

Legal Policy

No Safe Harbor: The Landscape of Immigration Legal Services in New York

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A Report by

The New York Immigration Coalition
The Immigrant Advocates Response Collaborative
& Brooklyn Law School's Safe Harbor Clinic

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Top Line Findings

1. Immigrants who obtain legal representation are much more likely to win release from detention and prevail in their deportation cases. Detained immigrants with legal representation are four times more likely to be released from detention, and 11 times more likely to file an application for relief from deportation than unrepresented individuals. And, when filed, their applications for relief are substantially more likely to succeed. Thirty-two percent of detained immigrants represented by counsel won their case, but only 3% of unrepresented detained immigrants were able to do so. Moreover, whereas 15% of non-detained unrepresented immigrants successfully argued for their ability to remain in the United States, that number jumps to 78% for non-detained immigrants who were able to obtain legal representation.
2. Geographic barriers present the single biggest obstacle to accessing legal services outside of New York City. Immigrant New Yorkers located outside of New York City are more likely to obtain legal representation if they are connected with a community-based organization (CBO) that can help facilitate their access to legal services. However, many CBOs that had previously received funding for outreach lost the opportunity to apply for funding renewals in FY2019.
3. Language access remains a critical obstacle in obtaining legal services across New York State. Statewide, only 60% of legal service providers report using interpreter services (whether by phone or in-person). 40% of providers statewide continue to rely on their staff's language skills or require non-English-speaking clients to bring in their own interpreters. In regions outside of New York City, where non-profit resources remain scarce, community members reported difficulties finding private bar attorneys who were able to provide services in other languages, including Spanish.
4. In the last two years, many smaller, community-driven groups stopped providing legal representation while larger, more established organizations consolidated offices and grew staff numbers. The number of organizations providing immigration legal services in the State fell by nearly 11% (from 158 to 141) between 2017 and 2019, with the biggest drop in New York City (26%, from 121 to 89).
5. While New York City lost legal service providers from 2017 to 2019, nearly all other regions gained 3 to 6 organizational providers during that period. Consequently, New York City now has 63% of all providers in the State (down from 77% in 2017). The only other region to lose providers in the last two years was the Capital District, which had 6 providers in 2017 and only 4 in 2019.
6. The decrease in numbers of legal providers was led in large part by a reduction in number of organizations recognized by the US Department of Justice (DOJ) to provide legal services through accredited representatives. The loss of DOJ-recognized organizations was concentrated in New York City, which lost 26% of its recognized organizations (from 70 in 2017 to 52 in 2019). In the rest of the State, three regions had providers lose recognition and three others had

Top Line Findings

providers who won recognition. The overall reduction in recognized organizations (11% statewide between 2017 and 2019) is particularly concerning because Accredited Representatives are often a more affordable way for organizations with smaller budgets to provide legitimate legal services.

7. Lack of capacity was a significant issue for legal service providers across the State, with nearly half requiring clients to wait 2-6 weeks for an initial appointment. In addition, the number of organizations that offered wait lists to schedule potential clients for services they could not immediately provide fell by ten percentage points, from 35% in 2017 to 25% in 2019. Providers reported that the need is so great that maintaining such lists is too burdensome.
8. Drastically changing laws, policies, and procedures at the federal level had a dramatic impact on the immigration legal field, making it harder for organizations to effectively support staff and sustainably grow the field. The top five changes attorneys identified in their practices were: lengthier and more resource-intensive cases, more requests for evidence (further delaying cases), more psych-social impact on attorneys, more appeals, and more losses.
9. Both practitioners and community members noted the tremendous toll that the increase in Immigration and Customs Enforcement (ICE) actions, changes in immigration court procedures that erode due process, and increased hostility across the board in interactions with the Federal Government has had on their respective communities' mental well-being.
10. Organizations by and large did not, or were not able to, provide enough support for staff. Over one-third of organizations did not have at least one attorney with more than ten years of experience on staff. About 90%

of organizations had 3 or fewer paralegals and/or clerical staff, and a third had no paralegals and/or clerical staff to assist attorneys. Over half of organizations did not have social workers on staff, despite the clear benefits reported by staff at organizations that do hire social workers. Nearly 70% of organizations required supervisors to carry full or nearly full caseloads, which necessarily means that they have less time to mentor and support staff. Only 44% of organizations offered some type of support for vicarious trauma and resiliency, but 97% expressed a desire for the resources to be able to do so or improve their existing offerings.

11. Community groups provide a vital complement to legal staff positions. These groups are better suited to conduct outreach and act as a bridge between communities and legal representative organizations. In addition, they often handle Know Your Rights presentations and respond in moments of crisis (such as an ICE raid) despite frequently not being funded to do so. Community groups also reported working with their members to obtain documents required by lawyers and otherwise supporting the provision of immigration legal services across New York State.
12. Sixty percent of organizations received public funds through New York City and/or New York State. New York State funds spent on immigration legal services dipped slightly from FY2018 (\$17.7M) to FY 2020, (\$16.9M) whereas New York City funding increased substantially from FY2019 (\$46.5M) to FY 2020 (\$58.2M). The main increases in New York City were for representation of detained immigrants facing deportation at the Varick Street immigration court and representation in deportation proceedings for Central American families and unaccompanied minors.

Executive Summary

One of the greatest barriers to integration and stability for immigrants in the United States is the difficulty in accessing competent legal help. This, in turn, leaves many unable to protect their rights or to understand their eligibility for legal status in the United States.

The arrival in 2017 of a fiercely anti-immigrant federal administration has further destabilized immigrant communities across the United States. Now, more than ever, the U.S. immigration system operates as a quasi-criminal system that arrests and detains immigrants and subjects them to adversarial legal proceedings with consequences that can include deportation to life-threatening conditions and lifetime separation from family members.

These consequences attach even when an immigrant simply misunderstood requirements for obtaining or maintaining legal status (or could not understand them due to language barriers) or was misled by an unscrupulous service provider. Despite its similarities with the criminal system, because immigration laws are categorized as civil by Congress and the Courts, the protections offered those charged in the criminal justice system do not apply to those charged in immigration proceedings. This means that, under our federal laws, immigrants do not have the right to an appointed attorney, to a speedy trial, or to protections from cruel and unusual punishment.

In response, cities and states have sought to provide immigrant communities with resources and, to the extent possible, protection. New York State and City have been at the forefront of these efforts and have made significant investments to that end. Nonetheless, challenges remain both for immigrant communities seeking protection and for organizations trying to provide it.

New York State is a large, geographically and politically varied state. New York City is by far the largest city and is home to 75% of the state's immigrant population and 63% of its legal service providers. In the rest of the State, lack of public transportation infrastructure outside urban and suburban areas make geographic barriers one of the most significant challenges to successfully securing legal help. Other challenges include organizations lacking in capacity to serve all that need help in their regions, lack of access to interpreters, financial barriers when low-cost or free providers are not available, and political barriers in the more conservative parts of the State.

Legal service providers representing immigrant communities in New York face their own challenges. The last three years have taken a toll. Providers have been working under a federal administration that has shown itself to be openly hostile to immigration and immigrant communities and they report that their work has come to require an ever-increasing investment of time and legal expertise, and that doing their job has increasingly become emotionally draining. In addition, the funding streams that support their work have not always proven stable and often

Executive Summary

do not easily lend themselves (because of, for example, case requirements) to supporting the type of work necessary to adequately represent immigrants in their petitions and defenses to deportation.

Legal service providers also face challenges in growing their field and promoting supervisors because tight, restricted, funding streams require supervisors to carry enormous caseloads and do not permit hiring of enough support staff. Short funding cycles also create hardship, as organizations are reluctant to make hires or take on cases that will last for years with funding streams that are only guaranteed for a year. Even when funding streams are renewed, they do not always allow for re-enrollment of cases from year-to-year, meaning that for some grants work done after the first or second year of a case is unfunded and providers must struggle to take on a sufficient number of new cases while still managing existing caseloads.

Solutions for improving New York's legal services for immigrant communities must include ensuring flexibility in its funding streams to allow providers to appropriately staff projects, supporting the non-legal work that is a necessary component of providing legal services to immigrants, and allowing for contract structures that ease the burden of case deliverables on supervisors. This would, in turn, allow attorneys to focus on legal work while community partners handle education, know your rights, and outreach, all of which are critical to competent legal services, and allow supervisors to focus on growing their attorney's depth and breadth of expertise in immigration law.

In addition, funding streams should be made multi-year to align with the timeline of most immigration cases, which on average take between 1 to 4 years to resolve. Finally, we need an investment of time and money to help create robust networks, utilizing technological or other solutions, to best support providers and ensure communities are connected to competent help even in the most remote parts of New York State.



Introduction

New York has always been a gateway for immigrants starting life in the United States. We are a state with a proud and rich immigrant history, which manifests itself in our landmarks, in our street life, and in our culture.

Today, New York has one of the largest populations of immigrants in the country, second only to California. One in five New Yorkers, 4.3 million in all, were born outside the United States. Over 200 languages are spoken throughout the State and over 30% of New Yorkers speak a language other than English at home. Of these foreign-born New Yorkers, an estimated 20% of the population, or 940,000, are undocumented.

New York's diversity is an asset to our social, cultural, and economic life. Immigrants are vital contributors within their communities and to New York as a whole. Immigrants are responsible for over \$229 billion of economic output in New York State, and make up over 28% of the workforce. They play roles in every sector, from finance and banking, to law, to STEM fields, to the farming, domestic work, manufacturing, and hospitality industries. In 2014, immigrant New Yorkers paid more than \$42 billion in taxes, spent over \$100 billion, led more than half of the state's Fortune 500 companies, and employed nearly half a million New Yorkers.

In addition to making up a large portion of economic life in the state, immigrant New Yorkers are active in civic and education sectors. By 2014, over 1,000,000 of New York's foreign-born immigrants had received a college education, a 41.9% increase between

2000 and 2011. In fiscal year 2016, over 90,000 immigrants became naturalized citizens in the metropolitan area of New York City, Newark, and Jersey City. Over 23% of registered voters in the state are considered "New Americans," who are naturalized citizens or US-born children of immigrants.

Despite the significant contributions that immigrants make to New York State, there remains an enormous gap in the critical services made available to them. Notably, immigrants, particularly low-income immigrants, face significant challenges in obtaining legal representation. This challenge stems mainly from the existence of an overly-complicated and increasingly outdated immigration legal system that is nearly impossible to navigate without the help of an attorney, while at the same time it refuses immigrants the right to free legal counsel similar to that available in criminal or family court proceedings. Recent changes in immigration policy from the White House administration have further exacerbated consequences for immigrants lacking access to counsel and have made ensuring immigrants' access to legal help more difficult, but also more necessary than ever before. Legal services are crucial to helping immigrants achieve legal status, obtain work authorization, and stabilize their lives in the

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United States so that they may increase their contributions to our economic and civil life. In the current increasingly arbitrary immigration enforcement regime, lawyers also ensure that basic due process requirements for immigrants are met and can challenge the legality of destructive policies in court. Yet the 141 organizations in New York State serving immigrant communities struggle to meet the crushing demand.

Methodology

The methodology of data collection for this report was as follows: 1) a detailed survey was circulated to legal service providers throughout New York State. Responses were collected from September 2019 to October 2019, with a total of 36 responses. 2) Follow-up interviews with legal service providers were conducted to gather closer snapshots of the legal needs reported by organizations. 3) Group and one-on-one conversations were conducted at the monthly meetings of the Immigrant Advocates Response Collaborative (Immigrant ARC or I-ARC) and through

regional convenings. 4) Group and one-on-one meetings were held in various parts of the State with community members and community-based organizations. 5) Finally, based on the most prominent areas identified through the legal service provider responses and community-based organization interviews, outside research was conducted to illustrate background or analyze outside conditions which could be responsible for the responses.

As survey and interview responses began flagging major issues set out below, we consulted information from other sources to confirm legal service provider observations and identify areas where there may not be as much work being conducted to address specific needs. Sources consulted included reports and statistics from major research and reporting institutions, governmental agencies, and materials compiled by legal service providers.

Unless otherwise noted in the footnotes, funding purposes and totals were determined by the Requests for Proposals put out by each agency and, in the case of legislative appropriations, by the Budget bills and related materials.

Challenges for Community Members in Accessing Legal Services

There are myriad obstacles preventing immigrant New Yorkers from obtaining legal representation. These obstacles include political, legal, legislative, and geographic barriers.

Availability of lawyers and immigration legal service providers varies greatly between metro New York City and the more rural areas of the State. Additionally, immigrant communities face obstacles unique to each community, ranging from lack of access to interpreters (aka language access), to distrust of lawyers, to the inability to safely and inexpensively travel to areas where services are available.

Below, we will first outline the landscape of legal providers in New York State, then review some of the most common challenges immigrant New Yorkers face in accessing legal services.

Overall Challenges

Types of Legal Service Providers

Immigration legal services are provided to immigrant communities throughout New York State by organizations that fall within one or more of the following categories:

1. Organizations that only provide immigration legal services;
2. Organizations that provide multiple types of legal services, with at least one department dedicated to immigration legal services;
3. Organizations that provide a variety of social services, including legal services.
4. Organizations that provide only certain types of immigration legal services (e.g. only citizenship) or serve only specific populations (e.g. indigent women immigrants or Arab and South Asian clients).
5. Community-based organizations that provide limited legal services as part of their broader agenda (e.g. organization that offers English classes also offering citizenship application assistance).

Organizations providing these services across NYS tend to have few attorneys and accredited representatives delivering legal services. Nearly one-third of organizations surveyed for this report have three or fewer attorneys on staff, while nearly two-thirds

Challenges for Community Members in Accessing Legal Services

deliver services with 10 or fewer attorneys or accredited representatives on staff.¹

One key finding from our research is that providing legal services to immigrant New Yorkers often entails far more than attorney time. In New York, immigration legal services do not simply equate to lawyer positions, but also encompass the myriad forms of supportive services that organizers, community advocates, and others provide. Paralegals, Department of Justice Accredited Representatives, support staff, and, when available, case managers and social workers are vital to providing efficient and quality legal representation. In addition, throughout the State, community-based organizations play a critical role in connecting immigrants to legal services, facilitating interpretation and document translation, and often helping identify and obtain information, documents, and other evidence required by attorneys to successfully represent immigrant New Yorkers in their cases.

service providers in New York are unable to take on additional cases, as they are already at near-maximum capacity.³ The inability to secure counsel is a particular challenge for detained immigrants who, absent state-funded representation, face removal with limited to no ability to access legal resources.⁴

Yet, immigrant New Yorkers desperately need access to counsel. The immigration legal system continues to deteriorate under the weight of the Illegal Immigration Reform

In New York, immigration legal services do not simply equate to lawyer positions, but also encompass the myriad forms of supportive services that organizers, community advocates, and others provide.

Legal & Legislative Barriers

Immigrants in the United States have the right to counsel in immigration proceedings solely at their own expense.² Unsurprisingly, most low-income immigrants, especially those without immigration status, do not have the resources to secure competent paid representation. At the same time, nearly all *pro bono* legal

and Immigrant Responsibility Act of 1996 (IIRIRA) and subsequent reform laws, which have transformed the immigration system into a quasi-criminal system.⁵ Over the past twenty-plus years, IIRIRA has criminalized immigration, and the results have been catastrophic.⁶ These results include an

1 Results of NYC Survey of Legal Providers, 2019. Available at Appendix A.

2 See *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990).

3 NYC Legal Service Provider Survey (November 2017 – January 2018); see “Profile of New York’s Legal Service Providers: Results of the New York Immigration Coalition Survey” *Infra*.

4 For a detailed look at the conditions faced by detained immigrant New Yorkers, please see Immigrant Advocates Response Collaborative, *Behind Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers* (2019), <https://d1jikt90t87hr.cloudfront.net/323/wp-content/uploads/sites/2/2019/03/State-of-Immigration-Detention-of-NYers-v5.pdf>.

5 Dara Lind, “The disastrous, forgotten 1996 law that created today’s immigration problem,” *Vox* (Apr. 28, 2016, 8:40 AM), <https://www.vox.com/2016/4/28/11515132/iirira-clinton-immigration>; see Melina Juárez, Bárbara Gómez-Aguíñaga & Sonia P. Bettez, “Twenty Years After IIRIRA: The Rise of Immigrant Detention and Its Effects on Latinx Communities Across the Nation,” 6 *J. on Migration and Human Security* 74 (2018).

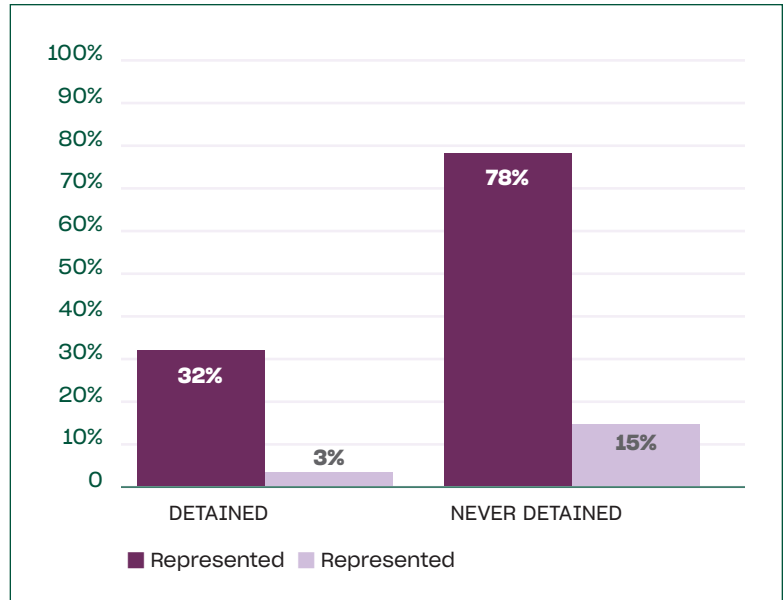
6 *Id.*

ever-growing backlog of cases (over a million as of this writing) in the immigration courts.⁷ Shifting immigration policies over the last three years have put even more pressure on this already broken system, creating a *de facto* humanitarian crisis. These trends are highlighted in greater detail in a later section of this report.

For immigrants in need of counsel, including many asylum-seekers and immigrant New Yorkers from war-torn regions of the world, accessing legal representation may be the difference between life and death.⁸ Immigrants represented by counsel are much more likely to win release from detention and prevail in their removal cases. In fact, immigrants in detention who are represented by counsel are four times as likely to be released from detention, and 11 times more likely as unrepresented immigrants to file applications for relief from removal before an immigration judge.⁹ And, when filed, their applications for relief are substantially more likely to succeed. Thirty-two percent of detained immigrants represented by counsel won their case, but only 3% of unrepresented detained immigrants were able to do so.¹⁰ And whereas, on average, 78% of non-detained immigrants who had counsel won their cases, only 15% of non-detained unrepresented immigrants were able to successfully argue that they merited the right to remain in the United States.¹¹

Figure 1.

Likelihood of Obtaining Relief in Removal Cases, by Detention and Representation Status, 2007–2012.¹²



In New York, an initial assessment of the New York Immigrant Family Unity Project, which was the first to provide merits-blind legal representation to detained immigrants appearing in New York’s immigration courts, showed that access to lawyers has resulted in a 48% success rate, a 44% increase from pre-NYIFUP approval rates and a 1,100% increase in a detained individual’s chances of winning their cases before an immigration judge.¹³

7 See “Immigration Court Backlog Tool,” *Transactional Records Access Clearinghouse* (TRAC), http://trac.syr.edu/phptools/immigration/court_backlog/, (last visited Dec. 6, 2019); see, e.g., Nick Miroff & Maria Sacchetti, “Burgeoning Court Backlog of More Than 850,000 Cases Undercuts Trump Immigration Agenda,” *The Washington Post* (May 1, 2019, 6:17 PM), https://www.washingtonpost.com/immigration/burgeoning-court-backlog-of-more-than-850000-cases-undercuts-trump-immigration-agenda/2019/05/01/09c0b84a-6b69-11e9-a66d-a82d3f3d96d5_story.html; Claire Hansen, “Immigration Court Case Backlog Hits 1 Million,” *U.S. News & World Report* (Sept. 18, 2019, 2:20 PM), <https://www.usnews.com/news/national-news/articles/2019-09-18/immigration-court-case-backlog-hits-1-million>.

8 At least eighty-three US deportees were murdered from January 2014 to October 2015 after their forced deportation to El Salvador, Honduras, and Guatemala. See Sibylla Brodzinsky & Ed Pilkington, “US Government Deporting More Central American Migrants To Their Death,” *The Guardian* (Oct. 12, 2015). The number of such deaths has continued to grow under the present Administration, which has been pushing policies that dramatically increase deportation orders. See Ted Hesson & Nahal Toosi, “Iraqi Man Dies After Trump Administration Depports Him,” *Politico* (Aug. 8, 2019), <https://www.politico.com/story/2019/08/07/iraqi-man-dies-deportation-trump-administration-1643512>; see also Sarah Stillman, “When Deportation is a Death Sentence,” *The New Yorker* (Jan. 8, 2018), <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.

