Refugee Services of Catholic Charities Community Services, Archdiocese of New York. For more than four decades, Catholic Charities Community Services (CCCS/Catholic Charities) has been committed to welcoming New York's immigrants—be they families seeking to reunify, children, refugees, the undocumented, or workers. This commitment is rooted in respect for the human dignity of each person and for the value he or she brings to our communities of work, of family, and of faith. We are grateful for today's hearing, as it is an important step towards offering New York City's immigrants a lasting welcome, just as their many contributions will be and have been a lasting part of its history.

Whether through our immigration legal services programming, our immigration court representation initiatives, our community driven pro bono programming, our case management support to thousands of children and families from Central America, our unaccompanied minors detention representation and KYR project, our refugee resettlement initiatives, our classroom offerings for job and English preparation, our hotline informational services, and many others, the issue is clear: fear and uncertainty about the future are real and the need for help and assistance urgent.

Responding to increased enforcement and severe adjudication at the federal level for immigrants seeking relief, this City's elected, administration, agencies, and service providers are collaborating together, more closely than ever, to build a stronger network for those we serve to access justice. I am here today to speak of the work of Catholic Charities and what more must be done to address the current capacity hurdles for immigrants' and refugees' seeking legal representation and how to further connect and expand existing networks of service delivery. Our goal is to encourage the ongoing and developing initiatives of New York City, and to touch on a few areas of concern needing further consideration, including: (1) building proactive, nuanced response and referral systems through existing collaborative models, including ActionNYC, ICARE, the Immigrant Opportunity Initiative (IOI) networks, the Immigration Court Helpdesk (ICH), and the Immigrant Advocates Response Collaborative (IARC), and (2) enhancement of nuanced direct representation structures, increased *pro bono* and *pro se* services for rapid response efforts, addressing emergent legal needs.

II. THE WORK OF CATHOLIC CHARITIES

Catholic Charities serves all individuals in need residing in all five New York City boroughs and seven counties of the Lower Hudson Valley. Over 50% of our clients are New York City residents; 20% of them are minors, including recently arrived minors who entered with a parent, typically a young mother.

The work of Catholic Charities in New York City is broad, diverse, and focused on responding to individual crises as well as addressing core needs that can cause crises. Catholic Charities provides a comprehensive range of professional human services to immigrants, including: eviction prevention; case management to help people access benefits and resolve financial and family issues; emergency food; specialized assistance for the blind and visually impaired; after-school, drop-out prevention and employment programs for low-income, at-risk and/or court-involved youth; sports and recreational programs for children and youth; and supportive housing programs for adults with mental illness. Our services are provided in our community centers, parishes, regional offices, NYC public schools, NYCHA housing developments, HRA offices, and partnering community-based agencies. Each year, CCCS works with thousands of households to manage crises and to help families achieve long term stability in immigration status, income, housing, and nutrition. The issues our clients face are often multi-faceted and complex, and it frequently takes the cooperation of several agencies to arrive at lasting solutions.

Catholic Charities' Immigrant and Refugee Services responds to the needs of thousands of immigrants and refugees each year, through services in five principal areas: immigration legal services, including innovative and community driven models, unaccompanied minors programming, English as a Second Language (ESL/ESOL) and cultural learning at our International Center, refugee resettlement services, and general informational and referral services through the New York State New Americans Hotline and the National Children's Call Center, which, as well as the newly expanded ActionNYC Hotline.

With the support of the Council and of New York City, the help of additional public and private partners, and often in collaboration with its partners, each of these programs has been able to step

beyond its core services and marshal a response to recent needs, as they have evolved. But more is needed and Catholic Charities is ready to help.

III. SUPPORTING AND EXPANDING EXISTING COLLABORATIVE MODELS

For the past two years, immigrant communities have faced countless shifts in policy and law, affecting forms of relief predicated on the very foundation of immigration law tenants – creating stability for communities in crisis, safety for survivors of violence, and family unity. In the current climate, legal service providers are responding to evolving obstacles, which shift the line on emergent crises that can no longer be described as rapid response given the duration. New York City strives to meet immigrant needs through holistic responses, marrying local communities with respected providers. This work is supported through elected advocacy responsive to community needs, and expansive contracts for services, which led to administration driven network creation. Catholic Charities encourages refining and nuancing these networks to increase efficacy, reduce duplicative services, and grow holistic connectivity across facets of service delivery to meet immigrant needs.

Strengthening Referral Networks and Hotline Support. New York City has a wide network of collaborative models, marrying community outreach organizations to legal service providers, many of which Catholic Charities is a member of, including:

- **Immigrant Children Advocates Relief Effort (ICARE)** – For over four years, Catholic Charities has collaborated with Atlas-DIY, Central American Legal Assistance, The Door, KIND, The Legal Aid Society, Make the Road New York, and the Safe Passage Project at New York Law School in ICARE, a program funded by the NYC Council, New York Community Trust and the Robin Hood Foundation that provides screenings and high quality direct representation to unaccompanied minor children who reside in NYC and are in removal proceedings at the New York Immigration Court. Since the fall of 2014, Catholic Charities' ICARE team has met regularly with the other members of the collaborative to review capacity and procedures; discuss relevant issues and strategies; develop solutions to emerging problems; and advocate with the local immigration and family courts to address issues affecting unaccompanied minors and adults with children. The ICARE Collaborative has been successful because it has brought together agencies that all work with children, but have various areas of expertise (family court, SIJ, asylum, U visas), employ different service models (in-house representation, pro bono networks, law school clinics), and offer different ancillary services (legal orientation programs, refugee resettlement services, in-house counseling, etc.) to create a representation system that covers almost every type of removal defense case, has resources to address many of the other needs experienced by unaccompanied minors, and leverages staff resources in different ways to ensure continued capacity to conduct screenings, accept new cases, and continue to provide services on existing cases.
- **ActionNYC** – a multi-pronged citywide initiative providing immigration legal services at scale and to build capacity within legal and community-based organizations by supporting those organizations and partnered legal service providers to conduct targeted outreach, comprehensive immigration legal screenings and application assistance. For the last three years, CCCS has participated in NYC's innovative, multi-pillared, coordinated citywide initiative, ActionNYC, on several levels: i) a team of Catholic Charities

attorneys and paralegals rotates through a select number of community schools with high foreign-born populations to provide free immigration legal screening clinics, application assistance, complex representation before USCIS and NYS Family Courts, and referrals for immigrant students and their families; ii) Catholic Charities operates the citywide scheduling system for ActionNYC appointments; and iii) Catholic Charities staff assists with training of ActionNYC staff and volunteers.

- Citywide Immigrant Legal Empowerment Collaborative (CILEC) – Since July 2016, Catholic Charities has participated in the Citywide Immigrant Legal Empowerment Collaborative, a consortium of service providers working together to provide representation in immigration and employment matters to indigent immigrants in NYC, which is funded by the city’s Human Resources Administration through the Immigrant Opportunities Initiative. Catholic Charities’ partners include the following legal service providers: Urban Justice Center (lead agency), Catholic Migration Services, and Make the Road New York. The four agencies accept referrals from eight community based organizations/base-building groups and ActionNYC.
- Immigration Court Helpdesk – The Helpdesk is a program that leverages staff expertise with volunteer lawyers and law students to orient unrepresented immigrant respondents to the deportation hearing process, inform them about possible relief from removal, provide targeted referrals, and hold self-help workshops. The self-help workshops expand access to justice for those who face deportation proceedings without representation. Under current law, asylum applicants must submit their applications within one year after arriving in the US. Given ever-growing backlogs in immigration court, where hearings are scheduled years out, meeting this deadline has become nearly impossible for those who are unrepresented and thus unaware of the requirement, how to complete the application in an unfamiliar language, or filing procedures. Catholic Charities began operation of the Helpdesk at the NYC Immigration Court in August 2016, where for a minimum of ten days per month, it provides group presentations, individual screenings, pro se assistance, and legal referrals for those without legal representation. To leverage staff resources, CCCS established strong collaborative partnerships with several law firms and law schools, training more than 200 volunteer lawyers, law students, and interpreters to provide effective services in court under the supervision of several of our staff attorneys. The Helpdesk serves as an intake channel providing consultation support for numerous legal service providers to refer individuals who are in removal as well as a placement referral program to send viable cases to providers who have in-house expertise and capacity for particular facets of removal defense representation.
- Immigrant Advocates Response Collaborative (IARC) – IARC is made up of over sixty nonprofit organizations providing or supporting legal services to New York’s immigrant communities. The goals of IARC are to pool legal knowledge, resources, and expertise to ensure that immigration attorneys throughout New York State are ready to defend our communities. Catholic Charities has served on the IARC Steering Committee since inception, and participates in all of the Collaborative’s efforts, including, working groups, training events, rapid response efforts, new initiatives, and legal strategy developments.

Given the strong foundation of networks presently operating, we recommend strengthening programming and referrals amongst the existing models by:

- Utilizing the ActionNYC Hotline as a referral conduit, with coordinated capacity updates provided by legal service providers in order to mitigate wait times for those seeking consultations,
- Incorporating New York City support for The Helpdesk to coordinate consultations and referrals for those in removal proceedings,
- Capitalizing on the expertise of established legal service provider consortiums (ICARE, CILEC, ActionNYC), to create meaningful, warm hand off, referrals amongst providers to reduce duplicative services, and,
- Relying on the member strength of IARC for rapid response initiatives and utilizing the knowledge of member providers to guide those efforts.

Since the Presidential election, relentless changes and restrictions have been imposed on immigration benefits at every level of adjudication. The line on what qualifies as rapid response and emergency situations is blurred as advocates face attacks on special immigrant juvenile status applications due to the federal government qualifying state law, rampant and invasive enforcement tactics, shifting lines on who may qualify for asylum leading to increased appellate work, and much more. In order to address this shifting landscape effectively while simultaneously avoiding recreating the wheel, we encourage funding to support coordination roles amongst the providers to ensure best practices are shared, referral systems are reliable and depict actual capacity estimates, resources are accessible and regularly updated, language support is accessible, and collaborative training is the standard. This in-depth coordination takes experience, time, thought, and effort. Funding for coordination roles will allow for heightened awareness of on the ground needs, greater efficacy, reduction of duplicative services, a warmer hand off on referrals, and a more cohesive response system.

Case Management for Immigrants. An incredibly complex human, social, economic, and legal landscape confronts the average low-income New York City immigrant who is struggling to keep many pieces of work and family life in place. Catholic Charities has found that its general, weekly legal intake days—when between 70 and 100 clients come seeking services—are far more effective when a social worker is on hand to meet with clients and individuals who seek help on a range of needs—be they housing, food, health, or other. Some can be easily resolved, such as an educational advocacy issue for a child, while others are more challenging, such as the need for physical health or even mental health services and care. The benefits of case management assistance therefore cannot be overstated, especially as the legal team is thus freed from navigating a system and process with which it is largely unfamiliar.

Likewise, we have found that unaccompanied children released from shelter detention—we assist almost 5,000 each year with know-your-rights presentation, legal consultation, and court defense—benefit from case management transitional supports to them and the families with whom they reunify. The challenges of reunification are both prosaic and stunning, as family systems are shocked by new arrivals, economics are strained, and questions of trauma and separation are often exacerbated.

But today, things have changed and become even more complex. With each new communication, announcement, policy shift, or enforcement action, the administration's campaign of indiscriminate apprehension and detention and instilling of fear and insecurity is as effective as it

is real and permanent. Immigrants who have, until now, resided and worked in New York City with a sense of safety and security are now living with stress, anxiety, uncertainty – whether documented, undocumented, or recently having lost protection such as TPS, DACA, prosecutorial discretion, or other. In just a year and a half since the election in 2017, Catholic Charities has presented over 500 know your rights, orientation, and safety planning seminars and presentations throughout the Archdiocese. We have assisted families in crisis and, likewise, have developed a protocol to handle emergency enforcement matters. More is needed, especially in the area of case management for individuals and families entangled in this process, including Hotline support for Information and Referral and public-facing informational resourcing, responsive and “safe” and constant KYR safety planning programming (such as at Catholic Charities’ Thursday Clinical intake), and in-community guidance on organizing personal documents, referrals to an attorney to see if the person may qualify for a form of relief, planning for medical and childcare needs, and putting financial affairs in order.

Similarly, parishes are an important part of immigrant communities, as they are often a place of comfort, support, and safety. Catholic Charities often relies on parishes to ensure success for community-based events. We have seen such success at monthly legal clinics we host across the Lower Hudson Valley. We hope to take this engagement further and across New York City and find new ways for parishes to empower their members to create a robust support network for immigrant communities. This includes working with leaders among parishioners to determine local needs of fellow members, and how others in that parish and among the parish networks can support, such as preparing families if a loved one has an ICE check in, host relevant KYRs on a variety of topics to further educate the parish community, and find ways to cut fraud perpetrated on immigrants.

Legal Service Providers, particularly those without in-house case management support, are forced to address a variety of client needs (food, housing, health, education, etc.), before turning to the legal substance of the case. Given the growing network of hospitals, schools, community groups, and faith-based support for immigrants seeking assistance, we recommend strengthening existing legal and non-legal connectivity at the city-agency level (hospitals, schools, housing services) as well as through existing ActionNYC programming in those spheres, to work toward creating a meaningful referral system to address these foundational needs for those we serve.

V. BROADENING LEGAL RESPONSES

In this unique period in history, immigrant communities experience fear and attack on multiple fronts, which they have not—in this way—for over a generation: the tenuous future of the DACA program; the certain termination of TPS programs for Salvadorans, Nicaraguans, Haitians, and Hondurans; the detention and deportation of people on orders of supervision; courthouse arrests that force people to choose between ICE detention and being issued arrest warrants for failing to appear in court; prolific changes to public charge provisions that will push vulnerable families to forfeit public benefits and subsidized health care, including for their US citizen children; massive threats to asylum relief for survivors of domestic violence and inter-familial violence; and the dissolution of prior immigration enforcement priorities, such that now everyone has become a priority for deportation.

For this reason, Catholic Charities proposes the following four (4) initiatives:

Expand the Immigration Court Helpdesk. As described above, the Immigration Court Helpdesk (ICH) program is a new and important program in New York. It is a non-detained deportation counterpart to the screening process that exists for the New York Immigrant Family Unity Project and needs expanded support and coverage. It was initially created by the Department of Justice to assist immigrants in removal proceedings in understanding their rights and learning to navigate the immigration system effectively. Unlike in criminal court, immigrants facing removal from the United States are not appointed free or low-cost lawyers. As a result, many navigate the removal process without counsel, while others become vulnerable to exploitation and fraud. At the New York City Immigration Court, Catholic Charities provide immigrants facing removal with information about the immigration court process, how to access and utilize available resources, and referrals to competent representation. The principal purpose of ICH is to give immigrants support, information and guidance through the immigration court process. This includes group presentations, individual sessions, *pro se* clinics, and information about pro bono resources available to those without legal representation. To facilitate the services we provide through ICH, Catholic Charities has established strong collaborative partnerships with several firms and law schools, and we rely on volunteers to be able to provide effective services each week in court.

CCCS supervision and provision of services at the New York City Immigration Court Helpdesk (ICH) commenced in August of 2016 and has assisted over 2,500 immigrants facing removal, including assistance with the *pro se* filing of nearly 500 applications for asylum and work authorization for families who are rapidly approaching their one year deadlines for filing and unable to secure representation. CCCS currently offers ICH services 10 days per month providing general know your rights presentations, individual information sessions, and deadline related relief assistance to immigrants facing removal at our City's local court.

It will not come as a surprise that funding for this initiative may be vulnerable. Improving and broadening *pro se* services, while working toward universal representation for non-detained immigrants facing removal, and simultaneously expanding *pro bono* support will create greater representation capacity. We therefore encourage the Council to support further the presence of access to high caliber, trusted, free legal information and assistance through ICH services for those in proceedings defending their right to remain without representation to be available every day that the court operates. Funding of approximately \$200,000 would permit increasing services by an additional six days per month (for a total of 16 days per month) and enable Catholic Charities' Immigration Court Helpdesk to serve 42-60 additional immigrants per month. This would allow us to help a total of between 1,460-2,160 vulnerable immigrants who require legal counsel to effectively defend their right to remain in the United States. This would be an increase of approximately 50% over present capacity. Additionally, this increase would allow for greater referrals from other providers facing capacity concerns for individuals in removal to access services. Furthermore, adding six Self Help Workshops per year would enable 120-240 more immigrants to meet their one-year filing deadline for asylum. To do so would require an investment in one attorney and an administrative assistant.