9 Ingrid Eagly & Steven Shafer, Am. Immigration Council, *Access to Counsel in Immigration Court* 17 (2016).

10 *Id.*

11 *Id.*

12 *Id.*

13 Jennifer Stave et al., Vera Inst. of Justice, *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* 5–6 (2017).

Providing representation also speeds up processing times for those with legitimate claims, and lessens the current backlogs in immigration courts.¹⁴ Legal representation for immigrants protects the integrity of the judicial system by preventing the miscarriages of justice that occur when most people do not understand charges leveled against them, do not know they are entitled to relief at all, and are not able to preserve claims for appeal.¹⁵

Political Barriers

Immigration has developed into a hot-button issue in our national conversation. With opinions sharply divided on how to best resolve issues ranging from the approximately 11 million undocumented immigrants living in the United States, to the thousands of refugees arriving daily at the Southern Border and the ongoing debate on sanctuary city policies, the prospect of meaningful immigration reform has become increasingly remote.

Starting in 2017, immigrant communities faced new threats as Donald Trump, who ran on a largely nationalist, anti-immigrant platform, assumed control of the Executive Branch while Congress remained firmly conservative.¹⁶ The subsequent three years have brought growing

challenges for immigrants and their allies as the national conversation on immigration has continued to deteriorate. A detailed description of some of the challenges posed by the Trump Administration are included in the following sections of this report.

The welcoming spirit that has long been a hallmark of New York State has also faced challenges during this period. While Hillary Clinton won the State's overall vote, Donald Trump beat her in 46 of 62 New York counties,¹⁷ most located in rural areas where the existing immigrant labor force faces substantial challenges, including discrimination.¹⁸ And, while the 2018 state elections brought a blue wave that recaptured the New York State Senate by democrats, resulting legislative items, including the Green Light legislation that grants access to drivers licenses to all New Yorkers, regardless of their immigration status, have faced fierce opposition in many parts of the State.¹⁹ This has highlighted the anti-immigrant sentiment that exists in New York, particularly outside of urban centers.²⁰

Despite this sentiment, in 2017, both New York State and New York City significantly increased funding for immigration legal services and sought to introduce enhanced protections for immigrants interacting with immigration authorities.²¹ However, some of these efforts were tempered by restrictions on the use of

14 See generally Ingrid Eagly & Steven Shafer, Am. Immigration Council, *Access to Counsel in Immigration Court 18* (2016) (suggesting that representation by counsel is strongly associated with immigrants coming to court and “[w]hen immigrants appear in immigration court, immigration judges can more effectively do their jobs.”).

15 See Karen Berberich & Nina Siulc, “Why Does Representation Matter? The Impact of Legal Representation in Immigration Court,” Vera Inst. of Justice (Nov. 2018), <https://www.vera.org/downloads/publications/why-does-representation-matter.pdf>.

16 Michael Grunwald, “The Victory of ‘No,’” *Politico Magazine* (Dec. 4, 2016), <https://www.politico.com/magazine/story/2016/12/republican-party-obstructionism-victory-trump-214498>; Tom Boggioni, “Running for cover: Since Trump took office, the House GOP has seen a stunning 38 percent turnover”, *Salon* (Aug. 29, 2019, 2:22 PM), https://www.salon.com/2019/08/29/running-for-cover-since-trump-took-office-the-house-gop-has-seen-a-stunning-38-percent-turnover_partner/.

17 Dan McLaughlin, “New York’s Vote was a Microcosm of America in 2016,” *Nat’l Review* (Dec. 8, 2016, 9:43 PM), <https://www.nationalreview.com/corner/new-yorks-votes-trump-looked-america-2016/>.

18 See, e.g., Christina Goldbaum, “County Clerks Revolt Over N.Y. Licenses for Undocumented Immigrants,” *N.Y. Times* (Nov. 14, 2019), <https://www.nytimes.com/2019/11/14/nyregion/immigrants-drivers-license.html>.

19 Phillip Pantuso, “Will New York’s Green Light Law Get the Green Light Everywhere?,” *The River* (Nov. 20, 2019, 7:00 AM), <https://therivernewsroom.com/2019/11/20/will-new-yorks-green-light-law-get-the-green-light-everywhere/>; “Niagara County Filing Lawsuit in Opposition to Green Light Law,” *Spectrum News* (Oct. 16, 2019, 7:10 AM), <https://spectrumlocalnews.com/nys/buffalo/news/2019/10/16/niagara-county-filing-lawsuit-in-opposition-to-green-light-law>.

20 Denis Slattery, “Cuomo Signs Bill Granting Undocumented Immigrants Access to New York Driver’s Licenses Despite 11th Hour Concerns,” *New York Daily News* (June 17, 2019), <https://www.nydailynews.com/news/politics/ny-senate-approves-undocumented-immigrants-access-to-drivers-licenses-20190618-eu2gx3xvunetpnfuijbsvn54-story.html>.

21 See Nolan Rappaport, “Cooperate, or else: New York threatens fines to force people to help block immigration enforcement,” *The Hill* (Oct. 6, 2019, 11:00 AM), <https://thehill.com/opinion/immigration/464486-new-york-threatens-fines-to-force-people-to-help-block-enforcement>; see also Joseph Spector, “New York eyes becoming a sanctuary state for undocumented immigrants,” *Democrat & Chronicle* (Apr. 22, 2019, 1:10 PM), <https://www.democratandchronicle.com/story/news/politics/albany/2019/04/22/new-york-eyes-becoming-sanctuary-state-undocumented-immigrants/3538252002/>.

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funds. For example, the \$58 million invested by New York City is subject to the so-called “criminal carve out”, which prevents legal-service providers from using the funds to provide representation to individuals who have been convicted of certain crimes.²² And, while the State made its largest ever investment in supporting the availability of legal services for immigrants beginning in 2017 — \$17 million — changes in how funds were allocated from year to year created hardship for both the legal services and community-based organizations that relied on those funds.

Geographic Barriers

An additional significant challenge to accessing legal representation in New York State is the location of service providers. While there are substantial immigrant communities throughout the State,²³ organizations that provide immigration legal services are highly concentrated in New York City. Of the 141 organizations providing immigration legal services in New York State, 89, or 63% operate within the five boroughs of New York City.²⁴ By contrast, the remaining 52 organizations are spread-out throughout the rest of the state, with rural areas being the most underserved, for example, there are only four legal services providers in Albany and the areas surrounding the capital, and only eight providers in Central

New York and the Finger Lakes region.²⁵

Immigration legal services in New York State are provided not only by attorneys, but also by a large number of accredited representatives authorized by the United States Department of Justice to advocate for immigrants before the Department of Homeland Security (“partially accredited” representatives), and, in some cases, the immigration courts (“fully accredited” representatives).²⁶

Part of the Department of Justice, the Office of Legal Access Programs (OLAP) works to increase access to information and representation “for individuals appearing before the immigration courts and Board of Immigration Appeals (BIA).”²⁷ OLAP administers the Recognition & Accreditation Program, which, pursuant to 8 C.F.R. section 1292.1(a) (4), authorizes qualified non-attorneys to provide representation in immigration matters through approved organizations.²⁸ Among the organizations recognized by the Office of Legal Access Programs, there are a total of 29 fully Accredited Representatives (meaning that these non-attorney representatives can appear before the immigration courts and the BIA), and 217 DHS-only Accredited Representatives in the State.²⁹ Seventy-six percent of fully accredited representatives (22) are located within organizations in New York City,³⁰ while 71% (153) of the DHS-only accredited representatives are located in New York City.³¹ A total of 64 DHS-only accredited representatives serve the remainder of New York State.³²

22 For a longer discussion on the subject of the carve out, please see Section III: Challenges in Providing Legal Representation, *infra*.

23 Office of the New York State Comptroller, *A Portrait of Immigrants in New York* (2016).

24 Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

25 Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

26 Dep’t of Justice, Recognition & Accreditation (R&A) Program (2019), <https://www.justice.gov/eoir/recognition-and-accreditation-program>.

27 Dep’t of Justice, Office of Legal Access Programs (2019), <https://www.justice.gov/eoir/office-of-legal-access-programs>.

28 Dep’t of Justice, Office of Legal Access Programs (2019), <https://www.justice.gov/eoir/office-of-legal-access-programs>; 8 C.F.R. § 1292.1(a) (4) (2019).

29 Dep’t of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>; 8 C.F.R. § 1292.1(a)(4) (2019).

30 Dep’t of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

31 Dep’t of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

32 Dep’t of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

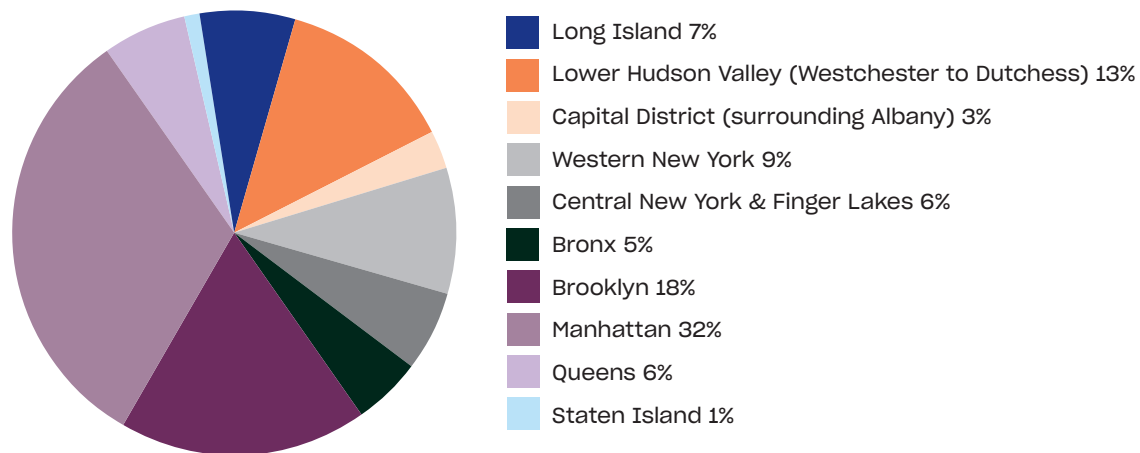
Table 1.

Legal service providers by region in 2019.

Region	Legal Service Providers (Total) ³³	Recognized by the Office of Legal Access Programs ³⁴
Long Island	10	5
Lower Hudson Valley (Westchester to Dutchess)	18	13
Capital District (Surrounding Albany)	4	3
Western New York	12	11
Central New York & Finger Lakes	8	5
New York City	89	52
Total	141	89

Figure 2.

Legal service providers by region in 2019.³⁵



There was a decrease in the total number of legal service providers throughout the State since 2018. The largest decrease was in New

York City, representing 32 fewer legal service providers in 2019.

33 Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

34 Dep't of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

35 Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

Challenges for Community Members in Accessing Legal Services

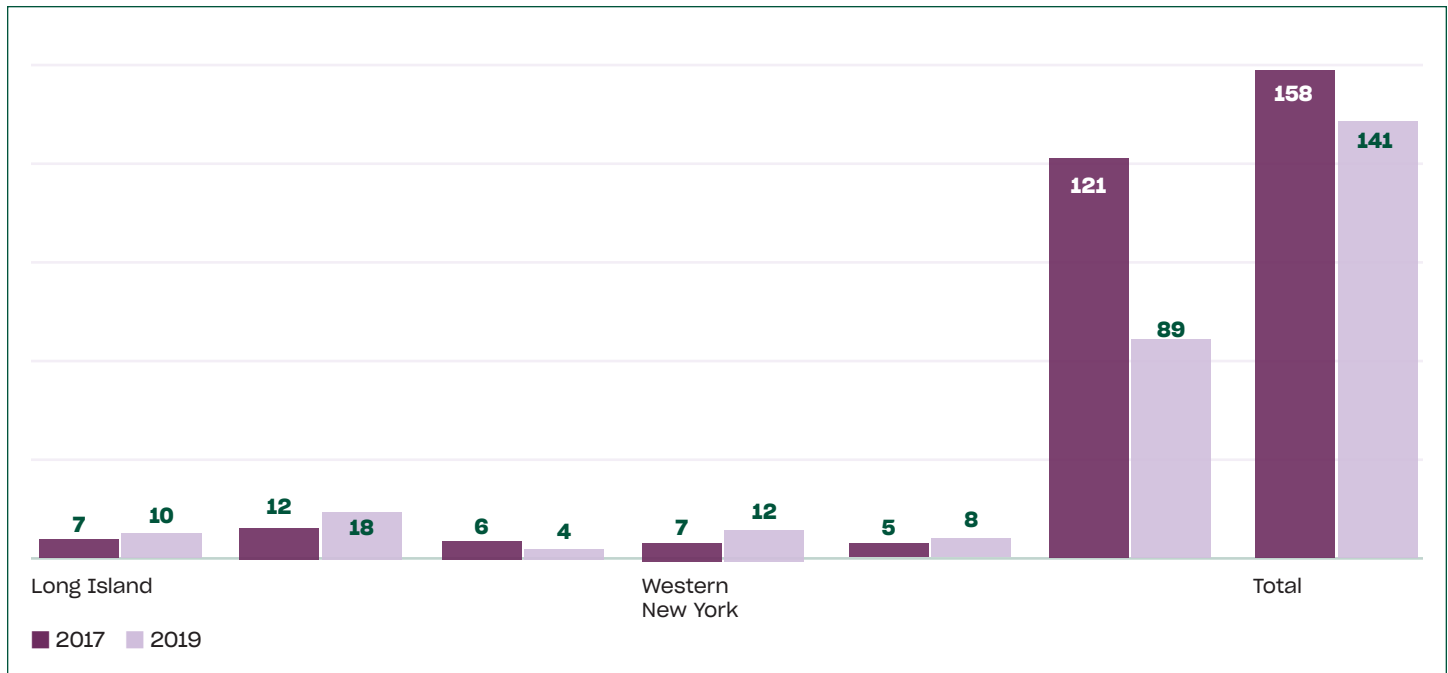
Table 2.

Change in number of legal service providers by region from 2018 to 2019.³⁶

Region	2018 Legal Service Providers	2019 Legal Service Providers
Long Island	7	10
Lower Hudson Valley (Westchester to Dutchess)	12	18
Capital District (Surrounding Albany)	6	4
Western New York	7	12
Central New York & Finger Lakes	5	8
New York City	121	89
Total	158	141

Figure 3.

Change in number of legal service providers by region from 2018 to 2019.³⁷



³⁶ Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

³⁷ Immigrant Advocates Network National Immigration Legal Services Directory, <https://www.immigrationadvocates.org/nonprofit/legaldirectory/search?state=NY> (last visited Dec. 6, 2019).

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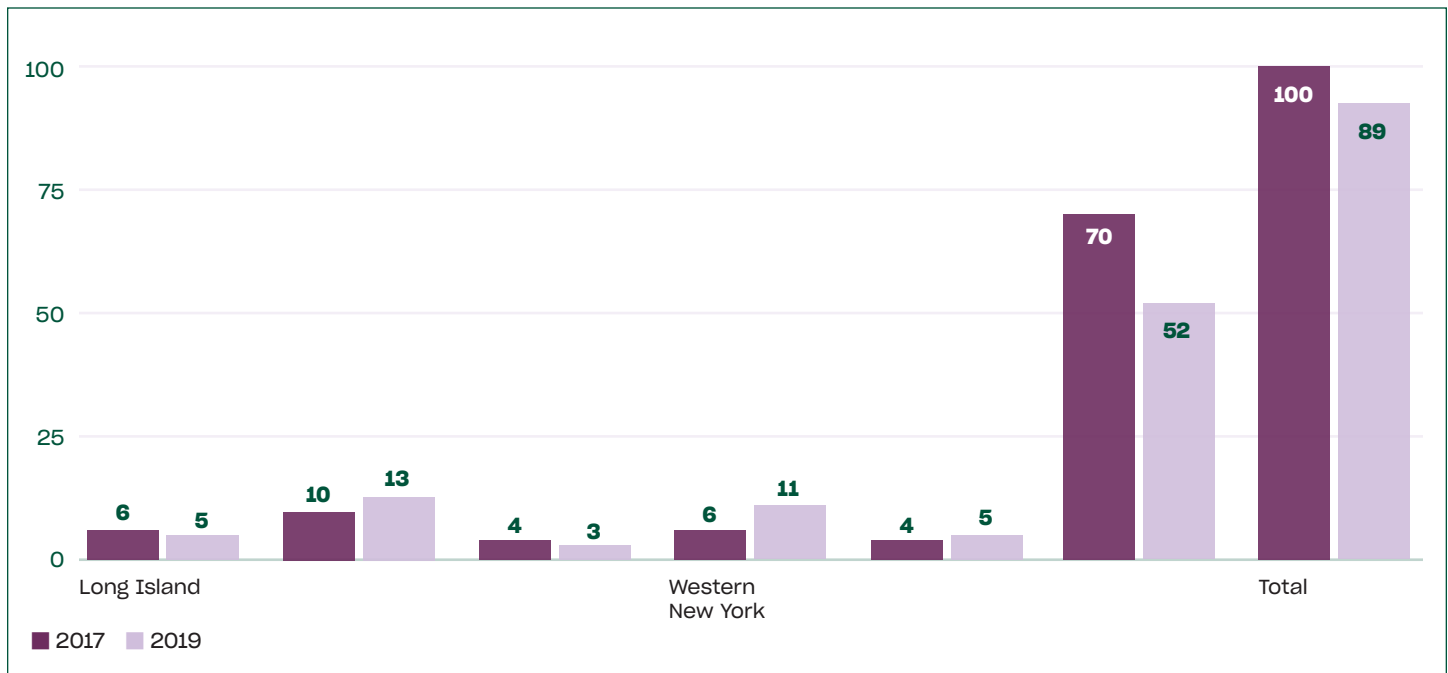
Table 3.

Change in number of legal service providers recognized by the Office of Legal Access Programs by region from 2018 to 2019.³⁸

Region	2018	2019
Long Island	6	5
Lower Hudson Valley (Westchester to Dutchess)	10	13
Capital District (Surrounding Albany)	4	3
Western New York	6	11
Central New York & Finger Lakes	4	5
New York City	70	52
Total	100	89

Figure 4.

Change in number of legal service providers recognized by the Office of Legal Access Programs by region from 2017 to 2019.³⁹



³⁸ Dep't of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

³⁹ Dep't of Justice, Recognized Organizations and Accredited Representatives Roster (2019), <https://www.justice.gov/eoir/page/file/942301/download>.

Wait Lists

Because most organizations lack capacity to meet the ever-increasing demand for services, it can be difficult for community members to find help.⁴⁰ Over half of organizations surveyed reported wait times for an initial appointment being between zero and six weeks, with 30% offering appointments one to two weeks after an initial request, 25% offering a first appointment two to three weeks after the initial request, and 20% offering a first appointment four to six weeks after the initial request. Twenty percent, or one in five providers, required a wait of over 6 weeks to secure an initial appointment.⁴¹ One important note is that, unlike in 2017, when 35% of surveyed organizations maintained waitlists, currently, only 25% of surveyed organizations kept waitlists. Providers noted that they often refrained from maintaining waitlists at present because they became too overwhelming to manage.⁴²

Community Based Organizations (“CBOs”) continue to report frustration in trying to make referrals to legal service providers, with several noting that they often call and wait for weeks before being finally told that the legal service provider cannot undertake representation. Organizations in more remote parts of the state expressed additional

frustration at these challenges, given that the options for legal services are so scarce in their regions. For example, in conducting qualitative interviews with legal service providers around the State, an organization in Western New York noted that they often have to turn-away families and individuals seeking relief because they do not have the resources to handle certain types of cases.⁴³ Another organization, in the Finger Lakes region of New York, specializes in handling a specific form of relief, however, they always have to partner with other private attorneys to appear in certain courts, and finding private attorneys to take on these cases *pro bono* is challenging.⁴⁴

Language Access

Access to appropriate language services continues to present enormous challenges to immigrants seeking legal assistance in New York State. Over 200 languages are spoken throughout the State and over 30% of New York City residents speak a language other than English at home. Nearly 1.8 million people in New York City alone, 25% of the City’s population, is not English proficient.⁴⁵

In the last few years, government agencies throughout New York State, including the New York court system, have significantly improved language access services to

40 For more on legal service provider capacity, see section “IV. Challenges in Providing Representation,” *infra*.

41 NYC Legal Service Provider Survey (Nov. 2019).

42 NYC Legal Service Provider Survey (Nov. 2019).

43 Telephone Interview with Anonymous (Nov. 5, 2019).

44 Telephone Interview with Anonymous (Oct. 31, 2019).

45 “Population Facts,” NYC Dep’t of City Planning, <http://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page>. (last visited Dec. 8, 2019).

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Limited English Proficient (LEP) litigants.⁴⁶ Yet, substantial difficulties in accessing services continue to exist. For example, a report by Legal Services NYC notes that, although New York State court rules mandate interpretation for LEP and deaf or hard of hearing litigants in civil and criminal cases, there is a lack of qualified interpreters in the court system and in clerks' offices. There are also few signs in languages other than English to assist LEP litigants navigate courthouses and understand courthouse procedures.⁴⁷

The federal court system provides interpreters for federal criminal cases or in immigration removal proceedings.⁴⁸ These interpreters are only available in cases commenced by the U.S. government. The Southern District of New York's website explicitly promotes the use of "a trusted family member or friend" to assist with interpretation.⁴⁹ Even in the immigration context, LEP persons must provide their own interpreters at interviews conducted at the U.S. Citizenship and Immigration Services' (USCIS) offices.⁵⁰

The dearth of proper language services for immigrants creates many delays and adjournments in court for LEP litigants.⁵¹ Frequently, courts schedule an interpreter, who does not speak the proper language or dialect of the non-English speaking litigant.⁵² At other times, courts only have access to interpreters who speak a certain language

during specific days of the month.⁵³

This requires that LEP litigants repeatedly return to court if an interpreter who speaks their language is unavailable. For low-income New Yorkers, who must pay for transportation, find childcare or seek time off from work, these delays are burden that limits their access to justice.

Limited language services also mean that a huge burden is placed on legal services providers to provide interpretation and translation services to ensure that immigrants can adequately present their cases in court and at government agencies. Over half of the legal service providers that responded to the survey detailed that the top languages in which they provide services to immigrant clients include, Spanish (52% of providers), French (25% of providers), Russian (11%), Mandarin (11%), and Arabic (11%). Additionally, nearly 60% of legal services providers reported having access to telephone interpretation services as an added method to provide LEP persons with language services.

Interpreters and translated documents are crucial to ensuring that New York's LEP immigrants can adequately obtain civil legal services, including immigration legal services. Without access to interpreters, a vast section of the state's population is denied the means to properly seeking help in a variety of legal matters.

46 Amongst other efforts, the NYS court system has begun translating many manuals and pamphlets instructing *pro se* litigants on how to initiate or defend a lawsuit. Judges have also been provided with "bench cards" to better assist them in interacting with LEP litigants, while the New York Courts websites provide a glossary of legal housing court terminology in Simple Chinese, and orders of protection are now translated into Spanish. For more detailed reading on these efforts, see Christine Clarke & Veronica Cook, Legal Services NYC, *Interpreting Justice: Language Access in the New York Courts* 7–14 (2016).

47 See Christine Clarke & Veronica Cook, Legal Services NYC, *Interpreting Justice: Language Access in the New York Courts* 7–14 (2016).
48 *Id.*

49 "Representing Yourself in Federal Court (Pro Se)," *U.S. District Ct., Southern District of New York*, <https://nysd.uscourts.gov/prose>. (last visited Dec. 8, 2019).

50 See *U.S. Citizenship and Immigration Services, Policy Memorandum: The Role and Use of Interpreters in Domestic Field Office Interviews* 3 (2017) (noting that USCIS only provides interpreters for asylum, credible fear, and Nicaraguan Adjustment and Central American Relief Act interviews).

51 See Christine Clarke & Veronica Cook, Legal Services NYC, *Interpreting Justice: Language Access in the New York Courts* 7–14 (2016).

52 *Id.*

53 *Id.*

Financial Obstacles

Ability to pay also poses a significant barrier to immigrants seeking legal representation. In 2019, two-thirds of providers reported that at least 70% of their client base lives under the federal poverty line.⁵⁴ At least two-thirds of survey respondents reported that 50% or more of their clients or clients' family members receive means tested benefits.⁵⁵ Of the 25 organizations that tracked the information, 88% had at least one client living in a homeless shelter.⁵⁶

In 2020 application filing fees for immigration benefits are expected to escalate.⁵⁷ Advocates also expect new challenges to obtaining fee waivers (both of which we discuss in detail in later sections of this report). Consequently, legal services organizations throughout New York State fear that, in the coming year, the cost of filing applications will eclipse the funding available to support client application fees and severely impact immigrant communities' ability to seek legal status.

Additional Challenges

Age

In one-on-one interviews, some respondents noted that age can often be a factor in whether someone seek out legal assistance.⁵⁸ Specifically, younger immigrants were more likely to seek out legal help, particularly if their concerns regarding their immigration status related to their ability to pursue educational opportunities. On the other hand, elderly immigrants with health issues, or those who face other obstacles such as illiteracy or language access typically have a harder time accessing legal services, and may be quickly dissuaded from exerting the gargantuan effort necessary to successfully secure representation, especially in underserved communities.

Cultural Norms

A study conducted by Bronx Legal Services and the Bronx Domestic Violence Roundtable around intimate partner violence, but which included immigration issues, noted the importance of multicultural and culturally sensitive lawyering and need for service providers to be more attuned to their communities.⁵⁹ In one-on-one interviews, other providers noted that gender and age were sometimes factors in attempting to secure legal services, particularly if the potential client was from a culture where women or younger individuals are not permitted to make decisions on their own.⁶⁰

54 NYIC Legal Service Provider Survey (Nov. 2019)

55 *Id.*

56 *Id.*

57 U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

58 Advocate Interview: Molly Delano (Hostos Community College)

59 See Bronx Legal Services, *More People to Listen: Legal and Social Services Needs of Bronx Communities Affected by Intimate Partner Violence* 31–33 (2016).

60 Advocate Interview: Emma Mondadori (International Rescue Committee).

Region-Specific Challenges

Note – the findings below are the result of surveying and qualitative interviews with attorneys and community groups that took place from September 2018 – November 2019. As such, they do not include an assessment of the impact the expansion of attorney positions through the re-designed Liberty Defense Project may have had on the regions as it is still too early to measure those effects. Similarly, the findings below do not reflect the changes brought on by the Green Light legislation allowing access to driver’s licenses for immigrants regardless of immigration status, as that law will go into effect after the writing of this report. However, given the concerns around implementation of Green Light, it is likely that the challenges outlined below will continue for a year or more after enactment on December 14, 2019.

In addition to the challenges outlined elsewhere in this report, immigrant New Yorkers and providers face additional challenges depending on their location in the State.

Long Island

Immigrants seeking legal representation and providers of legal services on Long Island face specific challenges, including: (1) limited transportation options that pose challenges for immigrants traveling to meetings with legal service providers, (2) identifying and retaining linguistically competent staff (3) lack of funding for certain desperately needed services, and (4) lack of meaningful collaboration between the private and non-profit bars.

Transportation/accessing services: Legal services on Long Island are unevenly distributed. Services are more prevalent closer to New York City, but areas such as Eastern Suffolk County have very few immigration legal providers. While community members use the Long Island Railroad to travel to court dates and immigration appointments in New York City, they must rely on buses, taxis, and unlicensed car services dubbed “rideros” to access legal appointments and other critical services. This can be costly, which has led to a reluctance in some communities to seek help. While attorneys have organized

screening and other legal events in the more under-resourced areas, the distance clients must travel for follow-up after initial intakes present substantial challenges to ongoing representation.

Linguistically Competent Staff: Like other parts of the state, immigration providers on Long Island have noted the need for case workers, social workers, and mental health providers to support legal services. This is particularly crucial as there have historically been system-wide discrimination issues on Long Island that have prevented communities of color from enrolling in school or accessing necessary social and law enforcement services. A secondary challenge is recruiting linguistically competent staff, both for legal and non-legal positions, who are willing to live and work on Long Island. Many of the local law and social service students do not speak Spanish, which represents the biggest language need, and attracting candidates from outside Long Island is difficult. Several Long Island groups noted that their funding is tied to yearly renewals, such as funds provided by New York State, and that this also hampers their recruitment because candidates are unwilling to settle on Long Island with no guarantee of a long-term position.

Lack of Funding for Needed Services: Much of the funding for providers on Long Island

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is siloed to address specific needs, such as unaccompanied children, which prevents providers from helping individuals with other cases. Notably, lack of funding for both citizenship and family-based green card petitions that may flow from a community member naturalizing were both raised as specific gaps in provision for the region. Many providers with less-restrictive funding focus on deportation defense and other urgent-type cases, leaving those who could legalize their status and avoid the risk of enforcement without access to resources through which to do so. Those providers who offer those services typically charge fees. In addition, clients, whether receiving free or low-cost services, still struggle to pay onerous immigration filing fees.

Lack of Meaningful Collaboration with Private Immigration Bar: With the exception of a handful of private attorneys who work closely with local non-profits, there is no meaningful collaboration between the non-profit and private immigration bars on Long Island. This is

due in part to a lack of resources. Many private non-immigration attorneys express interest in doing *pro bono* immigration work, but non-profits lack the capacity to mentor them.

New York City

While relatively well-resourced compared to the rest of the State, New York City immigrants in need of services and providers face a unique set of challenges. The main challenges specific to New York City are (1) uneven distribution of legal services, (2) restrictive funding contracts, and (3) geographic limits.

Uneven Distribution of Legal Services: The vast majority of legal service providers in NYC are concentrated in Manhattan, with some in Brooklyn and Queens and very few in the Bronx and Staten Island. Many funding sources have also historically favored larger providers, who tend to be located in Manhattan, at the expense of small, community-focused providers in the other-boroughs. As a result,



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many immigrants, who are concentrated in the outer boroughs, must travel long distances into Manhattan to secure legal services. This often requires them to take off from work to meet with a lawyer.

Restrictive Funding Contracts: The main source of funding for New York City-based immigration providers are funds provided by New York City itself. While these investments represent some of the largest municipal investments in immigration legal services nationwide, the contract requirements often silo the type of cases that can qualify for funds. The silo-ing of funding effectively forces lawyers to choose which cases to take on based on funding streams rather than the merits of individual cases, or the needs of the immigrant population they encounter. On a positive note, in recent years the City has removed limitations on how many times an ongoing case may be re-enrolled into a grant program from year to year. Previously, the limits on re-enrollment prevented organizations from taking on higher caseloads to avoid having a large number of unfunded cases to work on once the re-enrollment limits were reached but the cases still had several years before being concluded.

Geographic Limits: Because most organizations rely primarily on City funding, they are limited to representing individuals who live or work within the five boroughs of New York City. This poses challenges to providers who want to help grow and improve the field of immigration law by exporting the resources and knowledge developed within the City to other areas of the State.

Capital Region

Providers and immigrants in search of legal services in the Capital Region face the

following challenges (1) difficulties in traveling to meet with legal service providers and lack of providers for the region overall, especially for regions north of Albany, (2) lack of access to interpreters, and (3) the Immigration Court's locations, which are many hours away in Buffalo, NY and Batavia, NY.

Travel and Geographic Disparity: Relatively few legal service providers serve the Capital Region. It can be difficult for immigrants to access services, as most cannot obtain a driver's license. The lack of public transit infrastructure outside the city of Albany itself means that many immigrants must risk driving without a license, further increasing their risk of arrest by local law enforcement departments that cooperate with ICE. Moreover, while the scarcity of legal services necessarily means that community members need to travel to wherever they can access services, it also makes growing the field more difficult. Even as graduates of local law schools wish to remain in the capital region to practice immigration law, there are few if any available positions for them.

Lack of Access to Interpreters: The Capital Region is extremely diverse, with immigrant communities from South and Central America, Asia, Africa, and Eastern Europe. As a result, it is near-impossible for providers to competently represent individuals without access to robust interpretation services. However, existing services are often expensive and geared towards medical or other services; their interpreters cannot adapt easily to the immigration legal field. Student-led interpretation services are sometimes available, but they can only help a few cases at a time, subject to student availability.

The Immigration Courts' Geographic

Inaccessibility: The majority of immigration cases in the Capital Region are under the

Challenges for Community Members in Accessing Legal Services

authority of the immigration offices in Buffalo, NY. While USCIS and ICE have sub-offices in Albany, the non-detained immigration court is in Buffalo, NY and the detained court in Batavia, NY. This means that community members residing in the Capital region who are in deportation proceedings must drive approximately four hours to Buffalo for all appearances and find a lawyer willing to do the same. Immigrant community members who are detained may be held for a few days in a local jail but are typically quickly transferred to the ICE detention facility at Batavia, far from their families and legal counsel.

Western & Central New York

The main challenges specific to Western and Central New York are (1) a significant lack of immigration lawyers, (2) isolation of community members, (3) a general fear of consulting immigration attorneys, and (4) burdens on community-based organizations (CBOs).

Significant Lack of Attorneys: There are only 16 legal services organizations that serve Western and Central New York, an area that spans about 200 miles (from Buffalo to Utica) by 100 miles (from the Canadian border to Pennsylvania). Most of these organizations have only one or two attorneys working on immigration issues, and many rely on refugee resettlement funding to support their work, even as that funding has been significantly reduced because of the federal cuts in refugee admission numbers in recent years. As a result, non-profit immigration attorneys in this region are frequently at capacity and forced to turn away clients or place them on months-long waiting lists. In 2017, New York State government created the Liberty Defense Project (LDP) and disbursed \$10 million in grants for immigration legal services throughout New York. Before the

LDP was created, very few attorneys handled deportation cases in Central New York. The LDP created a new position for an immigration attorney to handle removal defense, but given the substantial, need, that attorney's docket has rapidly filled up. Further, an Equal Justice Works AmeriCorps Legal Fellowship program created to enhance legal representation in underserved areas was not renewed after its first year, which resulted in approximately 100 immigrants faced the risk of losing their attorney mid-way through their cases. Private immigration attorneys in this region are equally scarce, and in both the non-profit and private sector many attorneys do not speak Spanish. Community members and advocates alike describe hours of calling from organization to organization trying to place a single case, or of community members being screened and identified as eligible for immigration relief at community clinics but being unable to obtain legal help for follow-up.

Isolation of Community Members: Many immigrants in Western and Central New York are geographically isolated, as they often live and work on remote farmland and cannot easily take a day off to drive, many without access to drivers' licenses, into an urban area to meet with a lawyer. Non-profit attorneys and community advocates often must drive hours to meet with a single client, or to bring a client to a law office or government appointment. Additionally, in many of these areas, cell service and access to other technology are non-existent, making it hard to communicate with those in need of legal help.

Fear of Consulting an Attorney: The scarcity of immigration lawyers has also led to unscrupulous individuals taking advantage of immigrant communities' vulnerabilities to enforcement and anti-immigrant policies. This, in turn, has led to a general distrust of lawyers on the part of community members.

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Community members report that it is a prevailing belief that lawyers, while necessary to winning legal status in the United States, will likely charge money and complete no work in return. In some instances, individuals had been charged tens of thousands of dollars, working through debilitating illnesses to be able to afford legal representation, with no good results. Isolation and a lack of connection to appropriate resources means that community members frequently do not report these providers to law enforcement, allowing these bad actors to continue preying on others with impunity.

Burden on Community-Based Organizations:

In the absence of sufficient legal services, CBOs have stepped up to act as a conduit between community members and lawyers. Staff of CBOs often have enough training and experience to recognize facts that may have immigration consequences, and spend enormous time transporting community members, helping them gather documents, and calling around to organizations hoping to persuade them to take on a specific case. Most CBOs, however, are not funded to do this work and take it on in addition to their

regular obligations. Those who do receive funding receive it mainly from government grants but often have difficulties in responding to the weighty reporting and administrative requirements that come with these grants.

North Country, Finger Lakes, and Southern Tier

Though there is a significant immigrant population working in agriculture, construction, hospitality, and other labor-intensive industries throughout the North Country, Finger Lakes, and Southern Tier, until mid-2019 there were no legal service providers in these regions. Consequently, community members were often isolated and had difficulty protecting their legal rights. When community members needed an immigration lawyer, they had to travel to Albany or Syracuse and face the same challenges as the populations that reside in those areas. This changed in mid-2019, when the new attorney positions created through the LDP began representing community members in these regions. At the time of writing, it is too early to assess the impact of these positions.

The Lawyer Caravan

In May 2019, a group of lawyers from New York City teamed up with local attorneys and advocates in North Country and Central New York to travel to dairy farms along the US-Canadian border and meet with workers to better understand their legal needs and the challenges they face. Over the course of 5 days, this group visited 6 farms and met with over 40 workers. On four of the farms, workers met with lawyers in their housing units. In Watertown, lawyers and advocates met with local farmworkers at the All Souls Unitarian Universalist Church, and in one instance they met within the home of one of the farmers. The farms were chosen, in part, because the farmers agreed to have their workers meet with immigration lawyers. In many instances, farms that were contacted to participate in the effort refused to have the lawyers come on site, or simply failed to respond to outreach. Because of this, the stories collected cannot be deemed a representative sample of migrant dairy farm workers across New York State. Nonetheless, these stories are illustrative of the collective experiences of workers who power one of New York's most powerful economic sectors.

All of the migrants interviewed were from Mexico and Guatemala. Overwhelmingly were men between the ages of 20 and 45. Most of them were in the United States alone, either because they were unmarried, or because they had left their wife and children in their home countries. In at least one instance, a father worked on the farm along with two of his adult sons. Generally, the workers in each farm were connected, either through family ties or because they came from the same village or part of a country. Positions on the farms appeared to be highly sought after. Workers reported that if an opening presented itself on the farm, workers generally sent word to friends and family members back home. Among the older workers, most had at least one prior deportation order. Some had been apprehended and deported and subsequently re-entered the United States. The younger workers and those who had more recently arrived in the country had generally been arrested by immigration authorities at the border and were in the process of defending themselves against removal in cases in the Buffalo or New York City immigration courts. Those who had lawyers had found them in ad hoc ways, sitting in the waiting room at immigration court, for example, and they were not geographically close. Nearly all of the workers interviewed were economic migrants who did not have claims for asylum or other possible legal relief.

Virtually all workers lived isolated lives. They usually worked six days a week and were paid at least minimum wage (but needed to pay about a day's worth for a ride into town for groceries or to go to doctor's appointments). Several reported significant health concerns, including diabetes or other medical conditions requiring constant monitoring. Nearby towns often did not have businesses such as restaurants or grocery stores that catered to these communities. Most workers rarely left the farms; they pointed to lack of transportation and fear of racism as reasons why they did not do so.



Challenges In Providing Immigration Legal Services To New Yorkers

Funding

Overall State Funding

FY 2017 & FY 2018

In the past, Statewide public funding for immigrant legal services was extremely limited. In FY 2017, most state funding was directed to the Office for New Americans (ONA), which re-granted nearly \$5.7 million in grants to 27 community-based organizations and six legal service providers to provide services limited to citizenship, DACA screenings, and beginning in 2016, limited U & T visa help.⁶¹ In addition, ONA provided a small grant of \$50,000 to help providers representing unaccompanied children on Long Island.⁶² That same year, the Assembly also provided \$400,000, and the Independent Democratic Caucus in the Senate gave \$250,000, to a Statewide New York Immigrant Family Unity Project (NYIFUP), which provided legal representation to some detained immigrants housed at the Batavia Federal Detention Center and the Ulster County Correctional Facility.

In FY 2018, the State more than doubled funding for civil immigration legal services, mainly through the creation of the Liberty Defense Project (LDP). The LDP was conceived by the Governor as a public-private partnership to increase access to representation of immigrants across the state.⁶³ The LDP was funded at an initial \$10,000,000 through a joint effort by the Governor and the Independent Democratic Caucus (IDC) of the Senate. An additional \$1,000,000 was raised in private funds for the development of a *pro-bono* representation network and \$300,000 was allocated from the Department of State budget specifically for services to the Asian community.

The LDP was originally divided between seven specific groups, six of which were named in the April 2017 budget. The Vera Institute, which re-granted much of the money to service providers, received \$4 million dedicated to funding the upstate New York Immigrant Family Unity Project (upstate NYIFUP), which provides public-defender style representation to immigrants detained and facing first-time deportation hearings outside of New York City. The remaining funds were distributed to

61 See New York State Office for New Americans, <https://www.newamericans.ny.gov/> (last visited Dec. 8, 2019).

62 New York State Dep't of State, "New York State Office for New Americans, Immigrant Advocates and Philanthropic Organizations Announce Partnership to Increase Community Services for Recently Arrived Central American Children on Long Island" (Feb. 23, 2015), <https://www.dos.ny.gov/press/2015/immigrant2-23.html>.

63 New York State Governor Andrew M. Cuomo, "Governor Cuomo Launches First-In-The-Nation Public-Private Liberty Defense Project" (Mar. 24, 2017), <https://www.governor.ny.gov/news/governor-cuomo-launches-first-nation-public-private-liberty-defense-project>.

Challenges In Providing Immigration Legal Services To New Yorkers

the Hispanic Federation (\$2 million), Northern Manhattan Coalition for Immigrant Rights, Empire Justice Center, and Catholic Charities Community Services (\$1 million each), the New York Immigration Coalition (\$700,000, though the budget initially granted \$1 million), and the Asian American Federation (\$600,000, which came in part from the New York Immigration Coalition’s budget allocation and in part from State Department funds). These organizations,

either directly or through a network of sub-grantees that included both legal service providers and community organizations, provided screenings, representation, defense of deportation, outreach, and community education across the State. In acknowledgment of the time it took to build out this innovative program, contracts for the funds extended through September and even March of the following year.

Table 4.