Appellate and Federal litigation representation for immigrants. There are currently 103,823 cases pending before the New York immigration court,¹ with respondents from every country in the world. Master Calendar hearings take place in the morning, four days a week (Tuesday – Friday), with each immigration judge being assigned to one of the four days. According to the NY Court Administrator, there are five to ten Master Calendar hearings every day. More and more immigrants are faced with the prospect of navigating this complex legal system alone. Since January of 2017, decisions and policy changes by President, the Attorney General, and immigration adjudicating bodies, have deeply impacted immigrants seeking relief from deportation and, in turn, require Board of Immigration appeals and federal circuit representation at an alarmingly increasing rate. Asylum cases predicated on intimate partner violence as well as those arising from persecution within the family unit are under attack. Furthermore, increased Immigration and Customs Enforcement activity, both at the local level of immigrant communities and through heightened enforcement actions at every level, results in the rapid detention of immigrants throughout New York, whose families seek our assistance in growing numbers. Across the City, providers will face challenges in capacity to meet this increasing appellate and federal litigation effort. In order to strengthen and expand our existing models of service through our Immigration Court Helpdesk and Pro Bono programming to meet these rapidly developing needs, we propose creating a cross-over project to leverage our unique partnerships and use technology to streamline the process of matching, supporting, and training volunteers to serve this significant litigation effort. Support for this project at \$250,000 would fund two staff, a Project Supervising Attorney and a Project Coordinator, to develop and design collaborative workshops focusing on this immigration legal services need, to oversee and supervise volunteer advocates who will represent immigrants before the Board of Immigration Appeals and the federal courts, and to create clear data collection standards for collection and analysis.

Emergency action and enforcement response. The increasingly complex legal and social challenges faced by immigrants have created a growing need for expert assistance to bring security and stability to their communities in New York City. After the November 2016 election, shifts in the Department of Homeland Security's enforcement priorities have been felt both nationally and locally. These shifts have raised serious civil rights concerns, they have led to an increase in the separation of families, they have eroded trust in law enforcement, and they have increase the numbers of immigrants facing deportation. Catholic Charities currently responds to requests from detained immigrants across New York State by sending resources and legal referral materials and also accompanies individuals to ICE check-ins, providing assistance to immigrants interacting with immigration officers, advocacy on removal procedures and priorities, filing motions and stays in high risk cases, and tracking interactions and outcomes, which operate without rhyme or reason. Currently, numerous immigrants appear without counsel, some with no relief and criminal histories, who are given a year extension, and other families with no criminal histories and potential relief are being told to depart within 90 days or risk being detained. ICE's position has been that there are no priorities, and while this appears to be true in practice, the inconsistencies have grave consequences for immigrant families.

¹ Transactional Records Clearinghouse (TRAC) Immigration Court Backlog Tool, available at http://trac.syr.edu/phptools/immigration/court_backlog/.

Catholic Charities Community Services strongly encourages the Council to support a project to provide legal assistance and emergency crisis response to these families and individuals who find themselves subject to DHS/ICE “check-in” with a risk of arrest and deportation and to expand on our Pro Bono Project to serve this vulnerable population of immigrants by linking community organizations and service providers with pro bono firms, on an “emergency” basis, to assist with habeas petitions at the District Courts, Petitions for Review at the Circuit Courts, and other work at the Federal Court level as these large firms often have more experience doing this work. With a staff of 3, at approximately \$300,000, Catholic Charities would provide consultation services to 200 immigrants and defense in enforcement related matters to about 100.

Continued funding for nuanced direct service representation. This past year has shown the Council and the Administration’s support of immigration legal services at a historic level. We are grateful for this City’s commitment to providing access to justice for our immigrant neighbors and want to applaud the efforts toward thoughtful funding to meet gaps in service, including expansion of the ActionNYC in Schools program and expanded service delivery through IOI, in particular, expanded funding for on-site legal services at *Terra Firma*² and inaugural city-based support for *pro bono* programming for unaccompanied minors. Increasing direct service capacity through project-based, community driven models enables providers to close gaps at the front line and improves capacity for traditional direct services.

In conclusion, we thank the New York City Council, the Human Resources Administration, the Department of Youth and Community Development, and the Mayor’s Office of Immigrant Affairs for their visions and leadership in this continued work to welcome New York’s newest, who hold and regenerate our promise.

Thank you for your time and attention.

² *Terra Firma* is the first medical-legal partnership in the United States specifically for unaccompanied immigrant children. Founded as a pilot project in 2013, *Terra Firma* is a medical-legal partnership run in conjunction with Montefiore Hospital and The Children’s Health Fund. *Terra Firma* provides free medical, mental health, dental, legal, and transitional services to released unaccompanied minors.

Testimony of the New York Immigration Coalition
Oversight Hearing - The Need for Legal Representation in Immigration Court under Trump
December 19, 2018

Dear Speaker Johnson, Chairman Menchaca, and Members of the New York City Council,

Thank you for the opportunity to present testimony relating to the impact of the Trump Administration on proceedings in New York City's immigration courts and to examine the need for representation there. The New York Immigration Coalition (NYIC) has long worked with our members providing legal services to New York's immigrant communities and advocated for better resources and support for these critical needs. Since the beginning of the Trump Administration, the NYIC has led a state-wide collaborative of over 80 immigration legal service providers, the Immigrant Advocates Response Collaborative (I-ARC), as attorneys have navigated how to respond to the increasing challenges posed by Washington's anti-immigrant policies. Our most immediate goals are to enable attorneys to respond to each successive shift in enforcement and adjudication practices as they unfold and to best protect and defend our communities from these attacks, many of which play out in immigration courtrooms. Ultimately, however, we hope to illustrate the need for universal representation of immigrants and to catalog the lessons learned from these moments of crisis.

We defer to our colleagues and members present at today's hearing who are best suited to highlight the recent and rapid-fire changes in immigration court over the last two years, as well as the impact on client outcomes and communities that programs like the New York Immigrant Family Unity Project (NYIFUP) and the Immigrant Children's Advocates Response Effort (ICARE) have shown. However, we would like to take the opportunity to discuss the systems-wide changes that have been felt, and the recommendations we have based on years of observing New York City's immigration legal services field as a whole.

One of the most fundamental building blocks of the American experiment in democracy is the impartiality of our judiciary system. It is a value so deeply entrenched that most Americans don't question it and accept the assumption as fact when debating the fairness of our systems. Never has the strength of our judiciary been more critical to our survival as a nation, however. In the face of constant assaults on the very core of our government systems by an unprecedented presidency, the Judiciary has stood as our strongest institution, implacably pushing back on each attempt at discrimination, cronyism, and hatred. Yet there are glaring examples of where that aspiration fails, and one of those is immigration court.

Immigration court is a place where guilt is presumed and innocence must be proved. It is a place where individuals are forced to defend themselves, alone and often in a foreign language, against trained government lawyers who have the resources of an entire agency behind their actions. It is a place where you are consistently judged against your worst moments, and no opportunity is afforded to highlight your best. As one immigration judge put it not so long ago, it is "death penalty cases in a traffic court setting."

Despite this, the impacts of outcomes in immigration court are life altering. If someone fails to defend themselves properly against the government's charges, to identify ways they may have to remain in the United States, to correct the record against them, or simply to appear in court on the right day, they will

be ordered deported. This can mean exile from their families, friends, and communities. In the worst cases, it can mean returning to possible or certain death. It also means that justice has been distorted. When one side is so overwhelmingly advantaged over the other, the notion that proceedings conformed to basic principles of due process goes out the window.

In New York City, where the immigration court backlog is over 100,000 cases, these realities play out every day and in high numbers. The Trump administration has made no secret that they intend to make an example of New York City and recent Immigration and Customs Enforcement (ICE) arrest numbers, which show a higher-than-average number of arrests in New York, prove that. At the same time, unique programs such as NYIFUP and ICARE have consistently shown the power of providing attorneys to immigrants facing deportation, from individual case outcomes to more favorable case law won through litigation.

New York City has a passionate, dedicated, and tireless immigration bar. To best protect New Yorkers going through immigration court, we ask the City Council and the Mayor's Administration to ensure that these lawyers receive the best support they can from our elected leaders and institutions. In order to put us on the path to universal representation in New York City, we make the following recommendations, which have been collected over years of working in the trenches with immigration lawyers and organizational leaders:

1. Provide funding and other support in a manner that gives legal service providers a maximum amount of flexibility. This means being transparent about how funding is allocated, not imposing arbitrary eligibility guidelines that force New Yorkers into "deserving" and "underserving" categories, allowing for re-enrollment of cases into grant programs until the end of the life of a case, and providing support for supervising attorneys to do mentoring and training without worrying about carrying full case loads as well.
2. Ensure that resources are evenly distributed with free services going to those who truly can't afford an attorney, referrals to private bars for those who can, and developing new service-delivery models around low-bono and public-private partnerships to reach individuals who earn too much for non-profit services but not enough to be able to afford private counsel.
3. Look at how legal services are provided in Canada, which has extremely high representation rates, and which can provide ideas for new service delivery models. For example, in Ontario, Canada Legal Aid organizations are able to give vouchers to clients so that they can hire previously-vetted private counsel who will then be paid by the Legal Aid funds.
4. Invest in appellate and post-deportation order legal representation. Most non-profits are unable to either take on appellate or post-deportation order cases, or to supervise pro-bono attorneys who may be willing. Not only does this mean that they cannot continue fighting for clients who lose their cases in immigration courts, it also means that bad policies and adjudications do not get challenged. One of the most lasting impacts of NYIFUP, for example, is the case law it created limiting the government's ability to detain immigrants indefinitely. Without the capacity to take on this work, New Yorkers lose a vital tool in their fight to remain in the United States.



Testimony by the New York Legal Assistance Group (NYLAG)

before the NYC Council Committee on Immigration

December 19, 2018

Chair Menchaca, Council Members, and staff, good afternoon and thank you for the opportunity to speak to the Immigration Committee about the changing landscape of immigration services. My name is Lauren M. Reiff, and I am a Supervising Attorney at the New York Legal Assistance Group (NYLAG). NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

We appreciate the opportunity to testify to the Immigration Committee, and the generosity and support that the City Council and the Mayor's Administration have shown for low-income immigrant New Yorkers. With new and ever increasing hurdles being placed in the path of immigrants seeking to apply for immigration benefits, and a climate of fear and misinformation intended to discourage immigrants from seeking relief to which they are lawfully entitled, the support that the City Council and the Mayor's Administration have provided to low-income immigrant New Yorkers has become more critical than ever.

Increasing Complexity and Risk is Attached to All Immigration Applications

The most important change in the immigration landscape during the current Presidential Administration is that all cases have become more complex as a result of changes in policy within the federal government. As such, as legal service providers we must now assume that all cases we undertake for representation will require increased time and preparation, even for cases that in the past would have

been considered relatively straightforward or would have required less time expenditure on the part of our staff.

For example, naturalizations have become more complex, and now require a significant amount of time to prepare the application, review past case history, and represent the client at the interview, where in the past that may not have been necessary. NYLAG's client "Nenna" is an example of how important it has become to have competent representation on what may have been considered a straightforward naturalization case in the past. Nenna applied for naturalization without the help of an attorney after accumulating five years of residence in the United States as a Lawful Permanent Resident (LPR). Nenna has never been arrested, has taken no long trips outside of the United States, and has worked and paid her taxes for each year she has been an LPR. Nenna had received her LPR status after her U.S. Citizen sibling petitioned for her. Nenna had no reason to suspect that she would not be approved for naturalization. However, prior to her application to naturalize, United States and Immigration Services' (USCIS) fraud investigations division had discovered that, unbeknownst to Nenna, the petition that was the basis for her naturalization had been signed by a sibling who was not a U.S. Citizen and was impersonating a different sibling who is a U.S. Citizen. As a result, Nenna is now in removal proceedings through no fault of her own, and NYLAG is representing her in those proceedings. The clear lesson of Nenna's case is that even the most seemingly simple and straightforward application must now be preceded by careful and intensive review of the case files possessed by the federal government by a skilled attorney.

Indeed, a recent policy memorandum issued by the federal government mandates that, in the event an affirmative application for immigration benefits is denied and the applicant is not otherwise authorized to remain in the United States, the government will likely place that person in removal proceedings at the moment that the application is denied. In particular, it is expected that this will strongly impact applicants for affirmative immigration benefits based on their past experiences as victims of crimes, trafficking, and domestic violence such as U nonimmigrant status, T nonimmigrant status, VAWA self-petitioners, and

applications for Special Immigrant Juvenile Status. This expectation is only compounded by the changing standards used to adjudicate such application. As such, any acceptance of such a case by a legal service provider must account for the potential need to represent the client in removal proceedings in the event that the application is not successful. Due to the increased risk and the need to factor in significant additional time for each accepted case, it is now more difficult for legal service providers to accept the same volume of these affirmative humanitarian cases as was once possible.

It also, devastatingly, means that immigrants who are eligible for humanitarian relief, who are often particularly vulnerable and in need of services, health insurance, and stability, are now substantially more reluctant to file even strong petitions before USCIS, fearing the possible negative consequences of deportation or removal. One of NYLAG's long time clients, "Yamilet," a HIV positive trans woman from El Salvador, is a victim of domestic violence and trafficking, having been trafficked by her abusive partner. Yamilet came forward and reported her trafficker, who has since been deported. She is terrified to submit a T Visa or U Visa application, both of which she is eligible for, out of fear that if denied she would be sent back to El Salvador, where her trafficker is now living.

Another example of the unpredictably changing landscape and this presidential Administration's overwhelming reluctance to grant immigration relief is the federal government's abrupt reversal of its interpretation of eligibility for Special Immigrant Juvenile Status (SIJS). SIJS has long provided unmarried immigrant children under 21 who are abused, abandoned, or neglected by their parent with the means to obtain legal permanent residence once they have been declared dependent on the Family Court. USCIS has historically granted these youths legal permanent residence through Special Immigrant Juvenile Status and many teenaged immigrant New Yorkers have benefited from it. This year, however, USCIS began to re-interpret New York laws without warning, and has since been denying swaths of applicants for Special Immigrant Juvenile Status that they were previously squarely eligible to receive solely because they are over the age of 18 at the time the New York Family Courts make its findings.

The case of NYLAG's client "Alejandro" is just one example among many. Alejandro came to the United States alone shortly after he turned 18 years old, escaping years of domestic violence and threats from gangs in Mexico. Alejandro came to New York to live with his older brother. The New York Family Court granted Alejandro's brother guardianship and made special findings regarding Alejandro's inability to reunite with his father in Mexico because his father abused, neglected, and abandoned him by failing to provide him with a safe home, committing excessive corporal punishment on him to the point of physical injury, and failing to support or contact him at all for years. The USCIS, however, asserted that the Family Court had no jurisdiction to make such findings because Alejandro was over 18 at the time, and denied his Special Immigrant Juvenile Status petition even though he was well under 21 as the INA requires. We have asked USCIS to stay its decision pending federal litigation in our district on this very issue, but USCIS has ignored our request.

Constraints on Available Relief and Increasing Complexity of Cases in Immigration Court

While the increased risk of removal and increased complexity attached to all affirmative filings means that more immigrants are in removal proceedings than ever before, the immigration court landscape is also now more complex and allows for less flexibility than in the past. In particular, immigration judges have lost the discretion to manage their dockets in a manner that is favorable to respondents, such as by allowing multiple extensions of time to allow the respondent opportunity to seek counsel or apply for affirmative relief, or by closing or terminating a case in the interest of justice or to allow a respondent to apply for affirmative relief.

In addition, the immigration courts are setting much quicker timelines for preparing some of the most complex cases for some of the most vulnerable respondents for trial. For example, NYLAG's client "Roberto" and his elementary school aged son "Jose" are in removal proceedings after presenting themselves at the southern border to seek asylum. They came to our office desperate for representation after being told by the judge that, since they'd already had several months to find counsel, they now had only one more week or else they would be ordered removed. NYLAG accepted the case, anticipating that

we would have approximately one year to prepare the application for trial, as is standard in the New York immigration courts. However, because the immigration courts are now attempting to process cases involving family units on an accelerated timeline, this case will be going to trial in a matter of four months from the time that our office first met our clients. As such, it is now necessary that, in accepting complex cases for adults with children, attorneys are prepared to devote the majority of their time over the course of several months to preparing the case for trial and obtaining copies of any evidence and prior documents filed with immigration. Therefore, it is now significantly more difficult for legal service providers to accept cases in removal for some of the most vulnerable immigrant New Yorkers who most need our help.

Misinformation and Fear Causing Increased Vulnerability for Immigrant Communities

In addition to making it more difficult for immigration legal service providers to accept a high volume of cases, the constantly evolving immigration landscape has also spread fear throughout immigrant communities in New York. Desperate to obtain immigration status, immigrants are turning to bad actors who promise impossible results for protection. For example, NYLAG's client "Tonya," frightened that she may be unable to remain in the United States to care for her young United States Citizen son, consulted with a person who she did not realize was an unauthorized immigration practitioner at the recommendation of a trusted friend who had obtained work authorization after consulting with the unauthorized practitioner. Tonya asked the unauthorized practitioner whether her mother, who is an LPR, could petition for her. She was told yes, and was asked to sign some forms to begin the process. Tonya obtained work authorization and therefore felt confident that she was receiving the promised services. However, Tonya's case was ultimately denied and she was placed in removal proceedings. It was only when she came to NYLAG to seek representation in removal proceedings that she realized that the unauthorized practitioner she had trusted had filed an application under VAWA alleging that she had been abused by her step-father. Because Tonya relied upon an unauthorized and dishonest practitioner to represent her interests, she is now at substantial risk.