FY 2018 New York State Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Amount
Liberty Defense Project	Civil Immigration Legal Services, Outreach, Community Education (includes Upstate NYIFUP)	\$10,000,000
Office for New Americans	Citizenship services, DACA screenings, and limited U & T Visa applications	\$5,738,100
Assembly	Legal Services/Additional Appropriations	\$650,000
Department of State	Civil Immigration Legal Services, Outreach, Community Education	\$300,000
Private Funds Raised by Governor	Pro-Bono Legal Representation Coordination	\$1,000,000
TOTAL		\$17,688,100

FY 2019 & FY2020

In April 2018, ONA’s base budget of \$6.4 million to cover the Opportunity Centers and Legal Counsels as well as the \$10 million LDP funding were renewed in the budget, but without any funding being attached to specific organizations. In August, 2018, Governor Cuomo announced the renewal of the \$1 million grant to the Northern Manhattan Coalition for Immigrant Rights (NMCIR), to

continue its work providing legal services through a new program, “Safe Haven”, in partnership with consulates and religious institutions.⁶⁴ In October, 2018, funding for the upstate NYIFUP program was also renewed at \$4.2 million for two years (subject to renewal of second-year funds in the subsequent budget) and expanded to provide representation to immigrants detained at the Batavia facility with prior deportation orders.⁶⁵

64 New York State Governor Andrew M. Cuomo, “Governor Cuomo Announces Program To Provide Immigrant Services In Consulates And Religious Institutions” (Apr. 30, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-program-provide-immigrant-services-consulates-and-religious>.

65 New York State Dep’t of State, “NYS Liberty Defense Project & Vera Expand Legal Representation to Immigrants Facing Deportation Proceedings” (Feb. 15, 2019), <https://www.dos.ny.gov/press/2019/lcp-0215.html>.

Challenges In Providing Immigration Legal Services To New Yorkers

In December 2018, the Office for New Americans issued three Requests for Applications:

1. \$2 million⁶⁶ – Renewal applications for the Office for New Americans Opportunity Centers. The grants were reduced from up to \$175,000 per center to \$80,800 and the maximum number of centers went from 27 to 25. To make up for the difference in funding, the Opportunity Centers were no longer expected to provide English language classes, although they were still required to do 100 citizenship applications and host intake days in partnership with their legal counsel.
2. \$3 million⁶⁷ – Applications for ONA Legal Counsels, lawyers who support the work of the Opportunity Centers. The number of legal counsels was increased from 6 to a maximum of 20, with two lawyer positions required in Capital Region, North Country, Mohawk Valley, Central New York, Southern Tier, Finger Lakes, and Western New York for \$300,00 per contract and one lawyer position required in Westchester/Hudson Valley, Upper Hudson Valley, Suffolk County, Nassau County, Bronx/Queens/Manhattan, and Brooklyn/Staten Island for \$150,000 per contract.

3. \$2.8 million⁶⁸ – Applications for up to 17 total Liberty Defense Project rapid response attorneys. These positions either continued or created attorney and paralegal positions including two lawyer positions in Western New York, Finger Lakes region, Central New York, Mohawk Valley, Capital Region, Mid-Hudson, and Long Island for \$325,000 per contract and one attorney position in Southern Tier, North Country, and New York City for \$175,000 per contract.

Finally, the Liberty Defense Project also includes a *pro bono* network, run by a local non-profit organization, that recruits and mentors attorneys from all over the state to take on immigration cases.⁶⁹ In September, 2019, the Office for New Americans also announced a new partnership, with the New York City Mayor’s Office of Immigrant Affairs, for a joint Rapid Response Legal Services network that would address the needs of individuals arrested and detained by immigration authorities who already had deportation orders.⁷⁰ The State committed \$350,000 per year for two years to the new project.

At the time of the writing of this report, it was too early to assess the full impact of the newly created positions. Once the RFAs were awarded, a total of 19 Legal Counsel⁷¹ and 13

66 New York State Office for New Americans, “Request for Applications #18-ONA-32” (Nov. 5, 2018), <https://www.dos.ny.gov/funding/rfa-18-ona-32/Final.Revised%20Opportunity%20Center%20RFA.pdf>.

67 New York State Office for New Americans, “Request for Applications #18-ONA-38” (Dec. 12, 2018), <https://www.dos.ny.gov/funding/rfa-18-ona-38/Final%20Legal%20Counsel%20RFA.pdf>.

68 New York State Office for New Americans, “Request for Applications #18-ONA-40” (Dec. 20, 2018), <https://www.dos.ny.gov/funding/rfa-18-ona-40/Revised%20LDP%20RFA%2020190111.pdf>.

69 See Catholic Charities Archdiocese of New York, “NYS Liberty Defense Project and Catholic Charities of New York Launch Statewide Pro Bono Project” (Feb. 6, 2019), <https://catholiccharitiesny.org/news/nys-liberty-defense-project-and-catholic-charities-new-york-launch-statewide-pro-bono-project>.

70 NYC Mayor’s Office of Immigrant Affairs, “MOIA & ONA Announce \$1M Investment in Rapid Response Legal Services for Immigrants Facing Imminent Deportation” (Sept. 26, 2019), <https://www1.nyc.gov/site/immigrants/about/press-releases/20190926-rapid-response-legal-services.page>.

71 New York State Governor Andrew M. Cuomo, “Governor Cuomo Announces Selection of 19 Full-Time Immigration Attorneys to Help Immigrants Across State” (Apr. 4, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-selection-19-full-time-immigration-attorneys-help-immigrants-across>.

Challenges In Providing Immigration Legal Services To New Yorkers

Rapid Response attorneys⁷² were created around the state. Only 1 legal counsel position was awarded to Long Island (down from the 2 possible positions included in the RFA) and no applications were received for the Mohawk Valley region for the Rapid Response LDP attorneys. This is nevertheless a significant increase in attorney and paralegal positions around the State.

However, it must be noted that, through the December 2018 RFA process, critical services lost access to funding. Community based organizations that had received funding through re-grants under the original Liberty Defense Project (the FY2017 allocation) to do outreach and community education were not able to apply for the legal services RFAs. In addition, the network of Opportunity Centers, which had included 27 sites since 2013, was reduced to 21 sites and no longer offer English Language classes.⁷³ At the same time, the attorney positions are required to keep low caseloads (20-30 cases for each Liberty Defense Project attorney and 15-20 clients for legal counsels) so that they may travel around their respective regions doing the community education and know your rights presentations previously handled by the community based organizations. This high level of travel within their region has the added consequence of dissuading attorneys far from Buffalo or New York City to take deportation cases, as the travel to and from immigration court is a significant added burden.

Contracts signed for the use of the FY 2019 Funds, including the December, 2018 RFAs, the continuation of the NYIFUP program, the Safe Haven program, the pro-bono program, and

the Opportunity Centers and Legal Counsels were made for 2 years, therefore FY2020 funds served to fund the second year of those contracts. However, for FY 2020, the Senate also made a one-time allocation of \$1 million, which was granted to multiple organizations. The list of organizations is included in Appendix C.

Other State Funding

Civil legal service providers generally can also obtain funding from the Office of Court Administration and the Interest On Lawyers Account (IOLA) Fund, including providers that include immigration assistance as part of their work. Because the funding is not immigration specific, and it is not possible to determine which providers use a portion for immigration services or how much they allocated; those grants are therefore not included in the breakdowns below. However, the IOLA fund did note a substantial increase in numbers of immigration cases being closed by its grantees.⁷⁴ In 2009, immigration cases only accounted for 4% of all closed cases by IOLA grantees. In 2016, that number had increased to 11%.⁷⁵ In 2019, 17% of grantees' closed cases were immigration-related.⁷⁶ Finally, some organizations receive county funds to provide legal services to immigrants, including in Westchester and Suffolk Counties.

72 New York State Governor Andrew M. Cuomo, "Governor Cuomo Announces New Measures to Assist Immigrants and Protect Them from ICE" (Mar. 14, 2019), <https://www.governor.ny.gov/news/governor-cuomo-announces-new-measures-assist-immigrants-and-protect-them-ice>.

73 *Id.*

74 Information provided directly by IOLA and on file with authors.

75 *Id.*

76 *Id.*

Table 5.

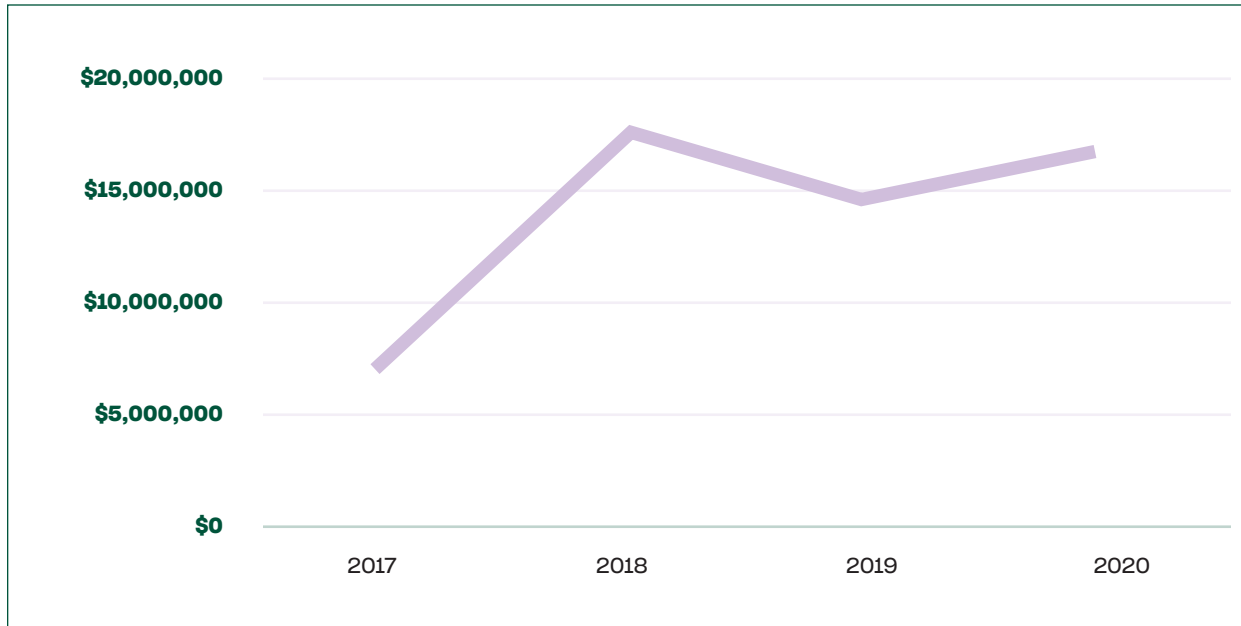
FY 2020 New York State Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Amount
Liberty Defense Project (Office for New Americans)	Rapid Response Legal Services	\$2,475,000
Liberty Defense Project Safe Haven Program	Legal Representation in Partnership with Consulates and Religions Institutions	\$1,000,000
Liberty Defense Project Pro Bono Project	Maintain and mentor a state-wide network of pro-bono attorneys to offer immigration legal representation	\$800,000
Liberty Defense Project New York Immigrant Family Unity Project (upstate)	Provide representation to individuals detained at the Buffalo Federal Detention Center and/ or appearing in detained immigration courts outside of New York City	\$4,250,000
Office for New Americans Legal Counsels	Support of Opportunity Centers, Consultations and immigration legal representation	\$2,850,000
Office for New Americans Opportunity Centers	Network of 21 Opportunity Centers	\$1,696,800
Rapid Response Network with New York City	Rapid Response Legal Services	\$350,000
Project Golden Door	Support to Unaccompanied Minors and Their Families (Legal + Social Worker)	\$750,000
New American Hotline	Hotline for legal referrals and information	\$625,000
Statewide Trainer	Training and technical assistance	\$60,000
Assembly	Legal Services/Additional Appropriations	\$690,000 ⁷⁷
Senate	Legal Services/Additional Appropriations	\$1,000,000
TOTAL		\$16,936,800

77 The appropriations are found in the Aid to Localities Budget Bills: A. 2003-D (2019) / S.1502-D (2019),

Figure 5.

2017 – 2020 Comparison of New York State Funding Streams Dedicated to Immigration Legal Services by Type



New York City Funding⁷⁸

Legal service providers in New York City, who make up 63% of all providers, also have access to funding — via several initiatives — from the New York City government.

FY 2015 – FY 2018

Funding for immigration legal services has steadily increased since 2014, when both Mayor Bill de Blasio and then-City Council Speaker Melissa Mark-Viverito made those investments a priority. Programs included the pilot and, ultimately, expansion of the New York City New York Immigrant Family Unity Project (NYIFUP), which provides public defender-type services to immigrants appearing before New York City’s detained

immigration courts, the Immigrant Children Advocates Response Effort (ICARE) to provide representation to unaccompanied children and Central American families, and the Immigrant Opportunity Initiative (IOI), first started under Mayor Bloomberg but significantly expanded over the last five years by both the Mayor and the City Council. In 2015, the \$3.3 million available in IOI funding was baselined in the executive budget and distributed via Request for Proposal (RFP) to two consortiums of legal service providers and community-based organizations through three-year contracts (for a total of \$10 million over the three years). To support organizations that had previously received IOI funding when it was administered through the City Council, the Council continued the

78 NYC Human Resources Administration, *NYC Office of Civil Justice 2016 Annual Report 3–5* (2016).

Challenges In Providing Immigration Legal Services To New Yorkers

IOI initiative in their own budget, allocating approximately \$2.6 million, mainly to organizations that lost funding through the RFP process. To date, there continues to be two sources of IOI: “Admin IOI,” through funds baselined in the Executive Budget, and “Council IOI”, which is allocated in the expenses outlined in Schedule C.

In addition to the New York City funding distributed to legal service providers, in 2015, the NYC Mayor’s Office for Immigrant Affairs (MOIA), the City University of New York (CUNY) Research Foundation, and the Human Resources Administration (HRA) launched ActionNYC to “expand capacity in the field of immigration legal assistance in NYC”⁷⁹ by doing targeted outreach, employing trained non-lawyer staff of non-profits (labeled “navigators”) to screen clients and help them with “straightforward” applications,⁸⁰ lawyers to supervise the navigators, and a clinic coordinator to organize monthly mass-assistance events. The total budget for ActionNYC for the last 9-month period in FY 2016 was \$7.9 million,⁸¹ \$2.7 million of which was re-granted for services directed to legal service delivery (including outreach, navigators, a clinic coordinator, and legal services in community schools⁸²). In FY 2017, the total budget for ActionNYC was increased to \$8.4 million to cover a full year, and contracts for outreach, navigation, legal supervisors, and community schools were extended and increased proportionally to

cover the longer time period. The clinic coordinator role was terminated and a new Legal Coordinator grant was created along with a medical-legal partnership in New York City’s Health + Hospitals.⁸³ Finally, MOIA received \$750,000 from private funders to administer citizenship services in libraries and schools through NYCitizenship,⁸⁴ of which \$375,000, or 50%, is given to one legal service provider. In FY 2018 the budget for ActionNYC was increased to \$8.7 million. The funding was used in a manner similar to 2017, with an increased focus on serving hard-to-reach communities through increase in navigator sites and an ActionNYC Legal And Outreach Capacity Building Fellowship program, which funds 15 fellows at various CBOs around the City.

In 2018, New York City nearly doubled the amount of funding dedicated to legal services for immigrants via these initiatives. NYC increased NYIFUP funding to \$10 million, the Unaccompanied Minors Initiative (UMI) and Immigrant Children Advocates Relief Effort (ICARE) projects to represent unaccompanied refugee children and refugee adults with children from Central America to \$2 million, IOI to \$8.5 million. NYC also increased CUNY Citizenship Now! Funding, which places immigration attorneys at various agencies and Council District offices around the city to provide consultations in all areas of family and naturalization law and limited application assistance to \$2 million.

79 NYC Human Resources Administration, *NYC Office of Civil Justice 2016 Annual Report 56* (2016).

80 In the addendum to the ActionNYC RFP, MOIA and HRA stated that “the initiative is primarily focused on helping people complete straightforward applications such as naturalization, TPS, Green Card renewals, DACA, etc.” NYC Mayor’s Office of Immigrant Affairs, *ActionNYC Addendum 22* (June 2015).

81 Liz Robbins, “New York to Aid Immigrants Amid Stalled Immigration Reforms,” *N.Y. Times* (Dec. 14, 2015). <https://www.nytimes.com/2015/12/15/nyregion/new-york-city-to-aid-immigrants-amid-stalled-national-reforms.html>.

82 ActionNYC runs a program in community schools, run through Catholic Charities Legal Services, that differs from the overall model of pairing non-attorney navigators with immigration attorneys to provide legal services in community-based organizations. Instead, the community schools project of ActionNYC brings experienced immigration attorneys into NYC-run community schools to organize legal screening clinics and provide direct representation in complex case matters to clients who would otherwise not qualify for services from a majority of legal service providers, such as Special Immigrant Juvenile Status (SIJS) for applicants at risk of aging-out of the program.

83 NYC Mayor’s Office of Immigrant Affairs, *ActionNYC Application Package & Instructions for ActionNYC in New York City Health + Hospitals* (Aug. 1, 2016), https://www.rfcuny.org/FilesDirectory/News/documents/ActionNYC%20H.H%20LTC%20Pilot%20RFP_7%2029_16_.pdf.

84 NYC Human Resources Administration, *NYC Office of Civil Justice 2016 Annual Report 56* (2016).

FY 2019 & FY 2020

As immigration enforcement has continued to increase throughout New York, and as adjudications of cases take longer and become more complex, New York City has continued to increase its financial investments in legal services and to reconsider how it administers its contracts. Of particular note, certain contracts no longer limit how many times a case can be re-enrolled on a grant, meaning that cases that take multiple years will be paid for each year that work is performed on the case. This is a significant change from previous years, in which cases were limited to one or two re-enrollments before no longer counting towards contract deliverables, a practice that essentially forced organizations to continue to work on cases without pay and limited the number of cases they would take on to better manage case loads.

In FY 2019 and FY 2020, the NYC Administration continued growing its baselined programs, including over \$31 million of programming through ActionNYC and Admin IOI. The latter renewed the original contracts awarded through the 2014 RFP and added significant funding that was distributed by bringing in additional sub-contractors into the initial consortiums and awarding new grants to multiple organizations. In FY 2020, the Administration also invested five hundred thousand dollars a year for two years for a Rapid Response Legal Services program in partnership with the New York State Office for New Americans to provide services to individuals with prior deportation orders arrested by ICE. Finally, the Administration allocated \$2.3 million in federal funds received through the Community Services Block Grants program to services for immigrant victims of domestic violence.

Similarly, the New York City Council increased funding to specific initiatives. CUNY Citizenship Now! received \$2.5 million in FY2019 and \$3.25 million in FY 2020 to place attorneys in Council District Offices. ICARE was increased to \$2 million in FY 2019 and \$3,981,800 in FY 2020. Finally, NYIFUP, which held at \$10 million in FY 2019 was increased to \$16.6 million in FY 2020, primarily to account for the longer amount of time cases remained active once NYIFUP attorneys obtained the client's release from detention.

There remain some concerns with New York City funding, namely around the so-called "carve out" which prevents individuals with certain convictions to be eligible for city-funded services.⁸⁵ In addition, the low ceiling for allowable overhead costs and non-legal services staff put a strain on organizations that must find other sources of funding to cover these necessary expenses. In many of the small and middle-sized organizations receiving funding, attorneys funded to do case work must also spend time doing the minute accounting and reporting required for government contracts.

⁸⁵ Liz Robbins, "All Immigrants Should be Given Lawyers, Some City Council Members Say," *N.Y. Times* (May 31, 2017), <https://www.nytimes.com/2017/05/31/nyregion/immigrant-legal-services-new-york.html>.

Table 6

FY 2019 New York City Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Amount
New York City Council	Representation of detained immigrants, Central American refugee families, unaccompanied children, general immigration services	\$17,800,000 ⁸⁶
New York City Mayor	Immigration legal services, outreach, rapid response	\$28,700,000
TOTAL		\$46,500,000

Table 7

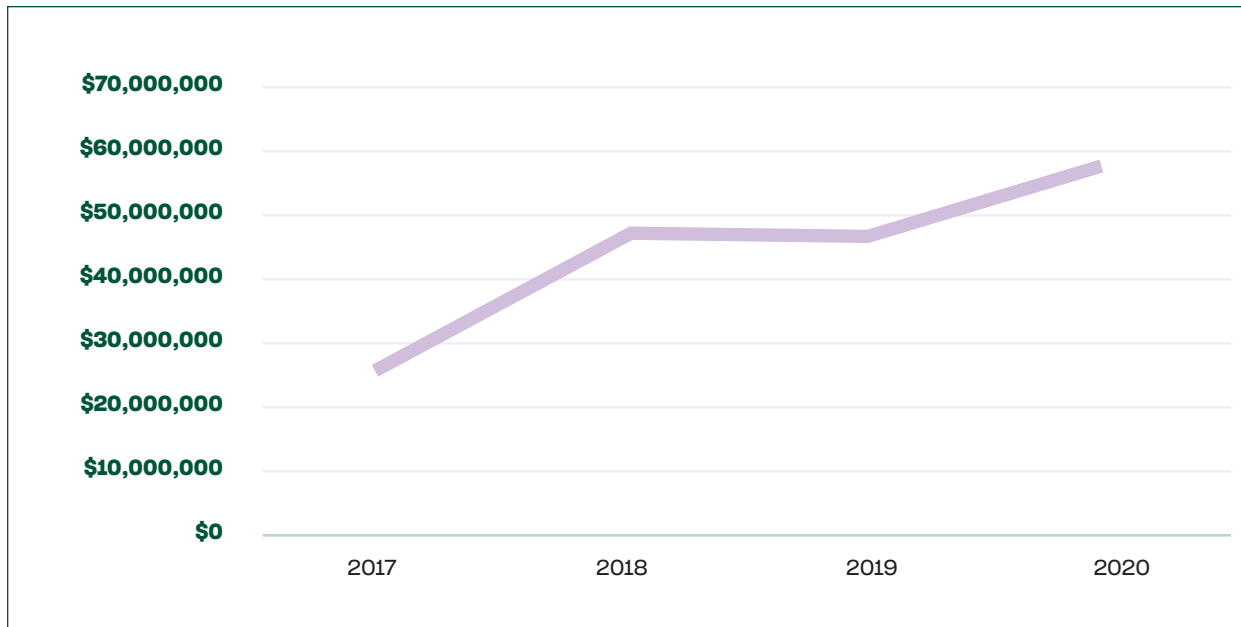
FY 2020 New York City Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Amount
New York City Council	Representation of detained immigrants, Central American refugee families, general immigration services	\$27,131,800
New York City Mayor	Immigration legal services, outreach, rapid response	\$31,100,000
		\$58,231,800

⁸⁶ FY 2019 Schedule C also include \$500,000 for an “Immigrant Resource Center”, but details had not been made public as of the writing of this report and it is not clear that legal services would be provided there.

Figure 6.

Increase In Legal Services Funding FY 2017 – FY 2020 in New York City



Private Funding

Most providers rely on private philanthropy in addition to government funding. Sources of funding were too varied to establish trends, but the most consistent funder was the Immigrant Justice Corps (IJC), which, yearly, places 25 recent law school graduates at legal service providers for two-year positions (for a total of 50 legal fellows in the field at any given time).⁸⁷ In addition, the IJC funds 10 “community fellow” positions every year (for a total of 20 fellows in the field at any given time). Community fellows are recent college graduates who become accredited by the Department of Justice to provide

basic legal services.⁸⁸ Nearly half of survey respondents hosted IJC fellows. Other major funders include community trusts, such as the New York Community Trust and Long Island Community Foundation, the Robin Hood Foundation, and individual donors.⁸⁹ Twenty-one percent of respondents did not receive any private funding.⁹⁰ One third of those who the supplemental survey also charge some type of fees.⁹¹

87 NYIC Legal Service Provider Survey (November 2017 – January 2018); Immigrant Justice Corps, <https://justicecorps.org/> (last visited Dec. 8, 2019).

88 Immigrant Justice Corps, <https://justicecorps.org/> (last visited Dec. 8, 2019).

89 NYIC Legal Service Provider Survey (November 2018 – January 2018).

90 *Id.*

91 *Id.*

The Role of Community Based Organizations

Community-based organizations (CBOs) play an important role in the provision of immigration legal services provision in New York State.

These groups are often geographically located in or near the communities they serve and are usually staffed by community members. They are a critical bridge between service providers and individuals whose lives are directly impacted by the Federal Government's policies and are often the first call communities make in moments of crisis.

CBOs speak the language(s) of the community and are connected to broader networks that keep them updated on legal and political developments. In addition, CBOs often use their physical space as community centers available to obtain information or to be connected to legal help. As such, they are best suited to provide Know Your Rights Presentations, general community education, and outreach on behalf of providers. More importantly, as most immigrant New Yorkers, particularly undocumented immigrants, come from countries where there is high distrust in government and legal institutions, CBOs are often crucial to helping foster trust between immigrant New Yorkers, legal representatives, and government agencies.

It is vital that our immigration legal services system include funding for CBOs. First, as noted above, CBOs have the trust and the ear of the community and are the best connection to community members. Second, if funded to do the work, CBOs can absorb some of the burden from legal representatives, freeing them to focus on actual casework. For example, staff of CBOs can act as case managers by helping immigrant community members gather necessary documents or navigate other agencies such as social benefits, schools, doctors and hospitals. They can also act as translators when there are language issues. Third, CBOs with sufficient funding and connections to attorneys in their area are best positioned to become recognized and accredited by the US Department of Justice, thus expanding the pool of available services. Finally, CBOs are the best advocates for their communities, and can both highlight where the needs are the most critical to ensure that resources are deployed where necessary and also make sure that the voices of immigrant communities are included when decisions are made as to how best to serve them.

For these reasons, it is important to note that the term "legal services", whenever it is used in connection with immigration legal services, ought to include not just lawyer positions but the services provided by CBOs as well.

The Impact of the Invisible Wall

The present legal and political climate has created or, in some cases, exacerbated, challenges to providing legal services in New York.

Providers report that immigration legal practice has shifted dramatically in the last 2-plus years in a process that some advocates refer to as the Administration's building of an "invisible wall" by eliminating long-standing legal protections, increasing ICE enforcement, and creating bureaucratic barriers to obtaining status.⁹²

The national rhetoric about immigration has also become increasingly polarized, which has caused both immigrant communities and the attorneys and advocates that represent them to feel under constant attack. Immigration attorneys and Department of Justice Accredited Representatives throughout New York State report feeling severe stress in trying to stay abreast of sometimes-daily legal developments. Attorneys and accredited representatives report feeling like "first responders" who are never sure of when the next crisis will arise. Attorneys and accredited representatives also report being ill-prepared to face these constant changes;

their existing caseloads prevent them from pivoting to address the needs of communities that come under attack. Many also report spikes in anxiety and depression as their caseloads explode because of the mass increase in denials and appeals of cases that would have been considered uncomplicated even two years ago.

Below, we review some of the changing landscape and its effect on the providers of legal services in New York State.

Threatened Loss of Longstanding Legal Protections

Temporary Protected Status

Over 400,000 people live in the United States with Temporary Protected Status (TPS).⁹³ Of these, at least 26 thousand have been lawfully residing in New York, many for decades.⁹⁴ Since taking office, the Trump administration has tried to end crucial TPS protections for nationals from El Salvador, Honduras, Haiti,

92 American Immigration Lawyers Association, "Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration are Slowing and Restricting Legal Immigration" (2018).

93 U.S. Citizenship and Immigration Services, "Temporary Protected Status" (Nov. 18, 2019), <https://www.uscis.gov/humanitarian/temporary-protected-status>.

94 "TPS Holders in New York," *Center for American Progress*, https://cdn.americanprogress.org/content/uploads/2017/10/19130252/101717_TPSFactsheet-NY.pdf. (last visited Dec. 19, 2019).

Nepal, Nicaragua, and Sudan, as each country's TPS designation has come up for review, a move that threw hundreds of thousands of TPS holders and their families into limbo and caused widespread panic across immigrant communities throughout NY.⁹⁵

Lawsuits filed in the U.S. District Court for the Northern District of California⁹⁶ and the U.S. District Court for the Eastern District of New York⁹⁷ have resulted in court orders that, for now, halt the administration's attempts to end TPS for all six countries.⁹⁸

The cases will continue to be litigated as they — and numerous other lawsuits challenging the Trump administration's termination of TPS designations for these countries — wind their way through the courts.

The fate of TPS is likely to end up at the U.S. Supreme Court. Nonetheless, the November 4, 2019 notice in the Federal Register sets forth the Trump administration's timeline for terminating TPS for these countries, if it succeeds in its attempts to overcome the court orders currently blocking TPS termination for these countries. The notice provides there will be additional time before TPS termination takes effect if the government is allowed to proceed with its plans to terminate TPS for the six countries.⁹⁹

The very real prospect of losing the ability to remain in the United States despite being long-term lawfully-residing community members has thrown entire immigrant

communities into panic and caused a spike in the need for legal screening and representation of previously stable immigrant groups. It has also caused widespread fear in other communities with TPS that their designations would also be revoked and make them subject to removal from the U.S.

Eliminating Fundamental Asylum Protections: Restrictions on Asylum for Survivors of Domestic Violence and Families

On June 11, 2018, in *Matter of A-B*, Attorney General Sessions restricted the ability of victims of domestic or gang violence to qualify for asylum.¹⁰⁰ On July 29, 2019, Attorney General William Barr made it more difficult for asylum seekers who have been persecuted because of a family relationship to obtain asylum.¹⁰¹ These decisions sought to overturn established basis for asylum and continued the present administration's assault on established tenets of asylum law.¹⁰²

Through the A.G. decisions in *Matter of A-B-* and *Matter of L-E-A-*, the federal government has foreclosed access to two previously reliable pathways to asylum. This has affected a large proportion of immigrants with pending cases, who found their prospects of obtaining status unexpectedly foreclosed without warning and left their attorneys scrambling for alternate legal theories to protect their clients.

These decisions have also led to a

95 U.S. Citizenship and Immigration Services, "Temporary Protected Status" (Nov. 18, 2019), <https://www.uscis.gov/humanitarian/temporary-protected-status>; Immigrant Legal Resource Center, "TPS EAD Extension for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan" (Nov. 2019), https://www.ilrc.org/sites/default/files/resources/tps_nov_2019.pdf.

96 See Ramos, et al. v. Nielsen, et al., No. 18-cv-01554 (N.D. Cal. Oct. 3, 2018); see also Bhattarai v. Nielsen, No. 19-cv-00731 (N.D. Cal. Mar. 12, 2019).

97 See Saget, et al., v. Trump, et al., No. 18-cv-1599 (E.D.N.Y. Apr. 11, 2019).

98 Immigrant Legal Resource Center, "TPS EAD Extension for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan" (Nov. 2019), https://www.ilrc.org/sites/default/files/resources/tps_nov_2019.pdf.

99 "Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan," 84 Fed. Reg. 59,403 (Nov. 4, 2019); Immigrant Legal Resource Center, "TPS EAD Extension for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan" (Nov. 2019), https://www.ilrc.org/sites/default/files/resources/tps_nov_2019.pdf.

100 *Matter of A-B-*, 27 I&N Dec. 316 (A.G., 2018).

101 *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).

102 Catholic Legal Immigration Network, Inc., "Practice Pointer: Matter of L-E-A-, 27 I&N Dec. 581" (A.G. 2019) (Aug. 2, 2019), <https://clinet.org/sites/default/files/resources/defending-vulnerable-populations/Litigation/L-E-A-Practice-Pointer-8-2-2019-Final.pdf>.

substantial spike in appeals, which we discuss further later in this report.

Elimination of Right to Seek Asylum at the Border

The present administration has instituted a number of new policies, many being challenged in court, designed to deter families from seeking asylum at the U.S. southern border.¹⁰³ The Migrant Protection Protocols (also known as “Remain in Mexico”), metering, and a ban on asylum for individuals who transited through Mexico before arriving at the U.S.-Mexico border have reshaped the state of asylum and impacted immigrant communities in NYS whose family members are now ensnared in this policy and forced to remain in precarious conditions at the US border.¹⁰⁴

Metering and the Asylum Turnback Policy

Throughout 2018, as asylum-seeking families began arriving at the border in large numbers, U.S. immigration officials advised asylum seekers to lawfully seek asylum at ports of entry while simultaneously effectively closing off ports of entry to asylum seekers by instituting a practice of “metering”.¹⁰⁵ “Metering” (or “queue management”) set shifting parameters for how many asylum-seekers would be processed daily at any of the U.S. ports of entry on the U.S./Mexico border. Any asylum-seekers that could not be immediately processed would have to

await a “turn” in Mexico.¹⁰⁶ Metering allowed CBP agents to turn away asylum seekers at the U.S.-Mexico border, in a general practice of “asylum turnbacks” that placed immigrant lives at risk.¹⁰⁷

Although metering was reportedly used as early as February 2016 at the San Ysidro port of entry, in late April 2018, the Administration ordered ports of entry across the U.S.-Mexico border to institute the policy. By November 2019, it was estimated that more than 21,000 individuals were waiting in squalid and dangerous conditions in 11 Mexican border cities just for the opportunity to start the asylum process.¹⁰⁸

The “Migrant Protection Protocols”

On December 20, 2018, the Administration announced a program called the “Migrant Protection Protocols” (MPP), often referred to as the “Remain in Mexico” program, where those who arrive at the southern border and request to apply for asylum are given notices to appear in immigration court and sent back to Mexico to await a hearing in precarious conditions.¹⁰⁹ Some of these hearings take place in “tent courts” built next to the port of entry, such as in Laredo and Brownsville, Texas, where immigration judges are broadcast via video teleconferencing.¹¹⁰ The Remain in Mexico program has also been used to separate families. For example, at a holding facility in El Paso, Texas, a Border Patrol agent

103 American Immigration Council, “A Guide to Policies Affecting Asylum Seekers at the Border” (2019).

104 See “Addressing Mass Migration Through the Southern Border of the United States,” 83 Fed. Reg. 57,661 (Nov. 9, 2018); American Immigration Council, *A Guide to Policies Affecting Asylum Seekers at the Border* (2019).

105 American Immigration Council, “A Guide to Policies Affecting Asylum Seekers at the Border” (2019).

106 “Federal Court Rules that Challenge to Trump’s Asylum Turnback Policy Will Move Forward,” *Center for Constitutional Rights* (July 30, 2019), <https://ccrjustice.org/home/press-center/press-releases/federal-court-rules-challenge-trump-s-asylum-turnback-policy-will>.

107 American Immigration Council, “A Guide to Policies Affecting Asylum Seekers at the Border” (2019); “Federal Court Rules that Challenge to Trump’s Asylum Turnback Policy Will Move Forward,” *Center for Constitutional Rights* (July 30, 2019), <https://ccrjustice.org/home/press-center/press-releases/federal-court-rules-challenge-trump-s-asylum-turnback-policy-will>.

108 The University of Texas at Austin Strauss Center, “Metering Update, November 2019” (2019), https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf.

109 INA § 235(b)(2)(C); Department of Homeland Security, “Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration” (2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historicaction-confront-illegal-immigration>. *Human Rights Watch*, “We Can’t Help You Here: US Returns of Asylum Seekers to Mexico” (2019), <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

110 American Immigration Lawyers Association, “Featured Issue: Port Courts” (2019), <https://www.aila.org/advo-media/issues/all/port-courts>.

told a Honduran family that “one parent would be sent to Mexico while the other parent and their three children could stay in the United States,” then the agent turned to the couple’s youngest daughter, 3-year-old Sofia, and asked her to make a choice.¹¹¹

Under MPP, CBP officers do not ask asylum seekers if they are afraid of returning to Mexico; a person who fears harm in Mexico is required to “affirmatively” assert that fear if they do not want to be returned to Mexico.¹¹² Then the asylum seeker must be referred to an Asylum Officer for an interview about their fear, but individuals are often held in CBP custody for these interviews and are not allowed access to an attorney; some even report being handcuffed throughout the interview process.¹¹³ It is estimated that merely 1% of affected asylum-seekers have successfully claimed that they would face danger if they had to stay in Mexico.¹¹⁴

From January 2019, when the MPP process began, through mid-November 2019, approximately 60,000 asylum-seekers have been returned to Mexico to await hearings in places the State Department considers some of the most dangerous in the world.¹¹⁵ As of September 2019, the largest number

of MPP cases had been filed in the El Paso Immigration Court, where only three judges preside at the time of writing.¹¹⁶ In addition to CBP officers, several hundred USCIS Asylum Officers have also been charged with conducting MPP interviews. One Asylum Officer, after being given the directive to conduct MPP interviews said, “I feel in some ways that this administration [has] made me a human rights abuser.”¹¹⁷

Under MPP, many individuals will be forced to wait many months to have their asylum case decided, and during the time these asylum seekers remain in Mexico, it is extremely difficult to obtain counsel and prepare for a hearing.¹¹⁸ For example, at the end of June 2019, there were 12,997 pending MPP cases, and of these, only 163 individuals, or 1.3%, had found representation.¹¹⁹

Under the MPP policy, CBP agents deliver children, families, and other asylum seekers to areas so plagued by violence that the State Department has designated the state of Tamaulipas a Level 4 threat risk, the same warning as Afghanistan, Iraq, Syria, Somalia, North Korea, and Yemen.¹²⁰ In September 2019, there were more than 340 public reports of rape, kidnapping, torture, and

111 Robert Moore, “3-Year-Old Asked To Pick Parent In Attempted Family Separation, Her Parents Say,” *NPR* (July 15, 2019, 5:01 AM), <https://www.npr.org/2019/07/15/741721660/follow-up-what-happened-after-a-border-agent-asked-toddler-to-pick-a-parent>.

112 *American Immigration Council, A Guide to Policies Affecting Asylum Seekers at the Border* (2019).

113 U.S. Citizenship and Immigration Services, *Guidance for Implementing Section 235(b)(2)(C) of the Immigration and Nationality Act and the Migrant Protection Protocols* (2019); American Civil Liberties Union, ACLU: “Asylum Seekers Subject to Trump’s Remain in Mexico Policy Must be Given Access to Counsel” (Nov. 5, 2019), <https://www.aclusandiego.org/aclu-asylum-seekers-subject-to-trumpsremain-in-mexico-policy-must-be-given-access-to-counsel/>.

114 Julio-Cesar Chavez & Andy Sullivan, “Few migrants seeking U.S. asylum successfully claim fear of waiting in Mexico,” *Reuters* (June 28, 2019, 3:25 PM), <https://www.reuters.com/article/us-usa-immigration-crossings/few-migrants-seeking-u-s-asylum-successfully-claim-fear-of-waiting-in-mexico-idUSKCN1TT2UP>.

115 Molly O’Toole, “Asylum officers rebel against Trump policies they say are immoral and illegal,” *Los Angeles Times*, (Nov. 15, 2019, 2:00 AM), <https://www.latimes.com/politics/story/2019-11-15/asylum-officers-revolt-against-trump-policies-they-say-are-immoral-illegal>.

116 Executive Office for Immigration Review, *El Paso Immigration Court*, [https://www.justice.gov/eoir/el-paso-immigration-courts#staff; Transactional Records Access Clearinghouse, “Details on MPP \(Remain in Mexico\) Deportation Proceedings Through September 2019,” https://trac.syr.edu/phptools/immigration/mpp/](https://www.justice.gov/eoir/el-paso-immigration-courts#staff; Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings Through September 2019,” https://trac.syr.edu/phptools/immigration/mpp/).

117 This American Life: “The Out Crowd,” *Chicago Public Radio* (Nov. 15, 2019) (downloaded from <https://www.thisamericanlife.org/688/the-out-crowd>); U.S. Citizenship and Immigration Services, “Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals” (Oct. 16, 2019), <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals>.

118 Aaron Reichlin-Melnick, “Chaos and Dysfunction at the Border: The Remain in Mexico Program Firsthand,” *Immigration Impact*, Sept. 9, 2019, <http://immigrationimpact.com/2019/09/09/remain-in-mexicoprogram-firsthand/>.

119 Transactional Records Access Clearinghouse, “Access to Attorneys Difficult for Those Required to Remain In Mexico” 2019, <https://trac.syr.edu/immigration/reports/568/>.

120 Human Rights First, “Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy” 2019, <https://www.humanrightsfirst.org/sites/default/files/hrordersfromabove.pdf>.

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other violent attacks against asylum seekers returned to Mexico under MPP.¹²¹ Tent camps have sprung-up in Mexico along the border, and in some areas, more than 2,000 asylum seekers are forced to live in squalid conditions rampant with diseases, and without running water or electricity.¹²²

Thousands of people subject to MPP have not been able to return to the border for a scheduled hearing and have been ordered deported for missing court, and numerous others have missed hearings because the danger, violence, and instability of the border region forced them to abandon their cases and go home.¹²³

It is undeniable that the Remain in Mexico policy is an attack on the asylum process. Aaron Reichlin-Melnick, a policy analyst for the American Immigration Council, argued that MPP is designed to break the asylum system through non-functioning bureaucracy; he said, “The goal of MPP is to create a system which fools casual observers into thinking a process exists — while making success near-impossible and harm so pervasive that sensible people give up.”¹²⁴

Asylum Transit Ban – Asylum Ban 2.0

On July 16, 2019, the Trump administration issues a joint interim final rule governing asylum claims which provided that any individual, including unaccompanied children,

who entered the United States across the southern border after failing to apply for protection in a third country outside of the individual’s country of citizenship, nationality, or last lawful habitual residence through which they transited en route to the United States, is ineligible for asylum.¹²⁵

The Asylum Transit Ban applies to people at different stages of the asylum process. For individuals sent back under MPP or released into the United States from the border with a notice to appear in immigration court, the Asylum Transit Ban applies at the end of the process, when an immigration judge makes a decision on an application for humanitarian protection. For people not sent back under MPP, the Asylum Transit Ban applies at the beginning of the process, when asylum seekers are subjected to expedited removal.¹²⁶ If the officer determines that the Asylum Transit Ban applies, the officer will make a determination that the individual is ineligible for asylum and instead screen the person to determine whether they have a “reasonable fear” of persecution or torture.¹²⁷ If the applicant passes this heightened screening and the officer determines their fear is “reasonable,” they are placed into full removal proceedings in immigration court.¹²⁸ Therefore, individuals subject to the Asylum Transit Ban are only eligible for withholding of removal and protection under the Convention Against

121 Human Rights First, “Orders from Above: Massive Human Rights Abuses Under Trump Administration Return to Mexico Policy 2019,” <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>.

122 Nomaan Merchant, “Squalid Conditions at Migrant Camp Shows Need for Help,” *AP News* (Nov. 14, 2019), <https://apnews.com/337b139ed4fa4d208b93d491364e04da>.