Another client, “Anna,” was terrified to remain undocumented for a day longer than necessary, and so chose to go forward with her case with a nefarious private immigration attorney who promised to file her U visa within two weeks, rather than a NYLAG attorney, who explained we would need three months. One month later, Anna returned to us with follow up questions. At that time, we found out that the attorney who filed for her filed the wrong forms and failed to include the certification needed for a U visa. We had to advise her that the consequences now were not simply filing a new form or reporting the attorney, but that she would very likely be placed in removal proceedings.

NYLAG has seen clients who are frightened about their status or changing policies make choices that are contrary to their best interests due to rampant misinformation. Conflicting information abounds about immigration rules and policies, especially when it comes to complex policies such as the new proposed rules for public charge. Clients seen through LegalHealth, NYLAG’s medical-legal partnership, which is supported through the Council’s Immigrant Health Initiative, are increasingly nervous about accessing the medical and other benefits to which they are entitled. We have heard from staff we work with at Health + Hospitals clinics that women on temporary visitor visas are concerned about accessing prenatal Medicaid and WIC for their children born in the U.S. because they intend to return to their home countries and want the ability to revisit the U.S. in the future. Others are concerned because they want to apply for citizenship in the future and fear that accessing benefits now will hinder them.

Because of the high levels of fear being sown by changes in federal government policy and threats of changes in federal government policy, bad actors have become empowered to prey on immigrant communities desperate to apply for immigration status. NYLAG has had some success in combating these bad actors by partnering with community-based organizations and community spaces such as schools and libraries to meet with immigrants in a place they feel safe. However, we only expect

that bad actors looking to take advantage of vulnerable communities will continue to prey on immigrant New Yorkers.

What We Need to Support Immigrant New Yorkers

As legal service providers, we are now faced with a hostile and complex federal immigration landscape that has an extraordinary effect on our ability to adequately serve immigrants here in New York. As such, we respectfully ask that the following needs be considered:

1. Increased case rates in city contracts that reflect the increased complexity of all cases, and by extension, the additional time that must be expended in each case;
2. Legislatures to enact a statute that squarely and unmistakably accords the New York Family Courts jurisdiction over all subjects of guardianship proceedings who under 21 years old;
3. Increased funding to permit the hiring of additional staff to meet the growing demands and faster timetables that define the current reality of immigration practice;
4. Increased funding or grants to cover filing fees for appeals that are necessitated by abrupt policy changes, and would not have been predictable at the time an application was filed; and
5. Flexibility in grant deliverables, such as permitting a greater number of applications to be funded per client, in light of the demands of the current immigration landscape.

I want to once again take the opportunity to thank Chair Menchaca and the members of the Committee for their exceptional leadership and commitment to overseeing issues related to immigration in New York City, and for working to schedule this hearing today. I welcome the opportunity to discuss any of these matters with the Committee further.

Respectfully submitted,

New York Legal Assistance Group



MAKING THE CASE FOR HUMANITY

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TESTIMONY BEFORE NEW YORK CITY COUNCIL'S COMMITTEE ON IMMIGRATION

Presented on December 19, 2018

My name is Hasan Shafiqullah and I am the Attorney-in-Charge of the Immigration Law Unit (ILU) at The Legal Aid Society (LAS). For more than 140 years, LAS has been a tireless advocate for those least able to advocate for themselves. Part direct legal services provider, part social justice defenders, we go beyond individual issues to effect change at a societal level. Whether it is fighting for 3,000 New Yorkers aged 18-21 arbitrarily denied the opportunity to regularize their immigration status or advocating for children separated from their families at the southern border, we are unrivaled in our ability to go beyond any one case to effect systemic change through litigation and advocacy.

ILU, founded in the 1980s and one of the country's largest immigration law units, provides legal representation to vulnerable New Yorkers seeking relief for themselves and their families. We assist those in detention and fighting unlawful deportations, and represent low-income individuals in gaining and maintaining lawful status. Combining this representation with affirmative litigation work, we strive to ensure that families are able to stay together and stabilize their living situations. In the last year, ILU assisted in nearly 5,900 individual legal matters benefiting over 13,000 New Yorkers citywide.

The Need for Legal Representation in Immigration Court under Trump

LAS welcomes the opportunity to present this testimony on the need for legal representation in immigration court under the Trump administration. In the two years since Trump's inauguration, the landscape for immigrant communities across New York has worsened immeasurably. Whether it is separating children from their families at the southern border or proposing changes to "public charge" regulations that will shut millions of people out of vital benefits programs, the federal administration's unprecedented attacks on marginalized communities add new urgency to our work as we continue to advocate for the the most vulnerable New Yorkers. Providing representation to New Yorkers in immigration proceedings speaks to a fundamental commitment to New York's values of inclusion and equal opportunity. We are grateful for the New York City Council's support for these essential services and look forward to continuing to work together to support New York's immigrant communities across the City.

1. Representation for Individuals in Detention

The New York Immigrant Family Unity Project (NYIFUP), the first government-funded legal representation program for detained immigrants, provides universal immigration representation regardless of income to help ensure New York families are not separated simply because they cannot afford an attorney. The importance of providing representation to detained immigrant New Yorkers cannot be overstated. Previously, only 4% of unrepresented, detained cases at Varick Street resulted in successful outcomes. Following the introduction of universal representation, 48% of NYIFUP cases end successfully – an 1,100% increase from the previous unrepresented success rate.¹ In addition to the obvious emotional impact of separation, many of

¹ See Vera Institute of Justice, "Evaluation of the New York Immigrant Family Unity Project," Nov. 2017, <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>

those detained by immigration authorities are relied upon by their families as primary wage earners. As a result of accessing this representation, greater numbers of New York families are able to stay together - with benefits for immigrant communities across our city. In the past year, we provided deportation defense to over 1,100 new and continuing clients, won over 100 removal cases, and secured the release from detention of over 150 clients. Among these clients are a number of vulnerable 18 year-old clients who were transferred from juvenile immigration custody to adult ICE detention centers at county jails as a result of policy changes that delayed their reunion with sponsors. Alarming, a number of our cases have involved U.S. citizens wrongly placed into immigration detention and removal proceedings. This includes one citizen who was detained for two years and Immigration and Customs Enforcement (ICE) refused to release despite clear evidence of his U.S. citizenship. NYIFUP attorneys were eventually forced to file habeas petitions in federal district court and he was then released one day later. Where it is not possible to halt removal proceedings or secure release, we provide our clients with frank and compassionate advice and ensure that there is due process throughout their proceedings.

Despite these many successes, representing detained New Yorkers continues to be extremely challenging – particularly as the Trump administration broadens its enforcement priorities beyond a previous focus on threats to national security. Among these challenges, ICE has recently begun to eliminate in-person appearances in court for detained individuals facing removal and replace them with video and audio conferencing. This has a significant impact on our ability to represent our clients effectively and ensure due process for individuals facing removal. This also deprives families of the opportunity to connect with their loved ones and further dehumanizes detained immigrants, an already vulnerable population. Under the current system, NYIFUP has provided a free attorney to almost every unrepresented detained immigrant facing deportation at Varick Street Immigration Court at their first court appearances. The new

process of eliminating in-court appearances deprives immigrants, many of whom have spent months in detention, of the opportunity to speak with a NYIFUP attorney at their first appearance. Additionally, relying on videoconferencing technology stops clients from meeting with attorneys prior to and following their court appearances. These meetings are essential to helping clients assess their legal options, sign or review documents, and make decisions about how to proceed with their case. In most instances, attorneys will be unable to meet confidentially with their clients before appearing in court, and clients will be unable to sit with their lawyers in court or look at the evidence presented. Further, there is no adequate provision of interpreter services for New Yorkers involved in removal proceedings appearing via videoconferencing technology. Simultaneous interpretation is currently the preferred method of interpreting for official court proceedings, and allows for interpretation to be provided to the client in real-time during the proceedings. However, this requires the person in removal proceedings to be physically present with the interpreter in the court room; as a result of this change, the interpreter will only be able to provide consecutive translation. There is a substantial risk that false or incorrect statements may be made in the courtroom without the individual facing deportation being given the opportunity to correct them or even being aware of them having been made. In addition, removing in-person court appearances forces immigration judges to make inherently difficult judgements as to credibility without having the individual physically present and risks distancing people from their own court proceedings.

In the past, NYIFUP has resolved 30-40% of cases at the first or second court appearance; this is no longer the case as intake can now only happen after the first hearing meaning that our cases and the court process take longer. NYIFUP attorneys are now forced to appear on intake dockets to ask judges for an adjournment for attorney screening and intake, and are then forced to travel to jails for intake, which takes more time and resources per attorney and extends each

client's case by at least one adjournment for us to actually start representation. Additionally, video hearings often have technical problems and a client's case may be adjourned for a month or more for another try at a bond or merits hearing.

Additionally, Executive Office for Immigration Review (EOIR) has recently begun creating new dockets at Varick Street without engaging with NYIFUP providers. In addition to ad hoc additions of extra detained dockets to individual daily calendars, it has recently been indicated that the detained dockets at Varick Street may increase significantly from February 2019. The government has indicated that the new courtroom construction is nearing completion and EOIR intends to add one or two full-time detained judges, in addition to increasing numbers of detained cases being heard by non-detained judges. While attempts to shorten the wait time before respondents' initial master calendar hearings are welcome, creating these new dockets without engaging with us leads to a range of issues. We have systems in place and staffing the dockets requires a great deal of organization and coordination, which are severely disrupted by these sudden changes. Creating these new dockets without consultation effectively interferes with the respondents' right to counsel and risks causing additional delays. Unfortunately, this approach is representative of a wider failure to engage with NYIFUP under the Trump Administration. In previous years, we have relied on regular stakeholder meetings with ICE (both the Office for the Chief Counsel and Enforcement and Removal Operations) and EOIR to help resolve issues such as these. Unfortunately, we have not been able to secure a meeting with EOIR and ICE for the last two years to continue this tradition of collaboration. Effective engagement between EOIR, ICE, and NYIFUP is in the interests of all parties: ensuring due process and increasing efficiency for all.

This also points to a wider resource issue among NYIFUP providers. Our staff currently has full caseloads responding to the established dockets, and we do not have much additional

capacity for additional case intake. As a result, if EOIR adds additional intake dockets of unrepresented respondents, we will be unable to staff these dockets and provide representation to these individuals without additional resources to hire new staff to take on the increased caseload. The addition of one NYIFUP intake day per week would increase our intake by 33% and the addition of two intake days would increase our intake by 66%. These cases are also increasingly time-intensive and adversarial to litigate, leaving us with a significant need for additional resources if we are to continue providing a truly universal right to counsel for detained cases in immigration court.

Developments in the immigration landscape and political environment also highlight the strong need to develop a robust federal practice institutionalizing rapid response in habeas proceedings. In February 2018, U.S. Supreme Court issued its decision in *Jennings v. Rodriguez*, finding that certain individuals subject to prolonged immigration detention are not statutorily entitled, under the Immigration and Nationality Act, to periodic bond hearings after six months of detention. As a result of this, the 2nd Circuit Court of Appeals vacated its related ruling in *Lora v. Shanahan*, from November 2015, which had previously allowed LAS to secure release of our clients at the six-month mark, unless the government was able to prove that continued detention was justified. As a result of the *Jennings* decision, LAS is now forced to undertake the much more burdensome and resource-intensive task of filing individual writs of habeas corpus—often accompanied by orders to show cause or temporary restraining orders—in federal district court, as well as Petitions for Review in the 2nd and 3rd Circuit Courts. In each of these cases, existing staff has been forced to abandon their anticipated schedules and reassign their responsibilities in order to do a tremendous amount of complex legal work on an accelerated basis within a very short time frame. Without additional resources and dedicated staff through a new federal practice, this work will not be sustainable in the long-term - particularly in light of ever-

increasing detentions and removals. Developing a robust federal practice will ensure that we are able to remain nimble and responsive to the rapidly changing immigration landscape and needs of our clients.

2. Representing Young People and Families

Together with our Immigrant Children Advocates' Relief Effort (ICARE) partners, LAS continues to provide direct legal representation, comprehensive advice, advocacy, and social work support to vulnerable New York City resident children and families in immigration proceedings. This legal representation is essential: without a lawyer, only 20% of cases are won by children compared to 92% of cases with a lawyer. Since the start of this project in July 2014, we have screened over 300 individuals and families and have concluded 83 cases successfully. We have successfully terminated proceedings for 45 minors in immigration court, allowing them to pursue Special Immigrant Juvenile Status (SIJS) through U.S. Citizenship and Immigration Services (USCIS). Children and families involved in immigration proceedings are an extremely vulnerable population. The trauma of being forced to flee danger and violence in their countries of origin is supplanted by the stress of having to navigate a complex and opaque bureaucratic legal system.

The legal landscape for immigrant children and families changes on an almost daily basis and we constantly alter our approach to adapt. The separated families crisis earlier this year illustrated how critical it is to be able to respond quickly to emerging issues. In this instance, we were forced to file an emergency class action lawsuit and group habeas petition to prevent the imminent transfer of our youth clients from facilities in New York to ensure their rights were upheld. Above all, this landscape is extremely challenging and complex and without access to effective representation it would be almost impossible for our clients to achieve the outcomes

they deserve. Many of the children we represent have their own individual claims separate to those of family members with whom they arrive, and in some cases also involve abuse and neglect.

While ICARE providers have substantially increased the numbers of children receiving representation, there are still significant numbers of unaccompanied minors and other children who face removal without legal representation. These numbers are growing, and over one-third of unaccompanied minors in New York are forced to navigate the complex legal system alone. Without representation it is extremely difficult for minors and children to argue their case effectively and their chances of success are drastically reduced as a result. Removal proceedings are abstract, technical legal proceedings, which require an understanding of the law and are difficult to follow for children, particularly those who do not understand English. This is further compounded by emotional issues and trauma, and children in this position often have complex psychological needs and require screening and appropriate medical, mental health, and social services. The difficulties facing this population highlight the acute need for universal representation for children in immigration proceedings in New York. As the New York City Bar has recently highlighted in its December 18, 2018 Statement in Support of Ensuring Right to Counsel for Minors, this is a matter of fundamental fairness. The consequences of deportation for a minor can be dire, and returning a child to an unsafe country of origin can lead to injury or even death. Since its implementation, NYIFUP has grown to become a national model for a universal representation practice for immigrant adults in removal proceedings. It is critical that we now work towards building a comparable program for the thousands of unaccompanied minors and children who are forced to traverse a legal system that is overwhelmingly stacked against them alone. It is time that New York takes on the role of providing a right to counsel for children in these desperate situations where the government has failed to do so.

Although the juvenile docket in Immigration Court has been partially reinstated, we continue to see significant numbers of unaccompanied children on other dockets. This, coupled with the loss of use of the ceremonial courtroom to meet with and screen children impacts our ability to identify, meet, and screen children for immigration relief. It has also meant that the delicate cases of vulnerable children are often being heard by immigration judges who have not been trained and educated to adjudicate children's cases in accordance with the special laws applicable to children. Despite advocacy with multiple agencies and at various levels, LAS and other ICARE providers continue to see children on non-juvenile dockets and have not been able to secure an alternate space to meet with and screen these potential clients. These hurdles make representing children and families more difficult and also impedes our ability to identify those who could benefit from our representation.

A number of recent developments have also complicated our ability to pursue asylum claims for our clients. In June 2018, former U.S. Attorney General Jeff Sessions issued *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) overruling a prior precedential decision, *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014), which held that there were certain circumstances – including gender, marital status, and certain country conditions – under which gang-related or gender-based violence could constitute a viable asylum claim. Under *A-B-*, the government has interpreted such circumstances as generally insufficient grounds for asylum, undermining thousands of potential asylum claims that would have previously been considered valid under *A-R-C-G-*. A large number of our children and family clients' claims for asylum are based on intra-familial violence, and this will significantly complicate our ability to obtain legal relief for our clients.

In January 2018, USCIS changed its policy regarding certain SIJS applicants. SIJS is a vital form of immigration relief for undocumented youth, and offers one of the first steps on a path to permanent residence and eventual citizenship for youth who have been abandoned, abused, or

neglected. USCIS had applied the SIJS Statute in its current form for a decade. However, USCIS recently changed its policy and stated – contrary to New York and federal law – that New York State Family Courts are not to be used to obtain predicate orders for SIJS eligibility for youth between 18 and 21 years old. LAS, together with *pro bono* co-counsel, filed a federal class action lawsuit on behalf of the estimated 3,000 New York resident youths who are prevented from regularizing their status as a result of this policy change. While we await decisions in this case, our clients continue to have their applications denied by USCIS; several clients have been ordered removed, despite the fact that their applications for SIJS are still in the appellate process.