123 Transactional Records Access Clearinghouse, “Details on MPP (Remain in Mexico) Deportation Proceedings 2019,” <https://trac.syr.edu/phptools/immigration/mpp/>; Gus Bova, *Migrants at Laredo Tent Court Tell Stories of Kidnappings and Violence While Pleading Not to Be Returned to Mexico*, *TEXAS OBSERVER*, Sept. 16, 2019, <https://www.texasobserver.org/migrants-at-laredo-tent-court-tell-stories-of-kidnappings-and-violence-while-pleading-not-to-be-returned-to-mexico/>.

124 Gus Bova, “In Nuevo Laredo, Trump’s ‘Remain in Mexico’ Program Feels Chaotic and Dangerous,” *Texas Observer* (July 31, 2019, 11:34 AM), <https://www.texasobserver.org/in-nuevo-laredo-trumps-remain-in-mexico-program-feels-chaotic-and-dangerous/>; Zachary Mueller, *Immigration 101: What is ‘Remain in Mexico’, or the Migration Protection Protocols (MPP)?*, *America’s Voice* (Nov. 15, 2019), <https://americasvoice.org/blog/remain-in-mexico-mpp/>.

125 Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829 (July 16, 2019).

126 American Immigration Council, “A Guide to Policies Affecting Asylum Seekers at the Border” (2019).

127 8 C.F.R. § 208.30(e)(5)(ii) (2019).

128 8 C.F.R. § 208.30(e)(5)(ii) (2019); *American Immigration Council*, “A Guide to Policies Affecting Asylum Seekers at the Border” (2019).

Torture, immigration protections that are not paths to either lawful permanent residence or U.S. Citizenship and do not allow them to provide status to their family members.¹²⁹

Immigrant advocacy groups challenged MPP in the U.S. District Court for the Northern District of California in *Innovation Law Lab v. McAleenan*, No. 19-00807. The court originally halted MPP and the government appealed to the U.S. Court of Appeals for the Ninth Circuit and also moved for a stay of the order during the pendency of the appeal which the Ninth Circuit unfortunately granted.¹³⁰ Thus, MPP remains in effect until the Ninth Circuit reviews the merits of the case.

Legal challenges have also been filed against the Asylum Transit Ban. On July 16, 2019, the ACLU, the Southern Poverty Law Center and the Center for Constitutional Rights filed a lawsuit, *East Bay Sanctuary et al. v. Barr*, in the Northern District of California seeking to have the new rule declared unlawful and seeking a preliminary and permanent injunction against its implementation.¹³¹ While the U.S. District Court for the Northern District of California initially issued a nationwide injunction enjoining the asylum ban across the country, the Ninth Circuit Court of Appeals limited the scope of the injunction to only states within the Ninth

Circuit.¹³² The federal government sought a stay of the injunction and on September 11, 2019, the Supreme Court granted the stay, thereby allowing Asylum Ban 2.0 to go into effect across the country as the litigation continues.¹³³ The U.S. Court of Appeals for the Ninth Circuit will hear oral arguments on the merits of the case on December 2, 2019.

Expected Loss of DACA

Deferred Action for Childhood Arrivals (DACA) was announced by the Obama administration on June 15, 2012 to provide protection from deportation and a work permit to undocumented immigrants who came to the United States before the age of 16 for a two-year period, subject to renewal. Nearly 800,000 people, including over 40,000 in New York State,¹³⁴ have been granted deferred action through the DACA program since its inception.¹³⁵ Although DACA does not provide a pathway to lawful permanent residence, it does provide temporary protection from deportation, work authorization, and the ability to apply for a social security number.¹³⁶

DACA has faced many threats and experienced significant changes since it began in 2012.¹³⁷ On September 5, 2017, the Trump administration announced the termination of the program,¹³⁸ which resulted in several

129 8 C.F.R. § 208.30(e)(5)(i) (2019).

130 Catholic Legal Immigration Network, Inc., "Recent Updates on the Administration's Assault on Asylum," (Sept. 30, 2019), <https://cliniclegal.org/resources/recent-updates-administrations-assault-asylum>.

131 See Center for Constitutional Rights, "East Bay Sanctuary Covenant v. Barr" (Sept. 10, 2019), <https://ccrjustice.org/home/what-we-do/our-cases/east-bay-sanctuary-covenant-v-barr>; Catholic Legal Immigration Network, Inc., "Asylum Ban Part 2: Third Country Transit Regulations FAQs" (Sept. 20, 2019), <https://cliniclegal.org/resources/asylum-ban-part-2-third-country-transit-regulations-faqs>.

132 Catholic Legal Immigration Network, Inc., "Asylum Ban Part 2: Third Country Transit Regulations FAQs" (Sept. 20, 2019), <https://cliniclegal.org/resources/asylum-ban-part-2-third-country-transit-regulations-faqs>.

133 American Immigration Lawyers Association, "Featured Issue: Border Processing and Asylum" (2019), <https://www.aila.org/advo-media/issues/all/featured-issue-border-processing-and-asylum>; Catholic Legal Immigration Network, Inc., "Asylum Ban Part 2: Third Country Transit Regulations FAQs" (Sept. 20, 2019), <https://cliniclegal.org/resources/asylum-ban-part-2-third-country-transit-regulations-faqs>.

134 *DACA Recipients by State*, Governing the States and Localities, <https://www.governing.com/gov-data/other/daca-approved-participants-by-state.html>. (last visited Dec. 9, 2019); NYC Mayor's Office of Immigrant Affairs, "Fact Sheet: DREAMers in New York City" (Jan. 2018), <https://www1.nyc.gov/assets/immigrants/downloads/pdf/2017-DREAM-Act-Fact-Sheet.pdf>.

135 Immigrant Legal Resource Center, "Preparing for the Future: Understanding the Rights and Options of DACA Recipients" (Feb. 7, 2019), <https://www.ilrc.org/preparing-future-understanding-rights-and-options-daca-recipients>.

136 DACA, Immigrant Legal Resource Center, <https://www.ilrc.org/daca>. (last visited Dec. 9, 2019).

137 Immigrant Legal Resource Center, "Preparing for the Future: Understanding the Rights and Options of DACA Recipients" (Feb. 7, 2019), <https://www.ilrc.org/preparing-future-understanding-rights-and-options-daca-recipients>.

138 Immigrant Legal Resource Center, "Preparing for the Future: Understanding the Rights and Options of DACA Recipients" (Feb. 7, 2019), <https://www.ilrc.org/preparing-future-understanding-rights-and-options-daca-recipients>.

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lawsuits. Several courts hearing these lawsuits ordered USCIS to continue accepting and processing renewal applications while the cases are pending. While DACA recipients remain protected and continue to be eligible to renew, there is still much uncertainty around the future of the program.¹³⁹ There are about 690,000 individuals enrolled in the program at this time.¹⁴⁰

With the attempted rescission of DACA in September of 2017, there has been renewed pressure on Congress to pass federal legislation known as the Dream Act and other similar legislative proposals to protect young immigrants who are vulnerable to deportation.¹⁴¹

On January 9, 2018, a federal judge in California blocked the Trump administration's termination of DACA and continued to allow renewal requests.¹⁴² Similarly, on February 13, 2018, a federal judge in New York issued a preliminary injunction preventing the administration from abruptly ending the DACA program.¹⁴³ As of August 2019, individuals with DACA or those who have had DACA in the past can continue to renew their benefits on a two-year basis. However, first-time applications are no longer being accepted.¹⁴⁴

The U.S. Supreme Court announced on June 28, 2019, that it will grant the Trump administration's request that it review the federal court cases challenging Trump's termination of DACA. The Supreme Court heard oral arguments in three consolidated

cases regarding President Trump's unlawful termination of DACA on November 12, 2019. A decision is expected in June of 2020. For now, the three U.S. district court orders allowing DACA recipients to submit renewal applications remain in effect, and U.S. Citizenship and Immigration Services (USCIS) is still accepting DACA renewal applications from anyone who has previously had DACA.¹⁴⁵

States cannot legalize the status of undocumented immigrants, but they may address collateral issues that stem from being undocumented. Most notably, numerous states, including New York, have enacted legislation that helps overcome barriers to higher education faced by many undocumented youth. Pursuant to some state laws and policies, undocumented students may now be able to attend state universities and qualify for in-state tuition.

Aggressive Immigration Enforcement

Immigration and Customs Enforcement (ICE) is the agency within the Department of Homeland Security (DHS) responsible for interior enforcement functions, including investigations, detention, and removal of unauthorized immigrants.¹⁴⁶ On January 25, 2017, President Trump signed Executive Order 13768, titled "Enhancing Public Safety in the Interior of the United States." This order essentially abolished the guidelines used by ICE under the Obama

139 Immigrant Legal Resource Center, "Preparing for the Future: Understanding the Rights and Options of DACA Recipients" (Feb. 7, 2019), <https://www.ilrc.org/preparing-future-understanding-rights-and-options-daca-recipients>.

140 *Id.*

141 American Immigration Council, "The Dream Act, DACA, and Other Policies Designed to Protect Dreamers" (2019), https://www.american-immigrationcouncil.org/sites/default/files/research/the_dream_act_daca_and_other_policies_designed_to_protect_dreamers.pdf.

142 See *Regents of U. of California v. U.S. Dept. of Homeland Sec.*, 279 F. Supp. 3d 1011, 1020 (N.D. Cal. 2018), *aff'd sub nom. Regents of the U. of California v. U.S. Dept. of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018); Michael D. Shear, "Trump Must Keep DACA Protections for Now," *N. Y. Times* (Jan. 9, 2018), <https://www.nytimes.com/2018/01/09/us/trump-daca-improper.html>.

143 See *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 407 (E.D.N.Y. 2018).

144 U.S. Citizenship and Immigration Services, "Deferred Action for Childhood Arrivals: Response to January 2018 Preliminary Injunction" (Feb. 22, 2018), <https://www.uscis.gov/humanitarian/deferred-action-childhood-arrivals-response-january-2018-preliminary-injunction>.

145 National Immigration Law Center, "Top 5 Things to Know About DACA Renewals Now that SCOTUS Will Review Court Cases" (June 28, 2019), <https://www.nilc.org/issues/daca/5-things-to-know-post-cert-granted-in-daca-cases/>.

146 Sarah Pierce, *Migration Policy Institute*, "Immigration-Related Policy Changes in the First Two Years of the Trump Administration 4" (2019).

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administration, which prioritized removal of noncitizens who had criminal convictions. Order 13768 also expanded the ICE police force.¹⁴⁷ As ICE engages in interior enforcement of the deportation mandate, reports of excessive force, deceit, and manipulation are common.¹⁴⁸ In addition, the current administration continues to target “Sanctuary Jurisdictions” — jurisdictions with policies that limit the collusion between local law enforcement and ICE — including New York State.¹⁴⁹

ICE Raids

ICE raids of homes, courthouses, streets, shelters, and workplaces in and around NYS have increased considerably under the current administration. There have been 901 documented raids throughout New York state since President Trump’s inauguration.¹⁵⁰ The Immigrant Defense Project, in conjunction with the Center for Constitutional Rights, has tracked 1077 ICE raids in New York since 2013; of those, 83% occurred under the current administration.¹⁵¹ Furthermore, of the 901 raids, 31 were warrantless entry raids where ICE entered a home without permission or judicial warrant; 131 were a ruse, meaning ICE used deceptive tactics, such as pretending to be police investigating a fictional crime; and 86 used force, including drawn guns and threats.¹⁵² Reports of force during raids include ICE agents forcefully throwing a 6-month

pregnant woman to the ground, an ICE agent holding a gun to a man’s neck without identifying himself, ICE agents threatening to withhold food and water from a man if he didn’t sign their paperwork, and a group of agents storming into a home wearing black masks over their faces and refusing to identify themselves.¹⁵³

ICE worksite enforcement also increased dramatically, rising fourfold between FY 2017 and FY 2018.¹⁵⁴ ICE Homeland Security Investigations opened 6,848 worksite investigations in 2018. By comparison, 1,691 worksite investigations were opened in 2017.¹⁵⁵

ICE’s increased focus on general enforcement has led to dramatically higher numbers of arrests. In FY 2018, ICE arrested 5,058 immigrants, of which 3,476 were in the lower 14 counties of New York and 1,582 in upstate, whereas in 2017 it arrested 4,070 immigrants, and in 2016, it arrested 3,020.¹⁵⁶ New York State officials, including Governor Cuomo and Mayor Bill de Blasio, have vowed to combat ICE raids and have done so through “Know Your Rights” campaigns, supporting legal assistance and representation, and non-cooperation directives to local law enforcement.¹⁵⁷

ICE in Courts

One additional way that shifts in ICE enforcement have impacted New York

147 *Id.*

148 Ben Leonard, “Numbers Show ICE is Using Tougher Tactics in New York Under Trump, Says Report,” *NBC News* (July 25, 2018, 4:44 AM), <https://www.nbcnews.com/politics/immigration/numbers-show-ice-using-tougher-tactics-new-york-under-trump-n893671>.

149 “ICEwatch: ICE Raids Tactics Map,” *Immigrant Defense Project*, <https://www.immigrantdefenseproject.org/wp-content/uploads/ICEwatch-Trends-Report.pdf>. (last visited Dec. 9, 2019).

150 “ICEwatch,” *Immigrant Defense Project*, <https://raidsmap.immdefense.org/>. (last visited Dec. 9, 2019).

151 *Id.*

152 *Id.*

153 *Id.*

154 Sarah Pierce, *Migration Policy Institute*, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration 4” (2019).

155 Annie McDonough, “New York’s Limited Power to Resist Ice Raids,” *City & State New York* (July 12, 2019), <https://www.cityandstateny.com/articles/policy/immigration/new-yorks-limited-power-to-resist-ice-raids.html>.

156 *Immigrant Advocates Response Collaborative*, “Behind Bars in the Empire State” 5–6 (2019).

157 Annie McDonough, “New York’s Limited Power to Resist Ice Raids,” *City & State New York* (July 12, 2019), <https://www.cityandstateny.com/articles/policy/immigration/new-yorks-limited-power-to-resist-ice-raids.html>.

State residents is through ICE's increased presence in NYS courts. ICE substantially expanded arrest and surveillance operations in New York courts following a 2018 directive, "Civil Immigration Enforcement Actions Inside Courthouses," which codified a systemic practice of arrests in and around courthouses.¹⁵⁸ Courthouse arrests were already on the rise prior to the ICE directive, as evidenced by the 1700% increase in court arrests in FY 2016.¹⁵⁹ FY 2017 saw an additional 17% increase, with New York City continuing to account for about 75% of arrests statewide.¹⁶⁰

The effects of the ICE directive have led to a growing number of arrests in and around courthouses and to a broadening of the geographic scope of courthouse arrests.¹⁶¹ In 2016, there were 11 ICE courthouse arrests, compared to 172 in 2017, and 202 in 2018. Upstate counties, including Orange, Rensselaer, and Fulton, which were untouched by courthouse arrests in 2017, saw ICE arrests in courthouses in 2018.¹⁶² There have also been increased reports of ICE using violence in courthouse arrests, including agents slamming family members of immigrants against walls, pulling guns on people exiting court, and one particularly troubling incident during which ICE officers in the course of an arrest allegedly physically assaulted an attorney who was 8 months pregnant.¹⁶³

In 2019, as a response to advocacy on behalf of district attorneys, former judges,

and the ICE Out of Courts Coalition, the New York legislature considered a bill to limit ICE enforcement operations at courthouses; however the Protect our Courts Act failed to pass and will be re-considered in the 2020 Session.¹⁶⁴ On April 27, 2019, the New York State Office of Court Administration (OCA) also signed a new rule change prohibiting ICE from arresting immigrants inside state courthouses absentia warrant signed by a judge.¹⁶⁵ Despite the new rule, ICE has maintained the 2018 courthouse directive enforcement policy, and as of November 5, 2019, there have been 112 reported courthouse operations in NYS.¹⁶⁶ In January 2019, eight individuals, including a domestic violence survivor with no criminal history, were arrested outside a town court in Rockland County.¹⁶⁷ On August 5, 2019, plain-clothes officers attempted to arrest a United States Citizen immediately outside the Red Hook Community Justice Center (a problem-solving court in Brooklyn); and when told they needed a judicial warrant, the officers responded that the warrant requirement only applied inside the courthouse building.¹⁶⁸ Other complaints include reports of ICE agents following individuals throughout the courthouses — going as far as to follow them into the bathroom, surveying them inside the courtrooms, and waiting outside the immediate vicinity of the courthouses — often on the steps or sidewalks.¹⁶⁹

158 Brief for Immigrant Defense Project et al. as *Amici Curiae* Supporting Plaintiffs, State of New York, et al., v. United States Immigration and Customs Enforcement, et al., No. 19-cv-8876 (S.D.N.Y. Nov. 5, 2019).

159 *Immigrant Defense Project*, "The Courthouse Trap: How ICE Operations Impacted New York's Courts in 2018" (2019).

160 *Id.*

161 *Id.*

162 *Id.*

163 *Id.*

164 Rachel Cohen, "New York State Legislature Fails to Deliver Justice for Immigrants in the Face of Escalating Threats from Immigration and Customs Enforcement (ICE)," *Immigrant Defense Project Joint Statement* (June 20, 2019), <https://www.immigrantdefenseproject.org/wp-content/uploads/JOINT-STATEMENT-POCA.pdf>.

165 Mallory Moench, "New York First State to Bar ICE Arrests in Courts Without Judicial Warrant," *Timesunion* (Apr. 28, 2019, 7:51 PM), <https://www.timesunion.com/news/article/New-York-first-state-to-bar-ICE-from-making-13776007.php>.

166 Brief for Immigrant Defense Project et al. as *Amici Curiae* Supporting Plaintiffs, State of New York, et al., v. United States Immigration and Customs Enforcement, et al., No. 19-cv-8876 (S.D.N.Y. Nov. 5, 2019).

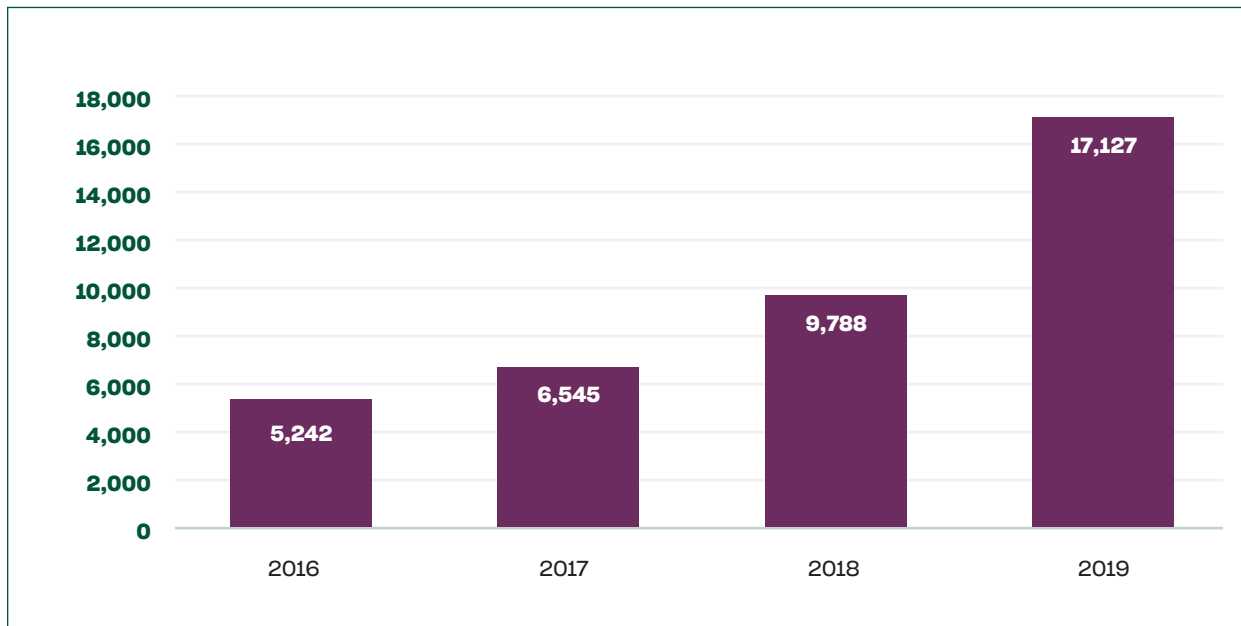
167 *Id.*

168 *Id.*

169 *Id.*

Figure 7

Removal Orders Issued in New York State



Increased Hostility in the Immigration Courts

Practitioners surveyed described a rapid negative transformation in the immigration courts. The most common challenges practitioners reported include soaring denial and appeal rates, the rise in VTC hearings, the elimination of prosecutorial discretion, arbitrary issuances of bonds, time restraints resulting from judicial quotas, and docket reshuffling.

Appeal Rates

As the number of detentions and denials of applications for immigration status have rapidly increased, so have the number of removal orders (*aka* deportation orders) issued by the immigration courts. The number of removal orders issued by immigration courts located within New York State has increased by 286.5% since 2016, and nearly doubled in just the last year, when more than

seventeen thousand immigrant New Yorkers were ordered removed.

“We know that in many of these cases, had clients not been detained, they would have a real shot at winning the right to stay in the US, but they can’t take being detained any longer, so a bad decision on their individual hearing means that they will take a deportation if only to just be free.”

Appeal rates from those denials have also increased dramatically. In 2018, the Board of Immigration Appeals (BIA), which has

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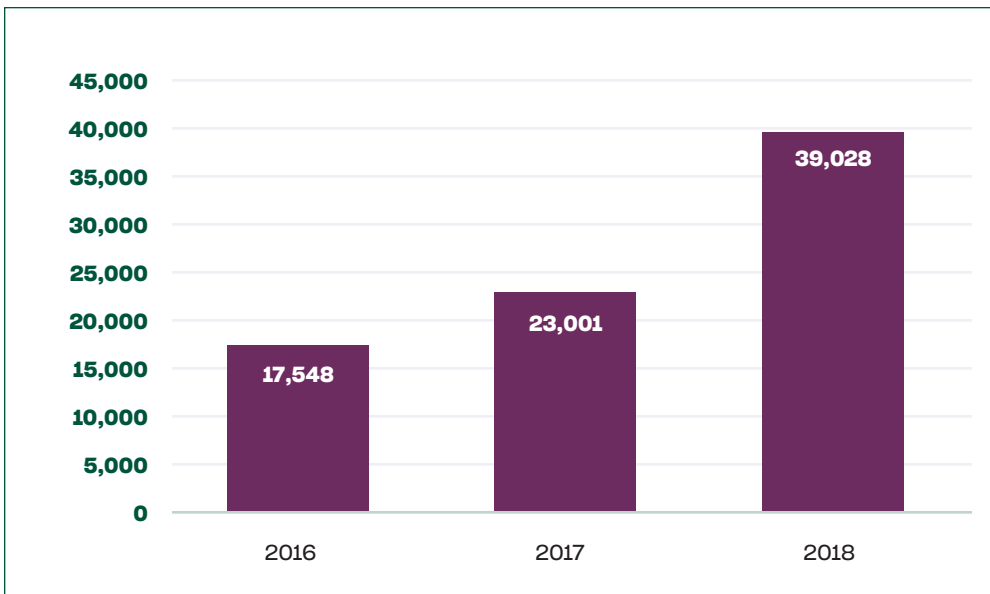
jurisdiction to review appeals of immigration judge decisions, received 39,028 appeals from IJ decisions across the U.S., a 48% increase from the 33,556 appeals it received in FY

2017. This increase has only added to severe backlogs. Of the 31,902 case appeals received in 2018, the BIA decided only 20, 986.

“Practically, we think a lot more about appeals. Previously, our goal was to win before the judge, but now, we focus on making sure the record is clean for an appeal.”

Figure 8.

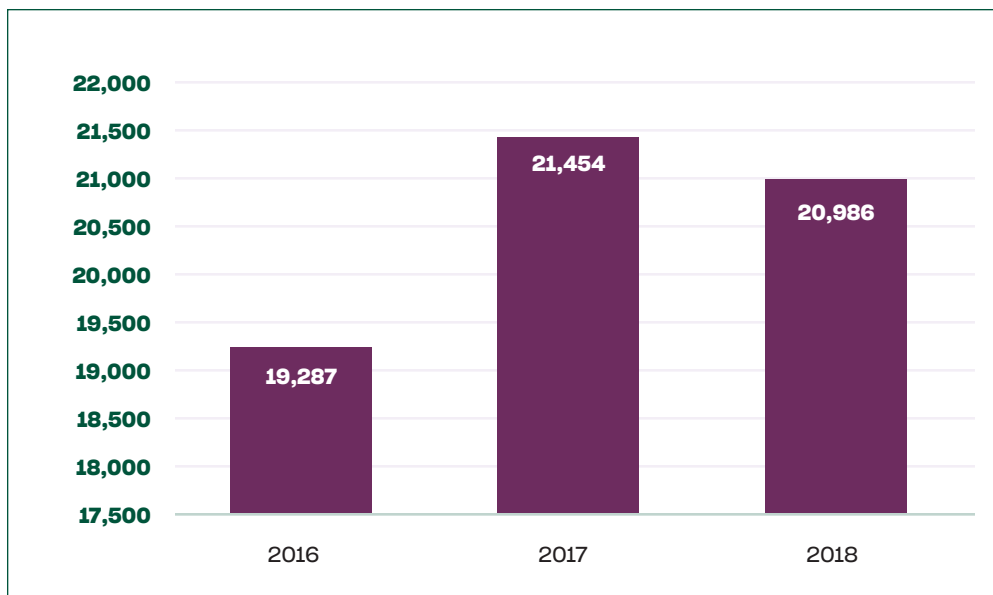
Appeals from Immigration Judge Decisions (Nationally) at BIA



“We are losing cases that we would never would have lost before. It’s hard on an emotional level.”

Figure 9.

Decisions Rendered by BIA



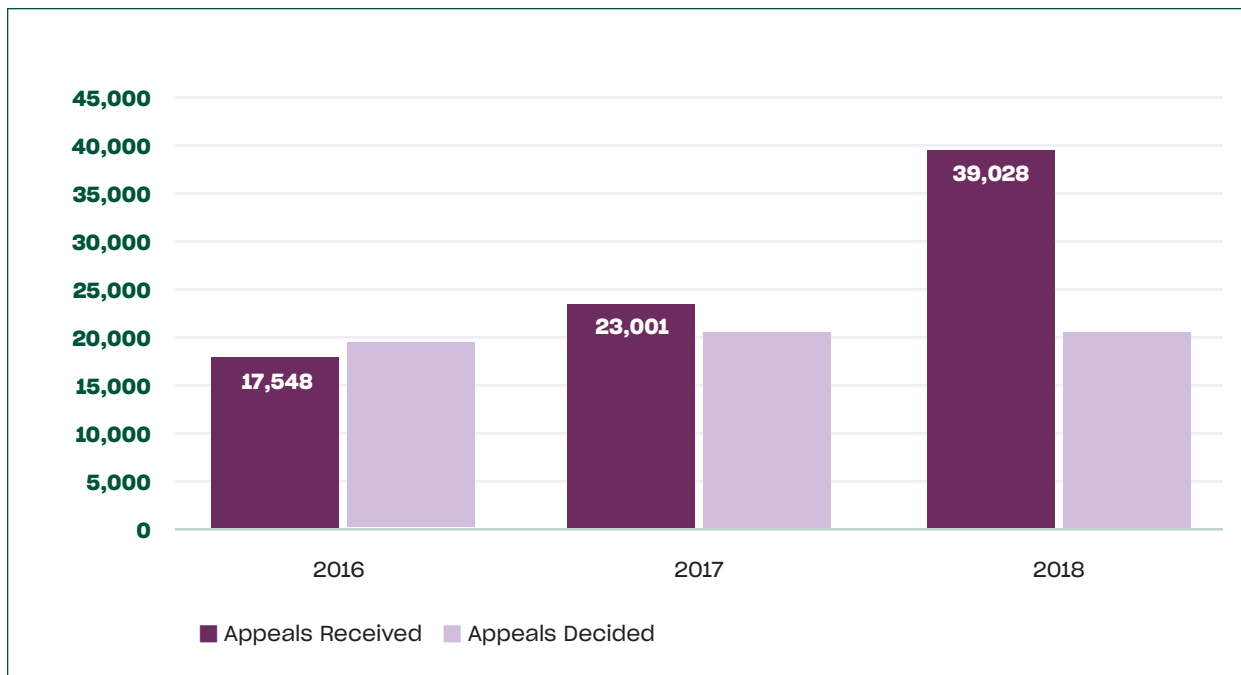
“There is a lot more work. It is not like cases are turning over. It is becoming a new population of BIA cases, which we know are going to be denied, then it is a circuit case. It hurts our ability to take on work.”

The backlog in decisions is particularly problematic for detained immigrants, who must often remain detained during the pendency of their appeals. In their cases, advocates maintain that long delays in the appeal process serve as a deterrent to even filing appeal. Of the total case appeal decisions from the BIA, only 37% (5,336) were detained cases.¹⁶⁸ It is notable that, unlike in

the criminal context, even if an immigration judge grants relief to an immigrant, DHS can reserve appeal, and, if DHS chooses to file appeal, the immigrant must argue appeal against DHS’s considerable legal resources. DHS now routinely reserves appeal, and advocates report expending extensive resources defending hard-won grants of immigration status.

Figure 10.

Number of Appeals vs. Number of Decisions at BIA



“I am sure there are still some judges and adjudicators that offer a fair shot at winning your case on the law, but it increasingly feels like we are appearing before adjudicators that are going to find a way to deny our client’s case no matter what the law is, what the facts are.”

Hearings by Video Conference

Under INA section 240(b)(2)(A)(iii) and 8 C.F.R. section 1003.25(c), immigration judges are authorized to conduct hearings in person or through video conference (VTC).¹⁷⁰ While VTC has

been a contested practice in immigration law since 1996, the reliance on VTC has dramatically increased under the Trump administration.¹⁷¹

On June 27, 2018, in response to protests relating to President Trump’s family separation

¹⁷⁰ See INA § 240(b)(2)(A)(iii) (2019); 8 C.F.R. § 1003.25(c) (2019).

¹⁷¹ Katie Shepherd, “Immigration Courts’ Growing Reliance on Videoconference Hearings is Being Challenged,” *Immigration Impact* (Feb. 25, 2019), http://immigrationimpact.com/2019/02/25/immigration-courts-videoconference-hearing-challenged/#.Xd05h0hKhPY_

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policy that took place outside of Varick Street Immigration Court in Manhattan,¹⁷² ICE's New York Field Office announced without warning that it would no longer produce detained immigrants to immigration court to attend their removal proceedings in person.¹⁷³

Removal proceedings for detained immigrants would instead be conducted exclusively over VTC, whereby detained immigrants would appear by video feed from the jails at which they are detained.¹⁷⁴ On February 12, 2019, seven immigrants representing a class of all detained immigrants in the New York City area, along with three New York Immigrant Family Unity Project (NYIFUP) providers, filed a federal lawsuit against ICE for its refusal to bring immigrants to court for their hearings.¹⁷⁵

The complaint relied on an April 2017 study commissioned by EOIR about the immigration system's growing number of pending cases in the court.¹⁷⁶ The study examined the use of VTC as a means for conducting immigration hearings.¹⁷⁷ The study found that (1) VTC technology does not provide for the transmission of nonverbal cues, which can impact an immigration judge's assessment of an individual's demeanor and credibility, and (2) that technological glitches, such as weak connections and bad audio, make it difficult to communicate effectively via VTC, to the extent that due process issues may arise.¹⁷⁸ The study also revealed that 29% of EOIR

staff reported that VTC caused a meaningful delay in hearings.¹⁷⁹ The report concluded that proceedings by VTC should be limited to procedural matters because appearances by VTC may interfere with due process.¹⁸⁰ Despite concerns, EOIR has expanded its use of VTC for substantive hearings, going as far as to create two immigration adjudication centers where IJs adjudicate cases from around the country from a remote setting.¹⁸¹

The increase in the use of VTC hearings in New York have resulted in substantial challenges for NYS legal providers. NYFUP providers, in particular, report that this practice has substantially interfered in their ability to evaluate and communicate with their clients and has led to increased confusion in the courts.

“We have clients who can't understand anything through VTC because they are hearing both the judge and interpreter at the same time, but they are too afraid to raise the issue because the judges respond so terribly.”

172 Class Action Complaint at 21, P.L. et al. v. U.S. Immigration and Customs Enforcement et al., No. 19-cv-01336 (S.D.N.Y. Feb. 12, 2019).

173 *Id.*

174 *Id.*

175 “Joint Statement: Detained Immigrants and NYIFUP Providers Sue ICE,” *The Bronx Defenders* (Feb. 13, 2019), <https://www.bronx-defenders.org/joint-statement-detained-immigrants-and-nyifup-providers-sue-ice/>.

176 Class Action Complaint at 24, P.L. et al. v. U.S. Immigration and Customs Enforcement et al., No. 19-cv-01336 (S.D.N.Y. Feb. 12, 2019).

177 *Id.*

178 Department of Justice, Executive Office for Immigration Review, Legal Case Study Summary Report 23 (2017).

179 American Immigration Lawyers Association, “AILA Policy Brief: Facts About the State of Our Nation's Immigration Courts 3” (2019).

180 *Id.*

181 *Id.*

Dismantling of Existing Procedures

Over the last three years, the federal administration has chipped away at the power of immigration courts, dismantling existing administrative procedures and reversing case law at unprecedented levels. Advocates report that these efforts have sown confusion in court personnel and severely impacted immigration court outcomes for immigrant New Yorkers.

Curtailing of Prosecutorial Discretion

One example of this practice is the curtailing of prosecutorial discretion. On August 15, 2017, ICE's principal legal adviser wrote a memo to ICE attorneys severely restricting the instances in which they were empowered to exercise discretion in favor of an immigrant facing removal.¹⁸² The memo instructed ICE attorneys to review cases that the agency had administratively closed for prosecutorial discretion to determine whether the basis for closure was still appropriate under the administration's new enforcement priorities.¹⁸³ The memo informed attorneys that they were no longer required to check the email inbox used to receive requests for leniency from immigration attorneys and that nearly all undocumented immigrants were priorities for deportation.¹⁸⁴

Advocates report that this has led to increasingly difficult relationships with opposing counsel, who now refuse to exercise discretion in deserving cases.

Immigration Decisions Made by the Attorney General

During the present administration, the role of the Attorney General in immigration matters has expanded beyond that of arbiter over administrative decision-making and into one of exerting direct political influence over U.S. immigration policy.¹⁸⁵ Thus far, the attorneys general in the present administration have self-referred ten immigration cases, largely focused on limiting asylum protections and the discretion of immigration judges.¹⁸⁶ By comparison, nine cases were self-referred during the eight years of the George W. Bush administration, and four during the eight years of the Obama administration.¹⁸⁷

Through these self-referrals the attorneys general have overruled caselaw that held asylum and withholding-of-removal applications were entitled to full evidentiary hearings,¹⁸⁸ ruled that immigration judges

“I used to measure my success by wins and interesting, creative arguments. But now, we measure our success in ensuring due process and making the best arguments we can make given the dismantling of the legal tools.”

¹⁸² Sarah Pierce, *Migration Policy Institute*, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration 4” (2019).

¹⁸³ Less than a month later, on a June 15, 2018, ICE attorneys were instructed to file motions to re-calendar cases that had been administratively closed. At the time, there were over 355,000 cases that had been administratively closed. See Sarah Pierce, *Migration Policy Institute*, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration 15” (2019).

¹⁸⁴ Hamed Aleaziz, *An ICE Memo Lays Out the Differences between Trump and Obama on Immigration Enforcement*, BUZZFEED NEWS (Oct. 8, 2018, 3:09 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/trump-ice-attorneys-foia-memo-discretion>.

¹⁸⁵ Sarah Pierce, “Sessions: The Trump Administration’s Once-Indispensable Man on Immigration,” *Migration Policy Institute* (Nov. 8, 2018), https://www.migrationpolicy.org/article/sessions-trump-administrations-once-indispensable-man-immigration_.

¹⁸⁶ Sarah Pierce, *Migration Policy Institute*, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration 14” (2019).

¹⁸⁷ *Id.*

¹⁸⁸ Matter of E-F-H-L-, 27 I&N Dec. 226, 226 (A.G. 2018).

generally cannot administratively close cases,¹⁸⁹ restricted the ability of victims of domestic or gang violence to qualify for asylum,¹⁹⁰ made it more difficult for immigrants to have their cases continued while they wait for a USCIS decision,¹⁹¹ restricted the power of immigration judges to terminate cases,¹⁹² and restricted family-based particular social groups for purposes of asylum.¹⁹³ Attorney General Barr even attempted to eliminate the authority of immigration judges to hold bond hearings for arriving asylum seekers through his decision in *Matter of M-S-*; but due to successful litigation, immigration courts are required to continue to provide bond hearings for arriving asylum seekers under a federal court order.¹⁹⁴

Advocates report that this practice has led to their feeling as though they are practicing in courts rigged against their clients: “*The hard part is being an attorney in an adversarial system in which the other side is operating in bad faith and constantly moving the goalposts.*”

The practice of self-referral is expected to continue. DOJ has proposed a rule that would expand the Attorney General’s power to review cases even beyond those decided by the BIA, allowing him to review cases

“I feel like I am a surgeon who is learned to do surgery by myself, and who has to work on 24 hour shifts all the time. So I am perpetually petrified of the mistakes that I am going to make. I am sure that I will make them, because it is impossible to perform at this level for a long time.”

pending before the Board (before a decision is rendered by the Board) and even certain immigration judge decisions, regardless of whether those decisions were even appealed to the Board.¹⁹⁵

On July 2, 2019 Attorney General Barr published a final rule further expanding his authority to reshape immigration.¹⁹⁶ The rule authorizes the AG to singlehandedly designate BIA decisions as precedent, bypassing the necessary legal procedures and without any checks and balances.¹⁹⁷

189 *Matter of Castro-Tum*, 27 I&N Dec. 271, 293 (A.G. 2018).

190 See *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

191 *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405, 406 (A.G. 2018).

192 *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, 463 (A.G. 2018).

193 See *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019).

194 “*Matter of M-S-*,” 27 I&N Dec. 509, 518–519 (A.G. 2019); see also *Padilla v. United States Immigration & Customs Enforcement*, 387 F. Supp. 3d 1219 (W.D. Wash. 2019) where plaintiffs challenged delays in credible fear interviews and bond hearings for certain asylum seekers. The district court previously certified two nationwide classes, including a Bond Hearing Class and a Credible Fear Class. On April 5, 2019 the court granted a preliminary injunction that ordered the government to provide Bond Hearing Class members with a bond hearing within seven days of request before an IJ or to release them from detention. Before the order took effect, AG Barr issued “*Matter of M-S-*,” in an attempt to eliminate bond for class members. Padilla plaintiffs challenged the case and the defendant government sought an injunction of the court’s order. “*Matter of M-S-*” temporarily went into effect during the litigation until the Ninth Circuit granted in part and denied in part the government’s motion for stay. The Court stayed the portion of the preliminary injunction requiring bond hearings within seven days of the request and procedural protection for asylum seekers in bond hearings but declined to stay the portion about the preliminary injunction requiring bond hearings. Currently, immigration courts must provide bond hearings for class members. For more information, see “Federal Court Requires Immigration Courts to Continue to Provide Bond Hearings, Despite *Matter of M-S-*,” *American Immigration Council* (Aug. 30, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/federal_court_requires_immigration_courts_to_continue_to_provide_bond_hearings_despite_matter_of_m-s-.pdf.

195 Office Of Mgmt. & Budget, Exec. Office of the President, Department of Justice, Referral of Decisions in Immigration Matters to the Attorney General (proposed Fall 2018), <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1125-AA86>.

196 “AG Attempts Power Grab over Immigration Appeals,” *American Immigration Lawyers Association* (July 2, 2019), <https://www.aiala.org/advo-media/press-releases/2019/aiala-ag-attempts-power-grab-over-immigration>.

197 *Id.*

Increasing Bond Amounts/ Arbitrary Issuance of Bonds

Advocates report that increasing numbers of clients are being forced to litigate the entirety of their cases from detention because immigration judges and authorized officials from ICE are increasingly denying bond requests altogether or setting bond in excess of \$10,000, which makes it inaccessible to immigrants and their families.¹⁹⁸

Under prior administrations, immigration judges were directed to use their discretion to release eligible immigrants who did not have a serious criminal record or pose a national security threat on low-cost bonds or without bond.¹⁹⁹ This practice has largely ended under the present administration. At present, immigration judges are reportedly making decisions based on immigration policies set by top administrative officials in Washington.²⁰⁰ For example, one judge said he was setting a high bond because he did not think the immigrant respondent, a woman with a DV based asylum claim, would be granted asylum under *Matter of A-B-*.²⁰¹

The chances of being granted bond at hearings before immigration judges vary

“Even when we can get bond these days, the bonds are astronomical.”

significantly, often by nationality and hearing location.²⁰² The nationalities with particularly high odds of being granted bond, also tend to have higher required bonds.²⁰³ In New York, the percentage of bond grants has steadily declined since 2016. In FY 2016, custody hearings in New York resulted in approximately 63.7% of immigrants receiving a bond and being released from detention during their removal hearings. As of September of 2019, only approximately 34.8% of hearings in NYS resulted in a bond grant.²⁰⁴

In FY 2019 there were 3,054 bond hearing conducted in New York immigration courts, of those hearings only 1,062 were granted bond. In September of 2019, the median bond granted in NYS was \$12,000.

Immigrants who are unable to obtain bond will remain detained while defending their cases, which, as we discussed in earlier sections, deeply impacts their ability to fight off deportation.

The Impact of Judicial Quotas and Probationary Periods

On October 1, 2018 EOIR imposed unprecedented case completion quotas on immigration judges, tying performance reviews and job security to case completion numbers.²⁰⁵ These performance standards defined “satisfactory performance” as completing 700 cases a year and having fewer than 15% of cases remanded from the BIA or federal courts.²⁰⁶ If the 700 case completion quota isn’t met, immigration

198 Daniel Bush, “Under Trump, Higher Immigration Bonds Mean Longer Family Separations,” *PBS News Hour* (June 28, 2018, 2:38 PM), <https://www.pbs.org/newshour/politics/under-trump-higher-immigration-bonds-mean-longer-family-separations>.