In November 2018, EOIR issued two memoranda announcing changes that will fast-track “Family Unit” cases through the immigration courts. Under these new procedures, “Family Unit” or “FAMU” cases consisting of a noncitizen parent of legal guardian accompanied by their juvenile noncitizen child must be completed within 365 days of the commencement of removal proceedings. By comparison, in New York many immigration judges are presently setting non-FAMU cases for hearings in late 2021, meaning that FAMU cases will be completed in a third of the time of other cases. In order to make this schedule achievable, EOIR will schedule the first Master Calendar hearing before an immigration judge within 30 days, and clients will be given only one continuance of 40 to 45 days to try and obtain counsel – with the final merits hearing held another five to six months later. This time frame is unrealistic and does not leave adequate time for our clients to firstly obtain counsel, and secondly adequately prepare a legal defense for what are often among the most complex immigration cases. It is therefore very likely that these changes will result in increased numbers of individuals forced to appear without representation or without being able to formulate their case fully. This occurs at a time that the prevailing immigration environment makes effective representation even more important following recent

changes to the law by former Attorney General Sessions that make effectively arguing a case almost impossible for someone without counsel.

Additionally, we are concerned that FAMU cases will be assigned to brand new immigration judges, who are mostly former ICE prosecutors and whose training has emphasized efficiency rather than fairness. In addition, these new judges are on probation for two years, making them more likely to follow government guidance and less likely to exercise individual discretion in a desire to retain their jobs. As a result, these judges are likely to place emphasis on processing cases quickly rather than ensuring due process and fair representation. These changes will also strain an already overburdened court system, and non-FAMU clients who have patiently waited in limbo for up to three years while their cases are adjudicated will likely have their cases further delayed to ensure that the time-frame for FAMU cases is met.

3. Representing Non-Detained Immigrants Facing Removal

There is a strong need for representation for non-detained immigrants involved in removal proceedings in New York. This need is likely to increase significantly as the federal administration continues to expand its hostile policies against immigrant communities across the U.S.

In June 2018, USCIS issued a policy memorandum (PM) titled “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.” Under this new guidance, USCIS is directed to issue an NTA in any case where an immigration benefit application is denied and the applicant is removable – a significant expansion from its previous policy. NTAs are used to signal the initiation of removal proceedings against individuals and summon the recipient to appear before immigration court on a particular date. The NTA PM is being implemented incrementally, and the first stage of implementation began on October 1, 2018. The NTA PM adds dangerous teeth to USCIS’s PM

on the issuance of Requests for Evidence (RFE) and Notices of Intent to Deny (NOID), given that the new RFE/NOID policy denies applications or petitions outright rather than providing individuals with a reasonable opportunity to cure any evidentiary deficiencies, thus raising the likelihood that an NTA will be issued for even minor filing oversights. On November 15, 2018, the second stage of implementation began, which included applications for T and U visas for victims of human trafficking and other crimes, as well as SIJS and other humanitarian applications – impacting what are often among the most vulnerable populations. Under this new policy, NTAs are issued in instances where applications that impact status are denied. Previously, NTAs were primarily issued in findings of fraud, crimes, and abuses of the immigration system. This policy change will significantly reduce the way USCIS uses its discretion to issue NTAs, and will effectively result in NTAs being issued in all cases where the applicant no longer has a current lawful immigration status at the time that the immigration benefit is denied. These USCIS PMs dramatically raise the stakes for any affirmative immigration benefits application or petition.

This policy poses a serious challenge to providing legal representation to immigrant communities in New York, and is likely to result in an influx of removal cases. The New York immigration court already struggles with capacity issues, and this drastic increase in NTAs will result in further delays to a process that is already stressful and drawn out for our clients.

4. Curtailing Administrative Closure of Cases and Limiting Continuances

In addition to the specific issues impacting these different groups, several issues cut across immigration representation as a whole. Among these, in May 2018, former Attorney General Jeff Sessions issued a decision in *Matter of Castro-Tum*, 27 I&N Dec. 187 (A.G. 2018), that revoked immigration judges' and the Board of Immigration Appeals' authority to administratively close cases without deciding on them. Administrative closure of cases is recognized as a "docket

management tool” and is used by judges to pragmatically manage their caseloads and for prosecutors to prioritize the government’s limited enforcement capacity. Administrative closure has been regularly used since the 1980s, and was frequently used by judges to temporarily mark a case off-calendar while an immigrant’s related immigration proceedings were being completed. This would allow a client to pursue their claim for immigration relief without the threat of imminent deportation, and was also used as a tool by judges to ensure fairness in proceedings. However, following this decision, judges and the Board no longer have the authority to administratively close a case unless expressly authorized by relevant regulations. As a result, the government is now re-calendarizing cases that have long been administratively closed – often because of a recent criminal arrest, but also at times for no discernible reason. These attempts to re-calendar removal cases are causing tremendous confusion, concern, and uncertainty for our clients who have previously relied on administrative closure.

Further, former A.G. Sessions also issued a decision in *Matter of L-A-B-R-*, 27 *I&N* Dec. 405 (A.G. 2018) on August 16, 2018, restricting continuances in removal proceedings, and in *Matter of S-O-G- & F-D-B-*, 27 *I&N* Dec. 462 (A.G. 2018) on September 18, 2018, restricting the ability of immigration judges to terminate proceedings. All of these measures significantly increase the volume of cases that will be handled by the courts and make representing our clients more difficult.

5. Ensuring Proper Resources for Universal Representation

We are grateful for the New York City Council’s support for providing these essential legal representation services, whose vision and leadership has established New York City’s approach as among the most progressive in the nation. While vulnerable New Yorkers now have much greater access to legal services, we require significantly more resources if we are to be able to provide truly universal representation.

We are taking on greater number of asylum cases for representation, which involve very vulnerable clients seeking protection from persecution or oppression in their countries of origin. Asylum cases are typically complex, and as a result take a long time to be resolved – often a period of several years. Currently, there is an enrollment cap of two years, beyond which we do not receive full funding to work on these cases despite the fact that many cases take significantly longer to resolve. These unfunded cases impair our ability to continue providing our clients with high-quality legal services, and it is essential that cases are funded based on the reality of how they are litigated.

Additionally, under the Immigration Opportunities Initiative (IOI) program funding, there is currently a limitation on the number of matters we can report per client, as well as the number of years we can report an open case. Our clients frequently have multiple, substantive issues that require resolution simultaneously in order to obtain long-lasting solutions and the best possible outcomes for our clients. Currently, we receive funding for only a maximum of two matters per client, or three for SIJS cases, despite the fact that it is often in the client's best interests to pursue multiple forms of relief. We may represent a client in removal proceedings while also filing for an immigration benefit such as asylum, which would already lead to us hitting the cap of two issues. In other instances, a client may be eligible for more than one form of immigration benefit such as a U visa, and we are required to submit multiple applications to ensure our clients have the best chance of being granted immigration relief. Additionally, many clients are also eligible to apply for an employment authorization document, which can be vital in ensuring they are able to support themselves and their families, and these comprehensive services are currently not funded by the current program. Providing our clients with the best possible representation frequently entails us working on multiple, substantive issues, and it is essential that we receive adequate funding to reflect this.

Additionally, our staff is incredibly dedicated to providing vulnerable New Yorkers with high-quality immigration representation, and frequently work long hours away from their families to ensure that our clients receive the best possible service. Immigration law is a high-pressure environment and our staff handles a high volume of cases, which is only set to increase further given the current background. As a result, we are currently experiencing high rates of staff turnover and we urgently require additional funding to be able to employ more attorneys to combat high rates of staff burnout. It is in the best interest of our clients that we are able to retain our staff and do not lose the expertise of experienced attorneys because of inadequate resources.

We look forward to working closely with the City of New York to ensure that we are able to continue providing vulnerable immigrant New Yorkers with the best possible legal representation.

Respectfully submitted,

Hasan Shafiqullah
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Testimony of Rich Leimsider
Executive Director, Safe Passage Project
December 19, 2018

Thank you Chairman Menchaca as well as the other members of the committee for convening this very important hearing today. My name is Rich Leimsider and I am the Executive Director of the Safe Passage Project. The Safe Passage Project is a nonprofit organization based here in New York City that does only one thing: we provide free lawyers to refugee children who are being deported.

Safe Passage Project was founded in 2013 with a half-time staff person and a small budget, finding pro bono lawyers for a few dozen children. We will end 2018 with 28 staff working alongside 400+ pro bono attorneys, supported by a \$2.4 MM budget - all to provide full legal representation to more than 800 immigrant children. Our exclusive focus is children classified as unaccompanied minors who are currently being deported - and our mission is that by the end of 2020 no child in NYC will have to face deportation in immigration court without a lawyer.

You have already heard from one of our clients this afternoon. Axel's story is the most important evidence of the power of legal representation to transform the lives of vulnerable New Yorkers who are faced with deportation at New York's Immigration Court.

My testimony today focuses on three goals:

- 1) To provide some broader context on the challenges that immigrant children, in particular, are facing in our city these days.
- 2) To share some good news about the ways that Safe Passage Project staff and partner ICARE / UMI organizations - with significant support from the New York City Council - can continue to improve lives every day.
- 3) To encourage the Council to maintain its leadership by fully funding this work in FY20 and by taking steps to move our City toward the affordable and achievable goal of true Universal Representation - a right to counsel - for immigrant children who are being deported.

1) Background and Context

When Gabriela refused to become the "girlfriend" of a local gang member in El Salvador, she was told she would not live past the age of 15. Her father had already fled their home, leaving Gabriela and her sister alone under the constant threat of death and abuse by MS-13, a gang so

prevalent and powerful in El Salvador that the country has one of the highest homicide rates in the world. After being held at gunpoint on one occasion, Gabriela decided she and her sister had to leave, however hard the journey. They set off on the dangerous migrant trail north hoping to eventually connect with family members in the United States.

Gabriela's story illustrates the brutality and constant fear that is pushing many to leave the Northern Triangle nations of Central America - Guatemala, Honduras, and El Salvador. Over the last four years these countries have suffered high levels of gang violence, economic instability, and have turned into some of the most dangerous places on earth.

In 2014, the United States witnessed a surge of unaccompanied children (UACs) attempting to enter through the Southern border. Embarking alone on a long and dangerous journey, these children arrive at the border seeking safety, feeling gang violence and recruitment, parental abuse and neglect, sexual harassment, assault and extreme poverty. In 2017, the federal government reported over 40,000 immigrant children seeking entry to the United States. In recent months, there has been a marked increase in the number of apprehensions at the border, with roughly three times as many border apprehensions in May 2018 compared to the same time last year. Closer to home, more than 15,000 children are waiting for their cases to be heard by New York City immigration courts.

Federal law notably sets forth different rules and procedures governing the treatment of unaccompanied minors. Under existing US law, unaccompanied minors are entitled to several viable options to pursue legal status and ultimately become permanent US citizens. Despite legal protections, the process of pursuing permanent legal status is terrifying complex and the government is under no obligation to provide legal counsel in immigration court proceedings. As a result, more than half of immigrant children go through immigration proceedings without the aid of a lawyer. This chaos is particularly evident in New York, where changes in policies under the current administration have left cases involving immigrant children pending for years in a backlog of cases.

Data from the Transactional Records Access Clearinghouse (TRAC) illustrates that without an attorney, children win their cases only 17% of the time. Unable to effectively argue for the protections they may qualify for, more than 80% of unrepresented children are issued deportation orders. For many, this means returning to the danger from which they fled. Safe Passage Project is on the ground responding to this mounting crisis by representing these children in court, but the needs of this vulnerable population continue to grow.

The federal government is increasingly sophisticated in its administrative and procedural obstacles to our work. These generally fall within the alphabet soup of RFEs (Requests for Evidence), NOIDs (Notices of Intent to Deny), and NOIRs (Notices of Intent to Revoke). In one recent example, the federal government rejected our clients application for a form of protection that our laws grant to children who have been abandoned by their parents. Our clients parents had died, and the government argues that this does not count as abandonment.

Additionally, because the immigration court is not part of the Judicial Branch (actually, it's the Executive Office of Immigration Review, part of the Department of Justice), the Attorney General has the personal authority to overrule any decision made by any immigration judge or the Board of Immigration Appeals. Lately he's made several precedential decisions that make it harder for our clients to win Asylum claims.

We are still winning these cases but they take longer and consume more resources than they used to.

2. The Good News: We still win every day.

When a child does have an attorney, the statistics that we see from the TRAC researchers are reversed. More than 80% of immigrant children with representation secure either a permanent legal status or are granted a form of long-term permission to remain safely in the United States.

In 2014 the Council launched a unique public-private partnership that has demonstrated how effective legal representation can be. City funding through the Unaccompanied Minor Initiative was matched with private sector funding, most significantly from the Robin Hood Foundation, for a collaborative effort called ICARE.

With UMI funding, Safe Passage project has directly supported more than 300 children. We match our in-house staff attorneys and social workers with literally hundreds of volunteers. To strengthen our capacity to provide high quality legal assistance to all immigrant children, we recruit, train, and mentor pro bono attorneys. Thanks to this pro bono model, each staff attorney can support more than 75 individual cases — and we win over 80% of the time.

Safe Passage Project steps into the process as early as possible by conducting assessment interviews with newly arrived immigrant children. Here, we help the child and his or her sponsor identify all options to obtain legal status. When our clients appear in immigration court, they have a lawyer by their side, speaking on their behalf to the judge, explaining how they qualify for legal protection (e.g., asylum or protection for victims of trafficking). We will not stop fighting until every client can remain permanently in a safe and secure home.

- We support Claudia. A 16-year-old girl, she fled her home after being told that the notorious gang MS-13 would force her to be the "girlfriend" of a gang member. With our help, she has been granted Special Immigrant Juvenile Status and her deportation has been halted.
- We support Steven. A 13-year-old boy, he was part of a church youth group that encouraged teens to resist gangs. He was threatened and attacked. Steven fled to the United States and Safe Passage Project helped him win asylum.
- We support Milton. A 14-year-old boy who was abandoned by both parents, he came to the U.S. so that his only aunt could care for him. The government improperly and

unjustly initiated his deportation case by violating several federal regulations. Because of our creative legal arguments, his deportation case was dismissed.

- We support Dulce. A 14-year-old girl, she fled to the U.S. with her father. They were separated at the border. Her father was unfairly deported. Dulce was forced to decide whether to return to her home country and risk death, or to pursue legal relief in U.S. We fought for her right, enshrined in U.S. law, to apply for asylum.

3. Together, We Can Do More

Despite the tremendous efforts of Safe Passage attorneys and our excellent partners in the ICARE network, last year more than 1,000 immigrant children from NYC went unrepresented in immigration court. This is partly because of an increase in the number of children arriving, but also partly because level funding can't support new cases when existing cases take more than one year.

And although the federal government refuses to provide poor children with a lawyer when they are being deported, in New York City we can maintain our leadership and do even better.

Safe Passage Project respectfully encourages the Council to act in three important ways in FY20:

- a) Fully fund Safe Passage and our ICARE partners through the Unaccompanied Minors Initiative. Over the next few weeks the providers will be building our FY20 models and will present a budget that will allow us to support the maximum number of children. We look forward to working with Council Members and your staffs to share this work and our request for FY20.
- b) Continue to be our partner and advocate in pushing back on the so-called criminal carve out which prevents resources from reaching some of our most vulnerable children and adds unnecessary bureaucracy to the attorney-client relationship.
- c) Support a legislative and fully funded Right to Counsel for immigrant youth who are being deported. There is momentum in many quarters - and I know that the City Bar recently shared with the Council their recent statement calling for this Right to Counsel. Safe Passage and the ICARE partners would like to work with the Council and the Administration to develop meaningful legislation that will provide a critical safety net - true "sanctuary" for these incredible young New Yorkers.

In conclusion, I'm so grateful that our New York City Council, and this Committee, have not only supported young immigrants and the work of advocates, but have demonstrated true leadership through the Unaccompanied Minor Initiative. Times are tough for our clients, but I look forward to everything we can accomplish as we work together in the months ahead. Thank you for your time.

**Testimony Before the New York City Council's Committee on Immigration
Presented by Sarah Deri Oshiro on December 19, 2018**

Good afternoon, my name is Sarah Deri Oshiro and I am the Managing Director of the Immigration Practice at The Bronx Defenders. I would like to thank the New York City Council for its consistent and generous support of immigration legal services.

The Bronx Defenders pioneered the model of immigration services embedded in a public defender office over fifteen years ago. Our robust immigration practice is today comprised of over forty attorneys, social workers, advocates and administrators. We provide deportation defense in both detained and non-detained court settings. We work closely with non-citizen clients and their advocates throughout the pendency of their cases in both Criminal and Family Court to avoid or mitigate negative immigration consequences, and provide affirmative immigration services. As the Council knows, since November 2013, our immigration attorneys have also served as assigned counsel at the Varick Street Immigration Court under the New York Immigrant Family Unity Project, the first-ever universal representation project in immigration court. A recent study of that program demonstrated its extraordinary impact in securing release and stopping deportations for New Yorkers.

The Council is well aware of the remarkable success of our legal services programs. I would like to use my time today to highlight four challenges we are facing in light of changes in federal law and policy, and the need for continued funding from the Council going forward.

First: The introduction of video-teleconference (VTC) in lieu of in-person production of detained individuals to Immigration court has presented one of the greatest challenges for our deportation defense clients and staff. VTC--or the "Refusal to Produce" policy--was implemented with no warning or preparation, in apparent disregard of our clients' statutory and due process rights. This change impacts our attorneys' ability to conduct legal screenings on initial hearing dates, and prolongs the overall length of time our clients are held in detention. VTC infringes on our clients' due process rights, impedes their access to counsel, and limits their ability to meaningfully participate in their own defense.

Our clients relay that sometimes they cannot see, hear or understand the parties in the courtroom because of VTC. They articulate fear and discomfort in having to testify about their asylum claims with jail officers in the room with them. They express frustration that they cannot meet and speak with their attorneys on court dates and often must seek continuances to properly consult with counsel before taking action in their cases.

VTC drains our staff's time, strains our office's resources, and forces unfortunate decisions. For example, when a judge is unable to connect to our clients in the jails during a hearing, which is common, our attorneys may be asked by the court to waive their clients presence at a hearing or face a weeks-long adjournment to try again. VTC thus prolongs detention by weeks or months.

Second, indiscriminate ICE enforcement against individuals deemed "low-priority" under previous administrations, including large numbers of arrests of clients with low-level or no

criminal records, remains a problem. Immigration detention centers and the courts are now flooded with people who would not have been in removal proceedings before. They certainly would not have been detained. The other side of indiscriminate enforcement is a lack of prosecutorial discretion. This manifests as ICE attorneys' unwillingness to stipulate with counsel at the outset of proceedings on matters such as bond, certain aspects of relief from deportation, or the decision to not appeal legal victories of our clients. Our clients spend more time in custody, prevail less frequently though deserving of relief, and our staff's dockets swell with more appellate cases.

Third, rampant criminal courthouse arrests of New Yorkers who are responsibly attending hearings present a problem for immigrant community members and exacerbate the immigration court backlog. ICE's arrest practices pit the fear of deportation against the desire to exercise one's rights in the criminal justice system. Then, when our clients are swept up in courthouse raids before they have the opportunity to resolve their criminal matters they languish in ICE detention with open criminal charges, which often prolong the amount of time they spend in deportation proceedings. This in turn worsens the court backlog as well.

Finally, the Attorney General continues to certify Board of Immigration Appeals decisions to himself, using his authority over the immigration courts to issue decisions with deleterious impact on our clients and their due process rights. This practice is occurring at an unprecedented rate, in an attempt to undo years of carefully developed legal precedents with the stroke of a pen. The harmful impact of these new decisions is hard to overstate. The scope of what constitutes a protected ground upon which to seek asylum has been narrowed (*Matter of A-B-*; *Matter of LEA*). Immigration Judges' authority to manage their dockets by administratively closing or terminating cases has ceased (*Matter of Castro Tum*; *Matter of S-O-G*), and their authority to grant continuances has been drastically curtailed (*Matter of LABR*). Lastly, the AG recently certified a decision to himself that would seek to eliminate asylum seekers' rights to be released from detention. This would impact the liberty rights of many of our clients who are apprehended at the border and transferred to New York. In sum, vindicating our clients' legal rights in this evolving legal landscape proves more challenging every day.

The policies, practices and enforcement trends described above ultimately exacerbate the court backlog, which, for detained clients has drastically increased the length of time between arrest by ICE and initial presentment before the court. Our detained clients currently wait an average of 80 days before they first see an immigration judge. Together with Cardozo Immigration Justice Clinic and the New York Civil Liberties Union, The Bronx Defenders brought a lawsuit to challenge this unlawful practice. Because of the massive increase in ICE arrests and the absence of a system to ensure people are brought to court quickly after arrest, the number of detained immigrants has ballooned. To protect people's rights, NYIFUP will likely need to direct resources and time to clearing this backlog. I flag this for the Council today to underscore the need for increased funding for immigration court representation.

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

Wednesday, December 19, 2017, 1:00 p.m.

RE: Oversight - The Need for Legal Representation in Immigration Court under Trump.

Thank you for this opportunity to testify about the need for legal representation in immigration court. My name is Terry Lawson. I am the Director of the Family and Immigration Unit of Bronx Legal Services, an office of Legal Services NYC. Legal Services NYC fights poverty and seeks racial, social and economic justice for low-income New Yorkers. I also co-lead the Bronx Immigration Partnership, a network of over twenty organizations and agencies working together to create a coordinated safety net of legal and social services for Bronx residents.

Legal Services NYC is grateful for the vital immigration funding it receives through New York City's IOI, DoVE, and CSBG programs, in addition to the generous discretionary grants it receives through City Council members. Through these programs and other funding, in City Fiscal Year 2018, Legal Services NYC provided legal assistance in 5,485 immigration cases, benefitting 12,635 immigrants and their family members. So far in FY2019, we have opened new immigration cases for 1,212 clients and are currently representing 71 immigrant youth in removal. City funding allows staff in our borough offices and outreach sites to meet with hard-to-reach community members, enabling them to come out of the shadows, opening *in absentia* removal orders, and providing them the strongest defense to removal.

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Raun J. Rasmussen, Executive Director
Susan J. Kohlmann, Board Chair

Allow me to illustrate the importance of city funding for immigration court representation through the story of one Garifuna woman I'll call Ana V. Through the Bronx Immigration Partnership, Bronx Legal Services works closely with Garifuna Community Services and its leader, Gregoria Flores. As the Council knows, there is a large Garifuna population, with many recent Honduran arrivals, in the Bronx. This summer, Ana V. and her 16-year-old daughter were connected with Garifuna Community Services after arriving in New York from the border. Gregoria reached out to Bronx Legal Services for help reuniting Ana and her older 19-year-old daughter, from whom she had been separated at the border. At an event this fall with Council Members Salamanca, Gibson, Ayala, Torres, and others, Ana V spoke, in heartbreaking detail, about the pain of being separated from her older daughter and their efforts to reunite. With support from our social worker, Ana V, a Far Rockaway resident, was connected with Queens Legal Services, the Queens office of Legal Services NYC. In the two weeks between Ana V's impassioned speech and her intake appointment with Queens Legal Services, the immigration court provided no notice of her court date, and the judge entered a removal order *in absentia* against Ana V and her younger daughter when they did not appear. Meanwhile, ICE deported Ana V's older daughter, from a Texan detention center.

A disturbing new trend in the overloaded New York immigration court is to label recent arrivals of parents with children as "FAMU" and to require these families to appear for their first master calendar hearing within 30 days of being served with the Notice to Appear, permitting only one continuance of 30-45 days to find legal representation, and requiring their merits

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hearing be completed within 5-6 months. On top of this accelerated timeline, the immigration court frequently changes court dates, providing individuals and their counsel little to no warning, and subjecting them to the very high risk of *in absentia* removal orders – orders of removal when someone does not appear.

When our social worker notified Queens Legal Services of the removal orders, Queens Legal Services immigration director Cristina Velez quickly filed a Motion to Reopen the removal orders. That motion was granted last month, and Queens Legal Services will be representing Ana V and her daughter in immigration court on their asylum applications. Without city funding, our representation of Ana V and her daughter, and the hundreds of other immigrants we stand with in immigration court would not be possible. At the same time that we applaud the city for providing vital funding, we feel the pain of all that we cannot do, wondering whether more funding could have helped us to stop the deportation of Ana V's 19-year-old daughter.

We ask the City Council to continue to fund immigration court representation, as well as critical social work services, for New York's nonprofit community. We are stronger together, and with the City Council's support, we will fill the halls of New York immigration court with talented, bright, fearless advocates and social workers who will do everything possible to protect immigrant New Yorkers, regardless of when they arrived. Thank you.

Terry Lawson,
Director, Family and Immigration Unit,
Bronx Legal Services (Legal Services NYC)

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**ADVANCING OUR
COMMUNITY**

Chinese-American Planning Council, Inc. (CPC)

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**Chinese-American Planning Council, Inc.
Testimony at the New York City Council Committee On Immigration
Honorable Carlos Menchaca, Chair
12/19/2018**

Thank you Chair Menchaca and the Members of the City Council for the opportunity to testify today. The mission of the Chinese-American Planning Council, Inc. (CPC) is to promote social and economic empowerment of Chinese American, immigrant, and low-income communities. CPC was founded in 1965 as a grassroots, community-based organization in response to the end of the Chinese Exclusion years and the passing of the Immigration Reform Act of 1965. Our services have expanded since our founding to include five key program areas: Early Childhood Education, School-Age Child Care, Education & Career Services, Senior Services, and Community Services.

CPC is the largest Asian American social service organization in the U.S., providing vital resources to more than 60,000 people per year through more than 50 programs at over 30 sites across Manhattan, Brooklyn, and Queens. CPC employs over 700 staff whose comprehensive services are linguistically accessible, culturally sensitive, and highly effective in reaching low-income and immigrant individuals and families. To that end, we are grateful to testify about issues that impact the individuals and families we serve, and we are grateful to the Council for their leadership on these issues.

Asian American Pacific Islanders (AAPIs) are the fastest growing population in New York, making up 15% of the population and growing. The largest AAPI ethnic groups in New York include: Chinese (755,983), Indian (405,833), Korean (145,335), Filipino (142,006), and Bangladeshi (86,228), but there are over 25 distinct ethnic groups and languages spoken by AAPI New Yorkers.

AAPIs experience some of the highest rates of Limited English Proficiency, with 80% of Asian Americans in New York speak a language other than English at home, and of those, more than 55% speak English less than "very well."

At the same time, cultural barriers and the political climate are making it both increasingly important, and increasingly difficult to access legal services. Many of CPCs community members have a deep sense of fear around issues of immigration, housing, and employment, but struggle to find a lawyer that speaks their language or can provide culturally competent services. We consistently have community members coming to seek legal services, yet there are very few Asian American legal services available. We have partnerships with NYLAG and IJC to provide a few days of legal services a week at each of our community centers, but demand for appointments always exceeds the available time slots.

The concern with this of course, is that a lack of appropriate legal services leads to the rise of predatory legal services, similar to "notarios," who will take advantage of community members. In fact, many of the cases we get are "second opinion," where a broker has defrauded a client, or they have been told to apply for a visa that they are not eligible for. In these cases, there is often not a lot we can do to help these clients, but these problems would not occur to begin with if there were adequate legal services for the AAPI community.

We urge the New York City Council to prioritize linguistically and culturally appropriate language services for immigrant New Yorkers, and to ensure that CBOs that have trust with those communities are funded to carry out those legal services. CPC appreciates the opportunity to testify on these issues that so greatly impact the communities we serve, and look forward to working with you on them.

If you have any questions, please contact Carlyn Cowen at ccowen@cpc-nyc.org



Testimony of Amy Taylor, Make the Road New York Before the New York City Council Committee on Immigration Wednesday, December 19, 2018

Good morning. My name is Amy Taylor and I am Co-Legal Director of Make the Road New York. Thank you to Committee Chair Menchaca and to the Committee on Immigration for the opportunity to testify today on behalf of Make the Road New York and its 24,000 members.

First off, we thank the City Council for supporting increased funding for immigrant legal services which has begun to address the vast unmet need for immigrant legal representation in New York City. City funding has greatly increased the capacity of organizations like ours to represent immigrant clients and the city's commitment has sent a powerful signal of standing by the immigrant community in funding access to counsel. However, despite the increase in funding for these services over the past few years, organizations like ours still turn away individuals seeking legal services every single day.

Make the Road is here today to support a bold recommendation to create a program in New York City to guarantee universal representation for *all* immigrants in removal proceedings. NYC's NYIFUP program is a nationally recognized successful model for universal representation for detained immigrants. Today we propose that this model be expanded to non-detained individuals. The communities we represent are under greater attack than ever before. Our federal government is increasingly hostile to immigrants of all backgrounds, even those who are the most vulnerable and the most in need of our support. The Trump administration is working to end DACA, TPS, asylum and is waging a piecemeal war to slowly tear apart our nation's immigration system and deport as many of our neighbors as possible. It is New York City's responsibility to be a model City and a leader across the country for bold smart initiatives that protect immigrants.

A universal representation program for individuals in removal proceedings would vastly increase their likelihood of success in proceedings that are harder to win and more resource-intensive every day. Without access to counsel, immigrants are forced to either represent themselves against trained government attorneys in one of the most complex areas of law or spend money many do not have to hire a private attorney. We urge the council to take this bold step in the face of unprecedented attacks from Washington. This bold new program will set the stage for replication across the country to fight back against the assaults on immigrant communities happening everywhere. Absent universal representation, what we know as a fact is that New Yorkers will continue to be deported not because they lack a valid claim to status but solely because they lack access to counsel.

We also want to highlight the need for support for community-based emergency legal representation arising out of raids response work that many community-based organizations are engaged in. Every week

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STATEN ISLAND
161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
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FAX 718 981 8077

LONG ISLAND
1090 SUFFOLK AVENUE
BRENTWOOD, NY 11717
TEL 631 231 2220
FAX 631 231 2229

WESTCHESTER
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community members come through our doors to report a family member recently detained by ICE. This emergency support includes legal advice and counseling, time sensitive bond hearings, preparation for reasonable fear interviews, filing motions to reopen for people with prior orders of deportation and habeas petitions in federal court. This is work that requires legal resources and expertise on emergency timelines that most organizations are unable to provide.

Based on the experiences of our staff and communities, we also support continued and expanded funding for the following initiatives specifically:

- NYIFUP: This noble council-funded program is facing more challenges than ever when interfacing with EOIR and ICE and NYIFUP cases are harder to fight and more time-sensitive than ever. The council should continue funding NYIFUP and remember that the NYIFUP providers need the City's support and flexibility in order to address each new challenge when fighting the detention and deportation machine. We know there is a pressing emergent need facing this program and we stand in solidarity with the NYIFUP providers testifying today.
- ICARE: We support the City Council's endeavor to provide guaranteed representation for unaccompanied minors in removal proceedings.

Additionally, we ask the City Council to resume its fight to oppose the Mayor's criminal carve-out for legal services that creates an unjust barrier to legal services for immigrant New Yorkers with certain criminal convictions. Limiting legal representation in this way stands in conflict with everything that we, as a legal services and immigrant rights community, believe in. The City must stand with immigrant communities and families who are facing separation, not prevent them from accessing services that could actually protect them. A carve-out for criminal convictions is an attack on due process, which is already grossly lacking in the immigration context and precisely why New York City has fought for access to counsel in immigration proceedings. The carve out will mean families will be separated, children will lose parents, and breadwinners will be detained and deported. Furthermore, this proposal stands in stark contrast to the criminal justice reforms our City has been fighting for.

I'd like to thank Council Member and Chair Menchaca and members of the Committee for your time today and ongoing leadership. MRNY appreciates our partnership with each of you to ensure the respect and dignity of immigrant families in New York City. I hope you will consider the requests we have made today, and we look forward to working together in 2019.

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TESTIMONY OF:

**Andrea Sáenz – Attorney-in-Charge, New York Immigrant Family Unity Project
BROOKLYN DEFENDER SERVICES**

**Presented before
The New York City Council
Committee on Immigration
Oversight Hearing on the Need for Legal Representation in Immigration Court
Under Trump
December 19, 2018**

I. Introduction

My name is Andrea Sáenz. I am the Attorney-in-Charge of the New York Immigrant Family Unity Project (NYIFUP) team in Immigration Practice at Brooklyn Defender Services (BDS). I thank the City Council for this opportunity to testify about the work that legal service providers across New York City, including Brooklyn Defender Services, are doing to represent community members who are facing deportation in New York City's Immigration Courts, and the ongoing and dire need for our services given the Trump Administration's sweeping and harsh enforcement regime.

BDS is a full-service public defender office in Brooklyn, representing nearly 30,000 low-income New Yorkers each year who are arrested, charged with abuse or neglect of their children, or facing deportation. Since 2009, BDS has counseled, advised or represented more than 10,000 immigrant clients. We are a Board of Immigration Appeals-recognized legal service provider.

Our immigration practice consists of more than 50 staff who work in three distinct teams that specialize in different aspects of immigration law:

- **The BDS Padilla Team** advises BDS's criminal defense and family defense attorneys and their immigrant clients on the immigration consequences of a guilty plea to help avoid or minimize negative consequences. About a quarter of BDS's

30,000 criminal defense clients are foreign-born, roughly half of whom are not naturalized citizens and therefore at risk of deportation or loss of opportunity to obtain lawful immigration status as a result of their criminal case. Our specialists provide support and expertise on thousands of cases, including Padilla advisals, advocacy regarding enforcement of New York City's detainer law, as well as with ICE officials to secure the release of our clients while charges are pending against them.

- **The New York Immigrant Family Unity Project (NYIFUP)** is the New York City Council-funded first-in-the-nation program providing counsel to immigrant New Yorkers who are detained and facing deportation and separation from their families and communities. BDS is proud to be a NYIFUP provider, along with The Bronx Defenders and The Legal Aid Society. Since the project's inception three years ago, BDS NYIFUP attorneys have defended more than 1,000 people in deportation proceedings. Jointly the NYC NYIFUP providers have won release from ICE custody for over 900 clients and won the cases of over 500 clients, with hundreds of cases still pending. The Vera Institute of Justice's comprehensive November 2017 study found that 48% of NYIFUP cases end successfully – a 1,100% increase from the rate for unrepresented cases before NYIFUP.
- **BDS' Immigrant Youth and Communities Team** has represented thousands of Brooklyn immigrants in their applications for lawful immigration status and in removal proceedings for people who are not detained, including motions to reopen prior orders of removal. Highlights of our work include representing young people in their pursuit of Special Immigrant Juvenile Status (SIJS) or Deferred Action for Childhood Arrivals (DACA) and working with Haitian and Central American New Yorkers to file or renew applications for Temporary Protected Status (TPS). We regularly provide Know Your Rights trainings for the community, including information on encounters with ICE and family preparedness planning. We also produced four short animated films as part of a national empowerment campaign called *We Have Rights* that informs community members how to prepare for and safely defend their rights during encounters with ICE.¹

II. Recent National Trends in Immigration Enforcement and Due Process in Immigration Court

BDS has represented individuals who are in "removal proceedings," or court proceedings where the government seeks a person's deportation, since 2009, and has done so at high volume since pioneering the NYIFUP program in 2013-14. This work has always been complex and time-intensive, and has always revealed injustices in the ways our current immigration laws separate parents from children, do not allow for second chances from long-ago arrests or errors, and impose the harsh and usually permanent penalty of deportation on people who served no jail time or have shown true rehabilitation and service to their communities, all while reinforcing the devastating racial and economic inequalities of our criminal legal system. Even under the Obama

¹ Learn more about the campaign at www.wehaverights.us.

Administration, rates of immigration detention and annual deportation rose to record levels, and the administration used cruel, stigmatizing rhetoric about deporting “felons, not families” that demonized anyone with criminal justice contact, even though many of those individuals had loving families and strong defenses to removal.

However, under the Trump Administration, we are experiencing the harshest and broadest-sweeping immigration enforcement regime in modern history, as well as an unprecedented undermining of due process in the immigration courts. Combined, this means that New York City’s commitment to fund high-quality legal representation for low-income people in our city’s immigration courts is more critical than ever. Ultimately, we believe our federal government must fundamentally transform its immigration system to recognize the humanity of all people, including by repealing the laws that created our current mass immigration detention system.

On a national level, enforcement and policy trends include:

- The highest rate of daily immigration detention in history, with a shocking average daily population of over 42,000 people, which is even above ICE’s Congressionally-mandated “bed mandate” level.²
- So much spending on enforcement and detention that DHS has raided the much-needed funds of other agencies like FEMA and TSA in order to spend it on detaining more immigrants.³
- Mass detention of parents and children, some together, and some in separate facilities after inhumanely pulling them from each other’s arms at the border with no systems or plans to track and reunite them.⁴
- Record-high levels of children detained in Office of Refugee Resettlement custody, along with reports of ICE arrests of sponsors trying to take in these children.⁵
- Constant arrests inside and near local courthouses, undermining people’s ability to even seek justice in the criminal legal system.⁶
- The use of baseless and uncorroborated allegations of gang membership to target Central American youth for detention, deportation proceedings, and denial of benefits.⁷

² <https://www.cnn.com/2018/11/12/politics/ice-detention/index.html>

³ <https://www.nbcnews.com/politics/immigration/dhs-transferred-169-million-other-programs-ice-migrant-detention-n909016>

⁴ https://www.washingtonpost.com/politics/2018/10/02/triple-barreled-indictment-trumps-family-separation-policy-his-homeland-security-department/?utm_term=.3fe251f39965

⁵ <https://www.cnn.com/2018/11/23/politics/hhs-record-14000-immigrant-children-us-custody/index.html>

⁶ <https://www.npr.org/2018/12/13/676344978/judges-ask-ice-to-make-courts-off-limits-to-immigration-arrests>

⁷ <https://www.thenation.com/article/ice-admits-gang-operations-are-designed-to-lock-up-immigrants/>

- Widespread workplace arrests that target undocumented workers for criminal and immigration arrests, but only fine the employers who may have coerced and mistreated them.
- The attempted end of DACA as well as TPS for almost every country that held the designation, meaning millions of people will lose affirmative status and be vulnerable to removal proceedings.
- New policies allowing U.S. Citizenship and Immigration Services to deny more applications for citizenship, permanent residence, and other benefits more quickly, and to trigger the beginning of removal proceedings more automatically for people who have an application denied.
- Aggressive attempts to “denaturalize” people already granted citizenship by combing through past applications looking for small mistakes or omissions, and deport them.

On a national level, immigration court trends include:

- The highest immigration court backlog in history, at over 800,000 cases.⁸
- The end of ICE counsel using prosecutorial discretion, a bedrock tool of any prosecutor’s office, to close low-priority cases and lighten the court docket.⁹
- Former Attorney General Sessions making repeated public remarks that many asylum seekers are lying and pressing fraudulent claims, that “dirty” immigration lawyers are assisting in asylum fraud, and that immigration judges must decide cases faster and avoid feeling sympathy for the people who come before them.¹⁰
- The Attorney General using the “certification” process to send long-standing immigration precedent to himself for review faster than any Attorney General has ever done,¹¹ overturning only cases that were favorable to asylum seekers or that helped immigration judges exercise their own discretion and manage their large dockets, including:
 - New decisions from the Attorney General taking away immigration judges’ ability to “administratively close” or terminate certain cases to await pending visa applications or otherwise manage their documents, and cautioning judges not to

⁸ http://trac.syr.edu/phptools/immigration/court_backlog/

⁹ <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration>

¹⁰ See <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-executive-office-immigration-review> , <https://www.politifact.com/truth-o-meter/statements/2018/jul/02/jeff-sessions/jeff-sessions-false-claim-80-percent-asylum-appli/>, <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-largest-class-immigration-judges-history>

¹¹ <https://www.vox.com/policy-and-politics/2018/5/14/17311314/immigration-jeff-sessions-court-judge-ruling>

grant many continuances, along with ICE counsel aggressively moving to put some prior closed cases *back* on the clogged immigration court dockets.

- New decisions from the Attorney General attempting to reduce grants of asylum to victims of severe domestic violence whose countries will not protect them, as well as reducing protections to people targeted for persecution and death on the basis of their family membership or as a result of resistance to transnational gangs, in short attempting to sharply limit long-standing precedent that protected many Central American people who are in grave danger in their countries.
- Policy memos from the Executive Office for Immigration Review (EOIR) requiring that judges meet case completion quotas or face poor evaluations, and instructing them to move certain types of cases more quickly and with stricter standards for granting continuances for people to seek counsel and properly prepare their cases.¹²
- Increased need for Board of Immigration Appeals and federal court appeals to challenge unsound Immigration Judge rulings affected by increasingly anti-immigration case law

All of these trends result in more New Yorkers being detained and placed into deportation proceedings, straining the capacity of BDS and other legal service providers who want to defend as many people as possible. For example, in the last year, NYIFUP has represented many clients who were arrested at or near city courthouses, as well as many 18 and 19 year-old clients who were not released from ORR custody to a waiting sponsor in a timely way and instead were cruelly arrested by ICE on their 18th birthdays and taken to adult ICE custody in a county jail. In particular, BDS has represented dozens of people who would likely have qualified for an exercise of prosecutorial discretion or for a grant of administrative closure in immigration court, but now are forced to fully litigate their cases, which necessitates more legal assistance.

III. Recent Local Trends in Immigration Enforcement and Due Process in Immigration Court

In addition to the above, we have experienced several local trends that have made these problems worse and created new obstacles in our representation. These include:

- Particularly aggressive courthouse arrests, the highest rate New York has ever seen. Such arrests often interrupt existing criminal cases, delaying favorable dispositions and also requiring more resources by defense counsel.¹³
- ICE officials explicitly threatening to punish “sanctuary cities” or cities with detainer discretion policies, like New York, with more community raids and arrests. We saw the plain facts of this trend when new ICE numbers were released Friday showing that

¹² <https://www.apnews.com/d8008f7a66a54562b612bd74156f2bed>

¹³ <https://theintercept.com/2018/11/02/ice-arrests-video-nyc-courts/>

national ICE arrests are up 11% in the last fiscal year while New York ICE arrests are up 35%.¹⁴

- New York ICE exercising no discretion to release arrested individuals on their own recognizance or set their own bond amount, as once occurred, so virtually all detained people, including those with no criminal history or serious medical needs, stay detained until they see a judge and retain counsel to successfully advocate for their release on bond. The increased arrests combined with the failure to ever release people short of a court order is the principal reason the detained backlog has grown and the need for representation at Varick Street has grown along with it.¹⁵
- The sudden decision, in late June 2018, to stop producing any detained people to their own hearings at Varick Street and require everyone to appear via highly flawed video teleconference technology. This has: prevented NYIFUP from using its long-standing and successful same-day intake model that allowed us to move cases on the first hearing; prevented private and non-profit attorneys alike from brief meetings with clients to sign documents or discuss strategy at Varick Street; caused significant back-ups and wait times at the jails where our clients are held just to briefly meet clients; and prevented clients from seeing or making eye contact with their loved ones in the courtroom.¹⁶
- Most recently, EOIR adding unrepresented individuals to the detained dockets without notice, outside of the set NYIFUP intake days that we and the court have agreed and collaborated on over the last five years, as well as indicating plans for a sharp increase of cases on the detained docket in early 2019.

Specifically, EOIR has recently informed us that they will be opening up to seven new courtrooms at Varick Street and that two of them will be for full-time detained dockets, while other judges will hear non-detained cases but have “flexibility” to hear additional detained cases. This change is expected in February 2019 or even sooner. This potentially represents a sudden and sharp increase in unrepresented detained New Yorkers, and NYIFUP providers do not have the resources or the staff to nearly double our workload, especially when staff are spending substantially more hours to do our existing cases because of all the factors above.

We have countless examples of individual clients who have been harmed by the enforcement and court trends in the above lists. As just a few recent examples, BDS represents:

- Dane Freeman, who was brought to the U.S. at a young age, became captain of the Canarsie High School soccer team, married his high school sweetheart, and is beloved by his U.S. citizen wife and 3 U.S. citizen children. Dane had trouble seeking a green card because of a single drug possession offense from 2000. In 2016, ICE used their discretion

¹⁴ <http://gothamist.com/2018/12/14/ice-deportations-surge-new-york.php>

¹⁵ <https://www.theverge.com/2018/12/12/18138243/nyclu-lawsuit-ice-immigration-risk-assessment-tool>

¹⁶ See <https://documentednyc.com/2018/12/07/court-use-of-video-conferencing-causes-case-slowdown/>, <https://www.nytimes.com/2018/06/27/nyregion/new-york-immigrants-deportation-video-hearings.html>

to agree that Dane was not an enforcement priority and join a motion to close his case. This year, they forced his case back on the docket, and he is once again facing deportation.¹⁷

- “Ana,” an indigenous woman who survived violence so severe in Honduras the immigration judge asked ICE to consider agreeing to a grant of protection for her. When ICE refused, the judge denied her asylum claim and ordered her deported, citing 7 times to *Matter of A-B-*, a recent Jeff Sessions decision that guts long-standing protections for asylum seekers fleeing violence. Instead of a straightforward asylum victory, we will now represent her on a complex appeal.
- “Mario,” a high school student who already had been granted Special Immigrant Juvenile Status and had his green card application pending when he was arrested by ICE on completely baseless allegations that he was a gang member. It took 4 months of detention in a county jail before he had a bond hearing, when ICE filed photos of Mario taking a selfie of himself wearing a Chicago Bulls hat and challenged him to name the team’s roster to prove he was not in MS-13. The Immigration Judge was dismayed and granted bond, but Mario lost so much time detained he will probably have to repeat 11th grade.
- Levy Jaen, a father of 4 U.S. citizen children who has lived in Queens since childhood, who fought with us through almost 2 full years of detention and appeals to prove that he acquired U.S. citizenship through his father at his birth. This year, the Second Circuit Court of Appeals proclaimed Levy a citizen, ordered him immediately released, and one judge noted that she was “troubled” by the government’s choices in denying him his liberty and identity for so long.¹⁸

These national and local trends, taken together, represent an all-out attack on immigrant communities in New York. They have also impacted the daily practice of BDS and other legal service providers who represent people in New York’s immigration courts. In short, more people are being placed into removal proceedings, more people are being detained during those proceedings, and each case itself takes more resources to provide excellent representation in a hostile and high-pressure enforcement and court environment.

Nonetheless, we and our NYIFUP partners are fully committed to the critical work of defending our communities and values. In the coming year, we will need new and additional resources to truly stand up to the rising challenges of the current moment, including a significant increase in NYIFUP funding if the Council shares the goal of continuing to ensure high-quality representation for every person detained and facing deportation in New York who cannot afford an attorney.

¹⁷ Dane’s story is featured in <https://documentedny.com/2018/08/31/thousands-of-new-yorkers-could-be-headed-back-to-immigration-court/>

¹⁸ See <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-ice-citizen-detained-paternity-appeals-court>

IV. Conclusion

Thank you for inviting me to testify and for considering my remarks today. I look forward to continuing to work with you to protect immigrant New Yorkers from the federal government's vicious attacks and ultimately, I hope, winning humane immigration reform to end these injustices.

Please reach out to Senior Policy Specialist Jared Chausow at jchausow@bds.org or 718-254-0700 ext. 382 if you have any additional questions.

**NORTHERN MANHATTAN
IMPROVEMENT CORPORATION
(NMIC)**

TESTIMONY
ON

The Need for Legal Representation in Immigration Court
under President Trump

PRESENTED BEFORE:
THE NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION

PRESENTED BY:
MARC VALINOTI
MANAGING IMMIGRATION ATTORNEY
NORTHERN MANHATTAN IMPROVEMENT CORPORATION
December 19, 2018

Good morning Chair and Council Members. On behalf of Northern Manhattan Improvement Corporation (hereafter, "NMIC"), I thank you for inviting us to present our views on the need for legal representation before the Executive Office for Immigration Review (EOIR or Immigration Court). My name is Marc Valinoti and I am the Managing Immigration Attorney at NMIC.

NMIC is a community-based, not-for-profit organization founded in 1979 that has grown into a leading multi-service agency with a staff of over 120 serving New York City with a focus on upper Manhattan and the Bronx. *Our legal and social services programs include immigration, housing, financial counseling and health services. Our education and career services provide the community with the additional tools necessary to build secure and prosperous futures.*

LIMITS ON CAPACITY TO REPRESENT IN EOIR

The EOIR is an administrative court where the outcome can have dire consequences on a client's entire life. Competent and thoughtful representation can make the difference between a Judge's decision to remove the client from the United States or to grant them Permanent Resident Status. NMIC's Immigration Unit provides consultations and representation primarily on USCIS applications, including humanitarian forms of relief such as U-Visa, VAWA, and SIJS cases. Although we screen and advise clients on a wide range of immigration issues, our ability to provide robust representation before the Immigration Court is very limited. There are two key aspects of how the lack of funding for nonprofit EOIR representation impacts our ability to assist immigrant New Yorkers.

FINDING REPRESENTATION FOR CLIENTS ALREADY IN PROCEEDINGS

The first is when a screened client has an upcoming hearing in the EOIR. Lacking the capacity to place one of our own attorneys on a court case that can take years to complete, our current practice is to directly refer the client to a partner organization. However, other organizations have similar constraints on their capacity which often prevents them from

taking on the client's case. This results in the client having to appear *pro se* before often hostile Immigration Judges and Attorneys from the Department of Homeland Security.

INCREASED RISK OF AFFIRMATIVE CASES TRIGGERING REMOVAL

Another issue arises in the decision of whether to file certain affirmative cases with USCIS. Up until recently, a relatively narrow set of USCIS application denials would result in a Notice to Appear (NTA) at removal proceedings. In June of 2018, DHS issued a memo vowing to greatly expand instances where the applicant for an immigration benefit will be issued an NTA. The list includes but is not limited to Applications for Adjustment of Status (I-485), Extension or Change of Temporary Status (I-539), Applications for U-Visa Status for Crime Victims (I-918), Applications for the Abused Spouse of a Permanent Resident or U.S. Citizen (I-360) as well as Special Immigrant Juvenile Status (I-360).

This new policy mandates an extra layer of analysis and risk assessment before even deciding to file a case with USCIS for a client who is not yet in removal proceedings. The likelihood of a positive outcome for an application (which can often depend on the individual USCIS officer's evaluation) is now weighed against the risk of being issued an NTA upon denial and having to fight against deportation. And, as with new clients who are already in proceedings, we will have to refer to other organizations those summoned to Immigration Court after their USCIS case is denied. Regardless of the strength of the person's possible removal defense, without an attorney the client's chances of success are extremely limited.

As a direct services provider, is especially disheartening to tell a retained client that we must now refer them in the hope that another organization has the capacity to defend them before an Immigration Judge. Lack of adequate funding to take on more EOIR cases is deeply frustrating and prevents clients with viable removal defense cases from getting the representation they desperately need.

CENTRAL AMERICAN LEGAL ASSISTANCE

Ayuda Legal Para Refugiados Centroamericanos

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

Testimony before Immigration Committee

Of New York City Council December 19, 2018

Chairman Menchaca and Committee Members:

Representing Central Americans in removal proceedings, as we do every day, requires being very resilient, to use a popular word.

A few months ago, in the summer, we were dealing with children being taken from their parent at the border. Litigation ensued; the practice stopped.

Then the then Attorney General pulled the rug out from under women seeking protection from domestic and sexual violence: they would no longer qualify for asylum.

Next President Trump announced that no one entering the U.S. other than at a border check point could apply for asylum. Litigation ensued: the policy – which was clearly contrary to statute – was dropped.

Now meet the FAMU docket. If the Administration cannot send people right back at the border, they are now trying to adjudicate their claims for asylum as fast as possible. Newly arrived asylum seekers are now being given initial (master) call hearings within one or two months of release from the border. They typically appear without attorneys, there not being enough attorneys in the city to represent everyone. Typically their next court hearing will be set for only two or three weeks later. At that second hearing, the judges are requiring the immigrant to be ready for a final, dispositive hearing within less than six months. This is almost impossible since supporting documents must be obtained from the home country, translated and filed with the court at least 30 days before the final hearing. If you do not bring enough supporting proof, your claim can be denied even if the judge believes your testimony.

New York City's immigration court has grown from seven judges when I began this work back in the mid-1980s to a staggering 33 judges today. The newer judges are on probation; they are the most vulnerable to the new emphasis on speed. They are under orders to crank out decisions within six months, to hear four cases a day.

This week (December 17-21, 2021) our office has 22 hearings (four final, 19 preliminary) for as many individuals. This is a record: 8-12 hearings a week is more normal for us. But it is a sign of things to come. And even the preliminary hearings take hours as the court dockets are often over fifty people each judge.

Whereas in the past, immigration judges were willing to put cases on a slow track, or even suspend proceedings, if the person – often a child – had a chance at some form of other anti-deportation relief such as a special juvenile visa, or a U visa for victims of crime – now they are not willing to do so. The Attorney General has ordered them not to suspend proceedings for any reason.

This new emphasis on speed above all else not only means immigrants will not have an adequate opportunity to present their claims for asylum, they will not be eligible for work authorization. You can only get permission to work if your asylum case has been pending over five months and this new policy attempts to deny cases before the person becomes eligible, thus making life even harder for poor immigrants.

Our program is already committed to appearing for 193 hearings (representing over 250 people) scheduled for final hearings in 2019. We also have a large caseload of final hearings set in 2020, 2021 and 2022 – commitments which we will keep no matter what. But of course we do not know what funds we will have so far out in the future. So this work is not for the faint of heart.

We very much appreciate this Committee's support and the whole Council's funding of our work and that of our sister organizations.

Anne Pilsbury, Director

**TESTIMONY OF
JAKE DAVID LARAUS, ESQ.¹**

Presented before

The New York City Council

Committee on Immigration

*Oversight Hearing on “The Need for Legal Representation in Immigration
Court under Trump” (T2018-3363)*

Wednesday, December 19, 2018 at 1:00 PM

Good afternoon. Thank you to Chairman Menchaca and the other members of the Committee on Immigration for again inviting me to testify before this body. My name is Jake LaRaus. I am a practicing immigration attorney, working primarily in the areas of deportation defense, family-based immigration, and humanitarian relief. I am also a sitting member of the American Immigration Lawyers Association (AILA) New York chapter’s Advocacy Committee. In my personal capacity, I have been actively involved in immigration-related policy development and legislative advocacy on the Hill.

Today marks the third time I have had the privilege of speaking to this Committee, though the issue that is the focus of this hearing is truly first in magnitude and significance for me personally. Perhaps, my being an immigration attorney, this would be expected or at least not particularly surprising. However, with the Trump Administration continually ramping up its bigoted crusade against non-citizens and the world of immigration law becoming ever murkier as these ham-fisted changes are effectuated,² I hope that all those in attendance today will be convinced of the paramount importance of legal representation in immigration court by the end of this hearing.

To begin to understand the role of attorneys and legal representatives in the immigration context, one must first comprehend the nature of the ultimate potential unfavorable outcome in the immigration court process: deportation. In this time of unchecked and unrepentant aggression by immigration enforcement agencies and the callous Administration that directs their activities, it may well seem as if deportation is a decidedly American creation, borne out of our sometimes-ignored history of migratory exclusionism and racialized treatment of non-citizens. This assumption, though, would belie the extensive and historically-entrenched legacy of the formalized concept of

¹ Associate attorney and Immigration Policy Advocacy Coordinator – Youman, Madeo & Fasano, LLP. Licensed to practice law in New York & New Jersey. Practice limited to immigration. The testimony presented herein, as well as the oral testimony offered in conjunction, solely reflects the beliefs of the witness and no other individual or entity unless otherwise noted.

² See generally Perry Bacon Jr., “Trump Hasn’t Needed the Wall to Remake U.S. Immigration Policy,” *FiveThirtyEight* (Dec. 6, 2018), <https://fivethirtyeight.com/features/trump-hasnt-needed-the-wall-to-remake-u-s-immigration-policy/>.

deportation, which finds its origins nearly two millennia ago in, aptly enough, a progenitor of our American republic: Rome. In the nascent Roman Empire, *deportatio* was “the most extreme case of banishment” and resulted in the “forcible removal” of an individual from within the Empire’s borders to a designated point outside them.³ Emperor Augustus was reportedly inspired, as appropriate to the inherently uncompromising and punitive nature of the act, to conceive and institute the new penalty of *deportatio* after being pleased with the results of his prior forcible banishment of his daughter to a remote island off the coast of Italy for perceived “unacceptable behavior.”⁴ The through-lines connecting this illiberal post-democratic period of Roman history in which *deportatio* arose and our current era of burgeoning American illiberalism, as well as the coincidental philosophical threads linking the family separation that inspired *deportatio* and the family separations inhumanely orchestrated by the Trump Administration, are difficult to ignore.⁵

Just as Cicero lamented how he had been “ruined and shattered” by his forcible exile from Rome, so too have American courts long acknowledged the unavoidably ruinous consequences of deportation.⁶ In 1893, the usually-conservative Justice David Brewer savaged the majority’s decision in *Fong Yue ting v. United States* with a fiery and rhetorically artful dissent, declaring, “Every one knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel.”⁷ In the successive years and decades, the Supreme Court repeatedly characterized the resultant effects of deportation in a similarly unflinching manner, at different times calling it “a drastic measure” wherein “the stakes are considerable,” a form of “banishment” that “uproot[s]” people and renders them “displaced” and “homeless,” and an act that “may result . . . in loss of both property and life, or of all that makes life worth living.”⁸

In the modern era, American jurisprudence continues to recognize the “particularly severe ‘penalty’” that is deportation.⁹ New York is no exception, with the highest court of our state having pronounced in recent years that “the deportation process deprives the defendant of an exceptional degree of physical liberty” and may cause an individual to “not only lose the blessings of liberty associated with residence in the United States, but may also suffer the emotional and financial hardships of separation from work, home and family.”¹⁰ The “gravity” and “profound significance

³ Kerill O’Neill, Ph.D. (ed.), “History of Roman Exile,” *Ovid and the Censored Voice*, Colby College (2018), <http://web.colby.edu/ovid-censorship/exile/history-of-roman-exile/>.

⁴ See Fred K. Drogula, Ph.D., “Controlling Travel: Deportation, Islands and the Regulation of Senatorial Mobility in the Augustan Principate,” 61 *The Classical Quarterly* 230, 234 (2011).

⁵ See generally Dara Lind, “The Trump Administration’s Separation of Families at the Border, Explained,” *Vox* (June 15, 2018), <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>.

⁶ See Kerill, *supra* note 3.

⁷ *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893) (Brewer, J., dissenting).

⁸ See *Harisiades v. Shaughnessy*, 342 U.S. 580, 600 (1952) (Douglas, J., dissenting); *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948) (internal citations omitted); *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).

⁹ See *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (internal citations omitted); see also *Bado v. United States*, 186 A.3d 1243, 1251 (D.C. 2018) (noting that “[r]emoval” from the United States carries with it the “grave consequences” of being deprived of “the cherished values that have beckoned to people in other lands since our country’s founding and continue to provide hope for those seeking a better life,” the “loss” of which “is so great as to be unquantifiable”)

¹⁰ *People v. Peque*, 22 N.Y.3d 168, 192 (N.Y. 2013).

of deportation” was in fact one of the primary animating concerns running throughout a monumental decision issued just last month by the Court of Appeals of the State of New York, which held that “deportation is a sufficiently severe penalty” such that “a noncitizen defendant charged with a deportable crime is entitled to a jury trial under the Sixth Amendment.”¹¹

For the vast majority of undocumented or out-of-status non-citizens in the United States who are caught up in the throes of our overzealous enforcement machine, all roads lead to and through the American immigration court system, which is the entity empowered to order an individual’s removal (legal term of art for “deportation”) from the United States. However, even though the ultimate negative outcome of one’s case in immigration court is deportation – an undeniable “punishment” that deprives a person “of all that makes life worth living,”¹² per the Supreme Court – individuals in immigration court have no right to government-provided legal representation.¹³ This means that for those 63% of non-citizens in immigration court who are unable to secure an attorney to represent them, they must proceed *pro se* (without legal representation) – regardless of whether they are asylum-seekers fleeing persecution, elderly people with illnesses, or even unaccompanied minors facing down this situation by themselves.

The monumental task of hypothetically representing oneself in immigration court truly cannot be overstated. According to learned scholars and experts, immigration law is “intricate, ‘hopelessly convoluted,’ ‘byzantine,’ [and] . . . a ‘hideous creature.’”¹⁴ One court even expressed its frustration with immigration-related regulations, saying that “they yield up meaning only grudgingly and that morsels of comprehension must be pried from mollusks of jargon.”¹⁵ Per the American Bar Association (ABA), the field of immigration law “is widely regarded as second only to tax law in its statutory complexity.”¹⁶ The inherent difficulty and complexity of immigration law is then significantly compounded by the unavoidable institutional shortcomings and problems of the immigration court system. By virtue of its subsidiary location within the Department of Justice and direct management by non-judge political appointees, the American immigration courts are in truth courts in name only, lacking the independence, autonomy, freedom from political oversight, and definitive objectivity that traditionally are the foundation of a functioning legitimate court system.¹⁷ According to Paul Schmidt, a former immigration judge and former chairman of the Board of

¹¹ *People v. Suazo*, No. 117, 2018 N.Y. Slip Op. 08056 (N.Y. Nov. 27, 2018).

¹² See *supra* note 8.

¹³ See INA § 240(b)(4)(A) (“[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.”); see also Ingrid Eagly & Steven Shafer, *Access to Counsel in Immigration Court*, at 1 (Sept. 2016) (“It has long been the case that immigrants have a right to counsel in immigration court, but that expense has generally been borne by the noncitizen.”).

¹⁴ See Won Kidane, “Immigration Law as Contract Law Everyday Law for Migrants,” 34 *Seattle U. L. Rev.* 889, 889 (2011) (reviewing Victor C. Romero, *Everyday Law for Migrants* (2009)); see also *Padilla v. Kentucky*, 559 U.S. at 375 (explaining that immigration law “can be complex” and “is a legal specialty of its own”).

¹⁵ See *Dong Sik Kwon v. INS*, 646 F.2d 909, 919 (5th Cir. 1981).

¹⁶ Joshua Daley Paulin, “Immigration Law 101,” *GPSolo*, American Bar Ass’n (June 29, 2017), available at https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2013/september_october/immigration_law_101/.

¹⁷ See generally Catherine Y. Kim, “The President’s Immigration Courts,” 68 *Emory L. J.* 1 (2018); Bijal Shah, “The Attorney General’s Disruptive Immigration Power,” 102 *Iowa L. Rev.* 129 (2017); Ben Johnson, “We Need an Independent Immigration Court System,” *The Hill* (Oct. 1, 2018), <https://thehill.com/opinion/judiciary/409172-we-need-an-independent-immigration-court-system>.

Immigration Appeals (BIA), the immigration court system also has “glaring quality and due process problems,” which instead of being fixed are ignored in favor of an “emphasis from the politicians . . . on artificially trying to make a broken system go faster and churn out more potentially erroneous decisions.”¹⁸ To make matters worse, the new enforcement-heavy and reasonableness-eschewing policies of the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) have compelled the agency’s trial attorneys, who represent the government in immigration court proceedings, to forego nearly all semblances of discretion and prosecutorial restraint.¹⁹ All of this comes together to create a situation wherein a non-citizen in immigration court proceedings, who is already facing a life-altering risk of deportation, must somehow also juggle the innate complexity of immigration law, the confounding nature of the overburdened and oft-politically-undermined immigration court system, and an adversarial ICE trial attorney whose incentive is to obtain a removal order. To call this a Sisyphean or quixotic undertaking would be an immense understatement.

Falling back on the “civil” nature of immigration court proceedings has always been a poor excuse for denying non-citizens access to government-provided counsel for their cases. Given the tangible threat of deportation and the plodding ordeal that is an immigration court case, many respondents in immigration court are in situations more dire and with greater risk than some criminal defendants, and yet their lack of citizenship and placement in the immigration court system deprives them of the legal representation they need to even have a chance of success. Until such time as Congress recognizes the costly mistake this deprivation of representation constituted and rights this decades-old wrong, the responsibility will fall to states and municipalities to try and fill in the gaps and pioneer localized legal representation programs to ensure that a person’s life is not upended for want of an attorney.

¹⁸ See Paul Schmidt, “DOJ POLITICOS SEEK TO “SPEED UP” A CAPTIVE COURT SYSTEM ALREADY STRUGGLING WITH THE BASICS OF DUE PROCESS FOR MIGRANTS: 4th Cir. Has To Instruct BIA On Applying The Burden Of Proof In Removal Proceedings – Mauricio-Vasquez v. Whitaker,” *ImmigrationCourtside.com* (Dec. 17, 2018), <http://immigrationcourtside.com/2018/12/17/doj-politicos-seek-to-speed-up-a-captive-court-system-already-struggling-with-the-basics-of-due-process-for-migrants-4th-cir-has-to-instruct-bia-on-applying-the-burden-of-proof-in/>.

¹⁹ See generally Randy Capps et al., *Revving Up the Deportation Machinery: Enforcement and Pushback under Trump* (May 2018), www.migrationpolicy.org/sites/default/files/publications/ImmigrationEnforcement_ReportinBrief_FINAL.pdf.



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December 19, 2018

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony to the New York City Council Committee on Immigration. We welcome the committee's oversight hearing concerning the need for legal representation in immigration court under the Trump administration. As civil immigration arrests skyrocket and immigration court backlogs swell, it is vital that the Council examine how immigrant New Yorkers' due process rights are being protected.

I. The NYCLU.

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 120,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. The need to ensure full representation for immigrants who are facing deportation or seeking other legal relief is a matter of basic due process, and the NYCLU supports the efforts of officials to expand funding and access to these critical legal services.

In both the criminal justice and immigration contexts, the NYCLU has fought alongside legal services providers for the due process rights of New Yorkers. In 2014, the NYCLU settled a historic lawsuit brought against the state of New York for its failure to adequately support indigent criminal defense services throughout the state, forcing the state to implement critical reforms in five upstate counties,¹ and paving the way for statewide legislative reforms adopted two years later.² Last year, we sued the Trump administration over its unlawful restrictions on the parole process for asylum-seekers held at an immigration detention facility in Batavia, New York, resulting in a court order for bond hearings for all those detained for six months or longer and mandating modifications to parole practices at the facility.³

¹ NYCLU, *Hurrell-Harring et al. v. State of New York* (Challenging New York State's Failure to Provide Adequate Public Defense Services), <https://www.nyclu.org/en/cases/hurrell-harring-et-al-v-state-new-york-challenging-new-york-states-failure-provide-adequate>.

² NYCLU, *Lawmakers Pass Major Statewide Reforms of Public Defense System*, April 10, 2017, <https://www.nyclu.org/en/press-releases/lawmakers-pass-major-statewide-reforms-public-defense-system>.

³ NYCLU, *Court Orders Federal Immigration Jail in Buffalo to Offer Parole, Bond Hearings for Asylum-Seekers*, Nov. 20, 2017, <https://www.nyclu.org/en/press-releases/court-orders-federal-immigration-jail-buffalo-offer-parole-bond-hearings-asylum>.

Here in New York City, along with the Bronx Defenders and the Immigration Justice Clinic at Cardozo School of Law, the NYCLU brought a class-action lawsuit last month against the ICE and the Department of Homeland Security (DHS) challenging the unconstitutional practice of holding immigrants in detention for months before they even have a chance to see a judge and seek their release or other relief.⁴

II. The need for legal representation in immigration court under the Trump administration.

The need for robust legal representation in immigration court is as urgent as ever. New York City's immigration court has more pending cases than any other in the country,⁵ as arrests and deportations in the New York region have shot up in the last fiscal year at a rate more than double the national average.⁶ Meanwhile, Immigrations and Customs Enforcement (ICE) has cynically shifted to a system of video-conferenced court appearances for detained immigrants at the city's immigration court under the guise of efficiency, hampering the ability of respondents to connect with their attorneys and effectively plead their case before an immigration judge.⁷ This two-pronged attack of arresting immigrants in overwhelming numbers and then depriving them of due process in court underscores the importance of providing all immigrants with the chance to argue their cases with the assistance of counsel.

Our case challenging the practice of prolonged detention for immigrants before they ever go to court illustrates the heightened challenges in ensuring legal representation for immigration court respondents in the current political climate. More than 70% of detained immigrants wait more than a month before seeing an immigration judge, and about one in ten of those turn out to not be deportable at all.⁸ Yet while they wait to see a judge, many detained immigrants – and particularly those who rely on New York City's groundbreaking New York Immigrant Family Unity Project (NYIFUP) for representation – have no access to counsel and no way to assess their legal options.

While immigration court proceedings are federal matters, state and local governments play a critical role in ensuring that immigrant respondents are adequately represented. Because those facing deportation or litigating other civil immigration matters are not afforded an attorney at the expense of the federal government, locally funded programs can help ensure that immigrants who can't afford an attorney aren't forced to navigate complex cases alone.

⁴ NYCLU, *Vasquez Perez v. Decker*, <https://www.nyclu.org/en/cases/vasquez-perez-v-decker>.

⁵ See Transactional Records Access Clearinghouse, Immigration Court Backlog Tool, http://trac.syr.edu/phptools/immigration/court_backlog/.

⁶ Beth Fertig, *ICE Arrests and Deportations On the Rise in New York*, Gothamist (Dec. 14, 2018), http://gothamist.com/2018/12/14/ice_deportations_surge_new_york.php.

⁷ Max Siegelbaum, *Court Use of Video Teleconferencing Causes Case Slowdown*, Documented (Dec. 7, 2018), <https://documentedny.com/2018/12/07/court-use-of-video-conferencing-causes-case-slowdown/>.

⁸ Paige Austin & Simon McCormack, *ICE is Keeping Immigrants Locked Up for Months Before They See a Judge*, NYCLU (Nov. 29, 2018), <https://www.nyclu.org/en/news/ice-keeping-immigrants-locked-months-they-see-judge>.

Indeed, New York City became a national leader in providing legal services for immigrants in establishing the NYIFUP program, which has achieved near-universal representation for detained immigrants whose cases are heard in immigration court in the city.⁹ Yet the continued attacks on the due process rights of immigrants require city officials to do all they can to ensure that the current funding and existing representation models are not undermined.

The needs of immigration legal services providers are complex, and those providers are in the best position to speak to the specific ways that local programs and funding impact their work. Our testimony focuses on the need to fund immigration legal services fully and completely, and to do so without discriminating against those with past criminal justice involvement.

III. Legal representation must be funded fully and completely.

As noted above, New York City has been a national leader in expanding representation for detained immigrants, and the city provides millions of dollars more to representation of unaccompanied minors and other programs serving immigrant communities.¹⁰ But the current enforcement climate is constantly creating new challenges for immigration attorneys, who must deal not only with the increased volume of cases, but with proactive attempts by the current administration to deny their clients due process and access to services and benefits.

Meaningful legal representation in the immigration context requires a holistic approach. We know from our work with legal services providers that many immigrants' removal cases can take years to resolve. Effectively representing a client in immigration court can require extensive discovery and fact-gathering, travel, and attention to related matters in federal court, criminal court, family court, or school suspension hearings. Funding must be sufficient to allow attorneys to fulfill their ethical duties to their clients and pursue all legal remedies that will help their clients avoid deportation.

The Trump administration's callous efforts to deprive immigrants of due process, as discussed above, further contribute to the need for greater funding for legal representation. When would-be clients are left in detention for months without access to counsel, and scheduling procedures and video conferencing make it difficult for lawyers to meet detained immigrants when they do make a first court appearance, legal services providers are forced to go to greater lengths to ensure that their client base is being served. Confronting these challenges necessarily requires additional resources.

⁹ Vera Institute of Justice, Evaluation of the New York Immigrant Family Unity Project, Nov. 2017, <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

¹⁰ New York City Council, Fiscal 2019 Adopted Expense Budget Adjustment Summary: Schedule C, June 14, 2018, pp. 53-56, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/06/Fiscal-2019-Schedule-C-Final-Report.pdf>.

As the Council examines how it can improve immigrant legal services in New York City, it must ensure that providers have sufficient resources to address all of their clients' needs, so that the promise of effective representation is realized. We urge the Council to listen to needs of legal services providers and shape policy to reflect those objectives.

IV. Funding for immigrant legal services must not be subject to a “criminal carve-out.”

New York City set a new standard when it became the first city in the country to provide near-universal representation for detained immigrants, a model that has since been extended to upstate regions and replicated in cities across the country.¹¹ Yet in 2017, the city took an unfortunate step backwards when it began exempting from public funding individuals who had been convicted of certain enumerated crimes, a carve-out that continues into the current fiscal year.¹² While we understand that private donors have committed to funding representation for affected NYIFUP clients, the carve-out also applies to programs like the Immigrant Opportunities Initiative that assist people with obtaining lawful status. For those programs, no dedicated funding source exists to cover those who are exempted.

Excluding immigrants from publicly funded legal representation based on their past contact with the criminal justice system is antithetical to due process. Those individuals are denied not just the outcome that might result from being represented by counsel, but the right to be meaningfully heard in court in the first instance. Immigration law is extraordinarily complex, and results from the NYIFUP program demonstrate that having a lawyer greatly increases a person's chances of a successful outcome.¹³ All those who are facing deportation or pursuing legal avenues to remain in the country deserve, at minimum, the assistance of counsel to navigate the intricacies of immigration law and make their case.

Depriving someone of counsel in a current immigration proceeding based on past contact with the criminal justice system imposes a prejudicial moral test for respondents. Many individuals affected by the criminal carve-out will have been completely rehabilitated since the time of their convictions, while others may have pleaded guilty simply to escape pre-trial detention. Even if an individual's conviction appears to pose a barrier to avoiding deportation or obtaining status, a skilled lawyer may be able to seek post-conviction relief or explore other legal options that a *pro se* litigant would likely not be equipped to pursue. Without legal representation, many won't know what their options are, let alone be able to effectively advocate for themselves.

¹¹ Vera Institute of Justice, Safety and Fairness for Everyone (SAFE) Network: Local Leaders Keeping Immigrant Families Together and Communities Safe, <https://www.vera.org/projects/safe-network>.

¹² Jeff Coltin, *NYC covers immigrants' legal costs for those without a criminal conviction*, City & State (June 14, 2018), <https://www.cityandstateny.com/articles/politics/new-york-city/budget-immigrants-legal-costs>.

¹³ Supra note 9.

The criminal carve-out is a mistake that the city must discontinue going forward. Due process demands that the city make the immigration legal services it funds accessible to all those who need it and are otherwise eligible, without turning away those with criminal records.

V. Conclusion.

The current administration has pulled out every stop to attack the due process rights of immigrants, and the City Council can respond by helping ensure that all immigrant New Yorkers are adequately represented in immigration court. We thank the Council for examining this important issue, and call on local lawmakers to meet the challenge by fully funding immigration legal services and ensuring due process for all.

The Need for Legal Representation in Immigration Court under Trump.

Let me start by dispelling a common misunderstanding that, unlike criminal court and despite the life and death consequences, there is no right to an attorney in immigration court. A study conducted by The National Immigrant Justice Center shows that, on average, only 37 percent of immigrants are able to secure representation. Although there is no right to an attorney, the consequences faced are often worse than those faced in a criminal prosecution.

Individuals in immigration court face deportation, often to countries that are more violent than what Americans would recognize as active war zones. This for many can be a death sentence, as was the case for Laura S. a young woman from Mexico. Laura S. had been living in the United States for most of her adult life, until she was pulled over by a cop who asked for her permanent resident card and called border patrol. Under pressure, Laura signed paperwork for a voluntary departure. She had no attorney, and a competent one would have advised her of different pathways towards remaining in the United States. Laura stated that she could not be sent back, that she had a protection order against her ex-husband. After the common experience of being rushed through the immigration system, upon return her ex-husband did as he had promised, and killed her by setting fire to her car as she left the house to buy food for her kids. If Laura been given the opportunity to be represented by an attorney, she would likely still be tending to her children and contributing to her adopted community.

Laura was one amongst many individuals seeking a better life in the United States, especially today as we see gang warfare on the level of civil wars in Central America, Muslims being persecuted in Myanmar and China and cartels controlling large areas of the Mexican border. Because of these current events, it should come to no surprise that, according to the United Nations, there has been a fivefold increase in asylum seekers since 2008. The Trump administration has often called individuals from these nations undesirable, murderers, rapists, and thugs. In reality, he is heartlessly cracking down on people trying to escape the most desperate circumstances since the Rwandan genocide, and the tone only changes when children in cages get sufficient press.

Not only has the Trump administration continuously used this rhetoric, but Jeff Sessions has also taken advantage of his power to refer immigration decisions to himself for review. Earlier this year, Mr. Sessions referred the case of an asylum seeker to himself: The Matter of AB. AB had been repeatedly abused by her husband, who raped her so many times she could not count how many. Ms. A.B.'s relationship with her husband was characterized by constant brutality and she often feared for her life. She repeatedly sought protection from Salvadorian authorities, but these attempts went in vain as local authorities there do not recognize domestic abuse.

Eventually, she was rightfully granted asylum in the US. That was until Mr. Sessions took the case for review. Using his review power, Sessions overruled a prior Board of Immigration Appeals decision, the matter of ARCG, which essentially held that victims of domestic violence can qualify for asylum based on their particular social group. This has resulted in many asylum hopefuls facing daily abuse to be stranded in dangerous situations, and is another reason court representations are extremely important in today's political climate. This also came from the same man who said at a news conference that separating families as a matter of policy was intentionally traumatizing children to send a message to their parents not to come to the US to apply for asylum, and did so proudly with a smile.

The Legal Department at The Council of People's Organization has strived to provide necessary court assistance for individuals like Laura S and AB, and we have had no shortage of asylum seekers coming through our doors; from LGBT claims from Uzbekistan to religious persecution in Pakistan; Russian attorneys critical of Putin to opposition political organizers fleeing Haiti; those fleeing the pervasive violence of gangs in El Salvador and seeing the worst of the gender violence we only speak of in hushed tones, we have seen the deep need that lies beneath the surface at our clinic, and in that we are certainly not alone. We urge this Committee on Immigration, as well as the broader community, to continue supporting organizations such as ours in their efforts to provide legal representation to those being targeted by the Trump administration.

Thank you for allowing me the time to testify today.



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**WRITTEN TESTIMONY OF
THE TASK FORCE ON THE CIVIL RIGHT TO COUNSEL,
CHILDREN AND THE LAW COMMITTEE,
COUNCIL ON CHILDREN,
FAMILY COURT AND FAMILY LAW COMMITTEE,
IMMIGRATION AND NATIONALITY LAW COMMITTEE,
THE PRO BONO AND LEGAL SERVICES COMMITTEE,
AND THE SOCIAL LAW WELFARE COMMITTEE**

**NEW YORK CITY COUNCIL COMMITTEE ON IMMIGRATION
OVERSIGHT HEARING: THE NEED FOR LEGAL REPRESENTATION IN
IMMIGRATION COURT UNDER TRUMP**

December 19, 2018

The New York City Bar Association (“City Bar”) submits the appended statement in support of ensuring right to counsel for minors in removal proceedings. The statement was drafted by the City Bar’s Task Force on the Civil Right to Counsel with the assistance and support of the above referenced committees. The Task Force on Civil Right to Counsel was formed in the spring of 2018 to advocate for the most effective implementation of New York City’s newly established right to counsel in eviction cases (“RTC”), to support the extension of that right to other jurisdictions, and to advocate for the extension of the right to counsel in other civil matters where fundamental human needs are at stake. The Task Force includes the President of the City Bar in an ex officio capacity, the immediate past President of the City Bar, prominent members of the bar, judiciary and legal academia, leading housing rights advocates and liaisons to other relevant City Bar committees.

Thank you for your consideration.



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**TASK FORCE ON THE CIVIL RIGHT TO COUNSEL
CHILDREN AND THE LAW COMMITTEE
COUNCIL ON CHILDREN
FAMILY COURT AND FAMILY LAW COMMITTEE
IMMIGRATION AND NATIONALITY LAW COMMITTEE
PRO BONO AND LEGAL SERVICES COMMITTEE
SOCIAL WELFARE LAW COMMITTEE**

DECEMBER 18, 2018

**STATEMENT IN SUPPORT OF ENSURING RIGHT TO COUNSEL FOR MINORS
FACING REMOVAL PROCEEDINGS**

The New York City Bar Association issues this statement in response to the shameful fact that large numbers of children are appearing in removal proceedings without counsel. This statement is based upon the following facts:

- Courts have not recognized a constitutionally guaranteed right to an attorney for individuals, including minors, in removal proceedings, if they are unable to afford counsel.
- The number of unaccompanied minors and other children facing removal without legal representation is growing such that fewer than two-thirds of unaccompanied minors in New York are represented.
- The consequences of deportation for a minor can be extremely dire, including injury and death.
- Removal proceedings are abstract and technical legal proceedings. They are conducted in English, a language which the minor, in most cases, does not understand. It is, therefore, extremely difficult or impossible for a minor to navigate removal proceedings unrepresented by counsel.
- Statistics show that without legal representation minors have almost no chance of success in removal proceedings. Conversely, if minors have legal representation, their chance of success dramatically increases.

- Unaccompanied minors and other children separated from their families are often fleeing endemic violence and persecution, and need screening and appropriate medical, mental health, social and other government services.
- Representation by an attorney for minors in removal proceedings provides fundamental fairness for those facing deportation and separation from their families.

* * *

The City Bar is committed to pursuing the right to counsel and appropriate language, social, and medical services for minors under the age of twenty-one who are facing federal immigration removal proceedings in immigration court. We urge our partners in the private bar, educational institutions and government to pursue actions that will result in establishing the right to counsel for minors facing removal in New York. Moreover, in order for the representation of minors in removal proceedings to be meaningful, government funding must be adequate to provide full representation by competent, experienced, qualified attorneys with workable caseloads and sufficient social services and related support.

Roger Juan Maldonado
President

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has over 24,000 members, is to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. Prior City Bar statements on the right to counsel for unaccompanied minors can be found [here](#) and [here](#).

**THE COUNCIL
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: Jojo Annobil

Address: 17 Battery Place, NY NY 10004

I represent: Immigrant Justice Corp.

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Camille Mackler

Address: 131 W. 33rd St NY NY 10001

I represent: New York Immigration Coalition

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Lauren Reiff, NYLAG

Address: 7 Hanover Square, 18th Fl

I represent: New York Legal Assistance Group

Address: 7 Hanover Square, 18th Fl

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/2018

(PLEASE PRINT)

Name: Franco Torres

Address: 80 Maiden Lane - 13th floor

New York, NY 10038

I represent: Catholic Charities Community Services

Address: 80 Maiden Lane - 13th floor

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/2018

(PLEASE PRINT)

Name: Marc Valinoti

Address: _____

I represent: Northern Manhattan Improvement Corporation

Address: 45 Wadsworth Avenue, NY NY 10033

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/2018

(PLEASE PRINT)

Name: Andrea Saenz

Address: _____

I represent: Brooklyn Defender Services

Address: 177 Livingston Street, Brooklyn

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Rich Leinsider

Address: _____

I represent: Safe Passage Project

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Samantha Norris

Address: _____

I represent: Safe Passage Project

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/18/18

(PLEASE PRINT)

Name: Axel Harry

Address: _____

I represent: Safe Passage Project

Address: _____

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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: 12/18/18

(PLEASE PRINT)

Name: Bridget Crawford

Address: 40 Exchange Place, Suite 1300, NY 10005

I represent: Immigration Equality

Address: same as above

**THE COUNCIL
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: HASAN SHARIFULLAH

Address: 199 WATER ST 3rd FL NY NY 10038

I represent: THE LEGAL AID SOCIETY

Address: 199 WATER ST 3rd FL NY NY 10038

**THE COUNCIL
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: Commissioner Bittie Mostofi

Address: MOIA

I represent: _____

Address: _____

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**THE COUNCIL
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: Commissioner Steven Banks

Address: 4 WTC

I represent: NYC Department of Social Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Sarah Deri C Shiro

Address: _____

I represent: The Bronx Defenders

Address: 360 E. 161 Bronx NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

☐ in favor ☐ in opposition

Date: 12/19/18

(PLEASE PRINT)

Name: Terry Lawson,

Address: _____

I represent: Bronx Legal Services + Legal Services NY

Address: 349 E. 149th St., 10th Fl, Bronx NY 1045

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**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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

Overight ☐ in favor ☐ in opposition

Date: *12-19-18*

(PLEASE PRINT)

Name: *Persephone Tan*

Address: _____

I represent: *ASIAN AMERICAN FEDERATION*

Address: _____

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

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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: *12/19/18*

(PLEASE PRINT)

Name: *Anne Pillsbury*

Address: _____

I represent: *Central American Legal Assistance*

Address: _____

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

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition
Date: 12/19/18

(PLEASE PRINT)
Name: Carlyn Cowen

Address: _____

I represent: Chinese American Planning Council

Address: _____

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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: Amy Taylor Make The Road NY

Address: 301 Grove St

I represent: MRM

Address: 301 Grove St.

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