199 *Id.*

200 *Id.*

201 *Id.*

202 “Importance of Nationality in Immigration Court Bond Decisions,” *Transactional Records Access Clearinghouse (TRAC Immigration)*, <https://trac.syr.edu/immigration/reports/545/>. (last visited Dec. 10, 2019).

203 *Id.*

204 “Immigration Court Bond Hearings and Related Case Decisions,” *Transactional Records Access Clearinghouse (TRAC Immigration)*, <https://trac.syr.edu/phptools/immigration/bond/>. (last visited Dec. 10, 2019).

205 *American Immigration Lawyers Association*, “AILA Policy Brief: Facts About the State of Our Nation’s Immigration Courts 1” (2019).

206 Sarah Pierce, *Migration Policy Institute*, “Immigration-Related Policy Changes in the First Two Years of the Trump Administration 13” (2019).

“In the detained context, one thing that we have been seeing with quotas are individual hearings being set for within two weeks of master calendar hearings. This leaves us no time to get evidence from the home country or [to secure] experts.”

judges risk losing their jobs.²⁰⁷

Prior to the implementation of the performance metrics, the National Association of Immigration Judges (NAIJ) wrote a letter to (then) U.S. Attorney General Sessions explaining their opposition to the standards. The judges were mainly concerned about the increased risk of due process violations, the creation of financial conflicts for judges in the cases over which they preside, and the likelihood that the quotas would create an even greater case backlog.²⁰⁸ Despite NAIJ's advocacy, EOIR imposed the case quotas, turning the immigration court into the only court in the United States implementing such a policy.²⁰⁹

The pressure of case quotas on judges remains ever-present through a performance dashboard on their computers that uses red, yellow, and green to reflect compliance with performance goals.²¹⁰ Prior to 2017, merits hearings were regularly scheduled

for three-hour blocks, with judges hearing one case in the morning and another in the afternoon.²¹¹ Some courts are now scheduling three times that many hearings. In practice, attorneys complain that this means that they have insufficient time to present a full case.²¹²

Delays in Hearings Dates/ Constant Reshuffling of Dockets/Inefficiencies

Attorneys report that the last three years have brought chaos to the immigration courts. New administrations have been known to reshuffle the order in which immigration cases are heard by the immigration courts in service of the administration's priorities.²¹³ This

“ I think the effect of the intentional dysfunction at DHS and DOJ cannot be overstated—this dysfunction has made it so that we have to spend so much valuable time doing inane tasks. Everything from the Courts cancelling our cases at the last minute without notice (so we have to spend hours and hours preparing over and over again), to the Court's rejecting service of documents without reason. Their dysfunction means that we have to waste our time trying to make up for it.”

207 American Immigration Lawyers Association, “AILA Policy Brief: Facts About the State of Our Nation's Immigration Courts 1” (2019).

208 Letter from A. Ashley Tabaddor, President of the National Association of Immigration Judges, to Jefferson B. Sessions, Attorney General of the United States (May 2, 2018) (<https://www.aila.org/infonet/naij-letter-ag-sessions-misunderstandings-ij-quota>).

209 Letter from A. Ashley Tabaddor, President of the National Association of Immigration Judges, to Jefferson B. Sessions, Attorney General of the United States (May 2, 2018) (<https://www.aila.org/infonet/naij-letter-ag-sessions-misunderstandings-ij-quota>).

210 Innovation Law Lab & Southern Poverty Law Center, “The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool 21” (2019).

211 *Id.*

212 *Id.*

213 “A Former Immigration Judge On The Current Situation: Former immigration judge Paul Wickham Schmidt talks with NPR's Scott Simon,” *NPR* (June 23, 2018), <https://www.npr.org/2018/06/23/622795409/a-former-immigration-judge-on-the-current-situation>.

often results in one group of cases moving to the front of the docket, while hearings in other cases are delayed.²¹⁴ When, as with this administration, priorities change several times, court dockets are disrupted and cases severely delayed as courts engage in subsequent rounds of docket reshuffling.²¹⁵

One such example was the Justice Department's attempt to expedite recent border crossing cases by temporarily reassigning judges to adjudicate cases at the border. Judge Kahn, a New York City immigration judge who was one of a handful of judges from across the United States sent to Texas to hear these expedited removal hearings, described the experience as one for "visual effect" that only added to her case backlog in New York.²¹⁶ Given the current

"The courts used to be pretty well organized, but now about one third of my cases don't go forward on a particular day. Sometimes we don't get hearing notices when cases get rescheduled, or when we get notices, the case is not on the judge's calendar for some reason."

backlog, cases on Judge Khan's docket are being scheduled for 2022.²¹⁷

Practitioners complain of hearings being abruptly rescheduled or advanced by weeks without consultation or timely notice.²¹⁸ It is common for attorneys to learn about their hearings being rescheduled, and in some cases assigned to an entirely different judge, only after checking an online portal.²¹⁹ In some instances, hearings that were originally scheduled a few months out were unilaterally rescheduled for dates as early as the following week, with no notice provided whatsoever.²²⁰ Attorneys also describe arriving to court for a long-awaited merits hearing only to discover the hearing time has been triple-booked, forcing them to "rock, paper, scissors" with fellow attorneys to determine the order of their appearance in court.²²¹ Attorneys and clients are forced to wait hours to go before an immigration judge, and it is not uncommon for their hearings to not happen at all, forcing immigrant clients, attorneys, and witnesses to return to the court for the next hearing date, often at substantial financial cost.²²² Delays also place attorneys and clients in an impossible position, as available evidence and testimony may weaken over a period of years.²²³

During the January 2019 government shutdown, the longest in U.S. history, over 86,000 immigration court hearings were cancelled.²²⁴ The biggest numbers of cancelled hearings were in California, followed

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Eric Katz, "'Conveyor Belt' Justice: An Inside Look at Immigration Courts," *Government Executive* (Jan. 22, 2019), <https://www.govexec.com/feature/inside-conveyor-belt-behind-curtain-doj-immigration-courts/>.

²¹⁷ *Id.*

²¹⁸ Felipe De La Hoz, "Immigration Hearings in New York are Being Rescheduled Without Notice," *Documented* (Mar. 20, 2019, 9:41 AM), <https://documentedny.com/2019/03/20/immigration-hearings-in-new-york-are-being-rescheduled-without-notice/>.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Innovation Law Lab & Southern Poverty Law Center, "The Attorney General's Judges: How the U.S. Immigration Courts Became a Deportation Tool 22" (2019).

²²² *Id.*

²²³ *Id.*

²²⁴ Deepti Hajela & Olga R. Rodriguez, "'Catch-up for Years' as Backlogged Immigration Courts Open," *AP News* (Jan. 28, 2019), <https://apnews.com/f73cd1cc534a4ae0a9e6a8e5902e0951>.

“Before I used to try and get creative with my arguments because I thought there was a way [to win]. But now I realize it is all arbitrary. I have adjusted my realities. Unless it is impact litigation, now I think about how it might be best to get my client’s hearing pushed back a year in hopes that we will have a new president. Creative arguments no longer work. My job now requires a lot of acceptance of what I can and can’t do.”

by Texas and New York.²²⁵ Between the government shutdown, docket shuffling, and judicial quotas, the pending case backlog in immigration courts around the U.S. continues to grow. As of September 2019, there were 1,023,767 pending immigration cases throughout the United States; 124,251 of those cases were in New York.²²⁶

Changes in the Recognition and Accreditation Program

The Department of Justice’s Recognition and Accreditation program allows non-profits to be recognized by The Executive Office for Immigration Review (EOIR) and have their non-attorney staff accredited to provide

legal services to immigrants so long as it is done for no cost or nominal fees. It is a vital tool providers have to increase their capacity to provide legal representation to their communities, but has undergone several transformative changes in recent years. These changes have comprised the program’s efficiency and ability to help meet immigrants’ legal needs and likely help account for the loss of legal service providers throughout New York State.

In 2017, long-awaited rules, designed to strengthen the program, were implemented. Non-profits that had previously been recognized for many years, even decades, were now required to re-register and re-certify their eligibility for the program. Organizations that had been recognized for over 10 years by January 17, 2017 were required to re-register by January 17, 2019. All others had to re-register by January 18, 2020. While intended to provide more oversight of recognized providers, these rules also increased administrative burdens on organizations, which, among other requirements, would now need to provide annual summaries of services they provided. This likely accounts for at least some of the drop off in the number of recognized organizations described in sections above.

At the same time, changes to EOIR’s staffing and internal structures have had a detrimental impact on the program over the last two years. Processing times for organizational and individual staff applications have substantially increased over the last two years, with most applications now pending six months or more. While the Office for Legal Access Programs, which took over running the Recognition and Accreditation Program in 2017, blames a backlog created during the

²²⁵ *Id.*

²²⁶ “Immigration Court Backlog Tool,” *Transactional Records Access Clearinghouse (TRAC Immigration)* https://trac.syr.edu/phptools/immigration/court_backlog/. (last visited Dec. 11, 2019).

January, 2019 Government shutdown (which coincided with the renewal deadline for many organizations under the new rules) decrease in staffing and large turnover at OLAP also appear to be a significant contributing factors.

In addition to lengthy processing times, organizations and individuals seeking recognition and accreditation have experienced a heightened degree of scrutiny in their applications. In 2018 and early 2019 the national R&A working group saw and addressed a troubling trend of OLAP staff calling individuals seeking accreditation to ask about their caseload, the types of applications they worked on, and other requests for information. While that trend seems to have abated, providers continue to see an increase in the number of Requests for Evidence and other written requests for additional information or additional evidence. Anecdotally, it seems more applications for initial or renewal of accreditation are being delayed or denied based on the applicant not having sufficiently presented evidence of ongoing attendance at trainings. In the case of a small community based organization that may have one accredited representative on staff, if that person leaves the organization or the accreditation renewal is denied, that organization will be placed on inactive status and no longer appear on the roster of recognized organizations. Given the backlog in adjudication of applications, it is quite possible that an organization that lost their accredited representative could be waiting half a year for a new accreditation application to be approved and then be placed back on the roster.

Increased Hostility at USCIS

The United States Citizenship and Immigration Service (USCIS), is an agency of the U.S. Department of Homeland Security charged with providing immigration benefits to eligible immigrants. USCIS adjudicates a broad swath of immigration applications, including requests for DACA benefits, work permits, lawful permanent residence and naturalization.²²⁷ Unlike other portions of DHS, USCIS does not rely on government funding, as it is primarily funded by fees paid by the immigrants who file benefit applications with the Agency.²²⁸ Advocates report that the past three years have brought increasing delays and inefficiencies to USCIS.

“ The recent rapid and near-constant change in law and practice has caused nothing but confusion and negatively impacted client relationships. A lawyer’s job is to counsel clients. We advise clients as to the available options and likelihood of success, and then they choose the option that is best for them. But these days we can no longer tell clients what to expect. Now that everything changes from week to week, it makes it very difficult to counsel clients.”

227 U.S. Citizenship and Immigration Services, <https://www.uscis.gov/> (last visited Dec. 11, 2019).

228 U.S. Citizenship and Immigration Services, <https://www.uscis.gov/about-us/budget-planning-performance> (last visited Dec. 11, 2019).

Increase in RFEs and Rates of Denial

Traditionally, USCIS officers reviewing a case were prevented from summarily denying the case unless there was no possibility that additional evidence could rectify a deficiency in the filing.²²⁹ Absent that determination, officers had to issue Requests for Evidence (RFE) or Notices of Intent to Deny (NOID) to provide applicants with the opportunity to establish eligibility for the immigration benefit they sought.²³⁰

On July 13, 2018, USCIS published a policy memorandum that instead authorizes agency adjudicators to deny applications or petitions for immigration benefits without first issuing an RFE or NOID.²³¹ In other words, this policy memo, effective September 11, 2018, gave USCIS officers discretion to deny cases outright.²³²

The denial rate for all applications — everything from work authorizations to petitions for foreign workers — has risen every quarter except one under the present administration.²³³ In the first quarter of FY 2019, USCIS' denial rate was 80% higher than it was during the first quarter of FY 17.²³⁴ This denial rate was the highest recorded for any quarter that USCIS has published records,²³⁵ and translates to more than 72,000 denials in just the first quarter of FY 19.²³⁶ These data

“ Our caseloads are expanding exponentially because cases keep coming back to us. Denials of fee waivers, RFEs, appeals because of erroneous decisions or erroneous applications of law, they result in additional unexpected work on cases we thought were already filed and done with. All of this additional illogical and unexpected work often makes me feel like I am wasting my time because I am now spending so much energy fixing issues that are caused by the government’ errors.”

exclude applications for citizenship, DACA, and TPS, but include all other USCIS applications.²³⁷

In addition, USCIS denials for temporary nonimmigrant worker visas have been increasing under the Trump administration, especially after the president's Buy American, Hire American executive order. USCIS issued updated data confirming that RFEs and denials continue to climb for commonly used nonimmigrant visas.²³⁸ USCIS is denying and scrutinizing some of the most relied-upon

229 “USCIS Gives Adjudicators More Authority to Deny Filings Without a Request for Evidence,” *Fragomen*, <https://www.fragomen.com/insights/alerts/uscis-gives-adjudicators-more-authority-deny-filings-without-request-evidence>. (last visited Dec. 11, 2019).

230 *Id.*; Zach Hirsch, “Seeking Asylum in Canada, Some End Up In a Clinton County Jail Cell Instead,” *North Country Public Radio* (Oct. 4, 2017), <https://www.northcountrypublicradio.org/news/story/34795/20171004/seeking-asylum-in-canada-some-end-up-in-a-clinton-county-jail-cell-instead>.

231 U.S. Citizenship and Immigration Services, “Policy Memorandum PM-602-0163” (July 13, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

232 *Catholic Legal Immigration Network, Inc.*, “New USCIS Memo on RFE/NOID” (July 2018), <https://cliniclegal.org/resources/new-uscis-memo-rfenoid>.

233 David Bier, “Immigration Form Denials Rise Every Quarter Except One Under Trump, Up 80% Overall,” *CATO Institute* (May 15, 2019, 11:52 AM), <https://www.cato.org/blog/immigration-form-denials-rise-every-quarter-except-one-under-trump-80-overall>.

234 *Id.*

235 *Id.*

236 *Id.*

237 *Id.*

238 Melissa Manna, “Requests for Evidence and Visa Denials Continue to Climb in 2019,” *The National Law Review* (Aug. 7, 2019), <https://www.natlawreview.com/article/requests-evidence-and-visa-denials-continue-to-climb-2019>.

petitions at a higher rate than in the past.²³⁹ Specifically, the first three quarters of the fiscal year ending October 1, 2019 show a clear uptick in denials and requests for RFEs.²⁴⁰ For example, the RFE rate for H-1B petitions has increased by 78% in the last five years, reaching almost 40% in the first

three quarters of FY 2019 compared to 22% and 21% in FYs 2015 and 2016, respectively.²⁴¹ Even when petitioners respond with additional information, USCIS increasingly maintains the denial.²⁴² In FY 2019 (as of June), only 63% of H-1B petitions were approved after an RFE was issued, compared to 83% in FY 2015.²⁴³

239 Tory Johnson, "USCIS Visa Petition Denials on the Rise," *Immigration Impact* (Aug. 16, 2019), <http://immigrationimpact.com/2019/08/16/uscis-denying-more-visa-petitions/#.XeLcXzJK1s>.

240 *Id.*

241 *Id.*

242 *Id.*

243 *Id.*

DEPARTMENT OF STATE

As this report focuses on immigration representation of Immigrant New Yorkers, denials of visa applications for individuals outside of the United States are largely outside the scope of this report. Nevertheless, as these denials impact the lives of immigrant New Yorkers whose family members are now being denied the opportunity to travel to the U.S. we thought it important to briefly outline the situation at the Department of State here.

The U.S. Department of State, through its consular services units, is responsible for applying U.S. Immigration law to foreign nationals seeking to enter the U.S. on a temporary (nonimmigrant) or permanent (immigrant) basis. Many of these foreign nationals are seeking the right to enter the U.S. to reunite with family members who are beneficiaries of humanitarian benefits like asylum, or are themselves beneficiaries of family-based lawful permanent residence.

Denial rates have also increased at the U.S. Department of State.²⁴⁴ The National Foundation for American Policy compared data for FY 2017 to FY 2018 and found ineligibility findings used by the State Department to refuse visa applicants increased 39% for immigrants and 5% for nonimmigrants (individuals seeking temporary visas) between FY 2017 and FY 2018.²⁴⁵ The number of temporary visas issued declined 7% from FY 2017 to FY 2018, while the number of immigrant (permanent resident) visas issued fell 5% from FY 2017 to FY 2018.²⁴⁶

244 *Id.*

245 National Foundation for American Policy, "State Department Visa Refusals in FY 2018 for Immigrants and Nonimmigrants" (Mar. 2019), <https://nfap.com/wp-content/uploads/2019/03/State-Department-Visa-Refusals-In-FY-2018.NFAP-Policy-Brief.March-2019.pdf>.

246 *Id.*

Increased Delays in Adjudication of Applications

Advocates complain that USCIS is taking longer than ever to adjudicate cases, and that these delays result in their having to spend an ever-greater portion of their time updating clients and explaining delays to them.

USCIS's own records show that the Agency is taking longer than ever to adjudicate cases.²⁴⁷ Some sources, including León Rodríguez, the former Director of USCIS, attribute a portion of these delays to “a range of unwarranted policies and practices that directly lengthen processing times” including recent requirements that every employer-sponsored green card applicant appear for an in-person interview.²⁴⁸ These across-the-board interviews drain limited resources and result in a cascading effect that results in prolonged adjudication times for all other applicants.²⁴⁹

In February 2019, 86 members of the U.S. House of Representatives wrote a letter to USCIS demanding accountability for the agency's crisis-level processing delays.²⁵⁰ In its April 2019 response, USCIS expressly acknowledging that its policy changes have exacerbated processing delays.²⁵¹

USCIS conceded that its in-person interview requirements for applicants seeking green cards under their employers (through employment-based Form I-485) and relatives of asylees and refugees seeking family reunification (through Form I-730), which the agency began implementing in 2017, “are

reducing the completions per hour because of the additional time required for interviews, which is contributing to increased cycle times and the backlog.”²⁵² USCIS also provided data showing that from FY2016 to FY2018, its completion rate for employment-based I-485s declined by approximately 16% and in that same timeframe, the completion rate for I-730s fell by 33%.²⁵³

USCIS's letter also reveals that in FY 2018, the agency's “gross backlog” (its overall volume of delayed applications and petitions) reached a staggering 5,691,839 cases, a 29% increase since FY2016 and a 69% increase since FY2014, despite a substantial decline in application rates and an increased budget during that period.²⁵⁴

“We now have clients sign an NTA policy notice to address the 2018 policy change on NTA issuance. We have to repeat to clients constantly that our advice is based on the current law and that we don't know what current practices and policies will be when immigration gets around to adjudicating their application because of ever-increasing adjudicating periods, so we cannot offer any reliable guidance, and there is now inherent risk in applying for immigration status, even as a victim of domestic violence, human trafficking or other crimes”

247 Jason Boyd, “USCIS Acknowledges That Its Own Policies Compound Case Processing Delays,” American Immigration Lawyers Association, (Apr. 30, 2019), <https://thinkimmigration.org/blog/2019/04/30/uscis-acknowledges-that-its-own-policies-compound-case-processing-delays/>.

248 León Rodríguez, “The Trump Administration Is Making Legal Immigration Harder, Too,” *The Washington Post* (July 29, 2019, 6:00 AM), <https://www.washingtonpost.com/outlook/2019/07/29/trump-administration-is-making-legal-immigration-harder-too/>.

249 *Id.*

250 Jason Boyd, “USCIS Acknowledges That Its Own Policies Compound Case Processing Delays,” American Immigration Lawyers Association, (Apr. 30, 2019), <https://thinkimmigration.org/blog/2019/04/30/uscis-acknowledges-that-its-own-policies-compound-case-processing-delays/>.

251 *Id.*

252 *Id.*

253 *Id.*

254 *Id.*; León Rodríguez, “The Trump Administration Is Making Legal Immigration Harder, Too,” *The Washington Post* (July 29, 2019, 6:00 AM), <https://www.washingtonpost.com/outlook/2019/07/29/trump-administration-is-making-legal-immigration-harder-too/>.

Policy Memos/NTA Memo

On June 28, 2018, USCIS issued a new Notice to Appear (NTA) policy memorandum which expands the situations in which USCIS will issue a Notice to Appear in connection with adjudicating a request for immigration benefits.²⁵⁵

Attorneys and advocates report that this policy memo has caused them to shift their legal practice, and has caused them to advise increased numbers of would-be applicants for humanitarian benefits (mainly crime victims and survivors of domestic violence and human trafficking seeking VAWA U and T visas) that they risk deportation if they apply for benefits and are denied.

The policy memorandum, titled, “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens” significantly expands the situations in which USCIS is directed to issue NTAs against individuals applying for immigration benefits or to refer a case to ICE for initiation of removal proceedings against a noncitizen who applies for an immigration benefit.²⁵⁶

The policy memorandum requires USCIS to issue NTAs in far more cases than ever before.²⁵⁷ In particular, it calls for the issuance of an NTA if an applicant or beneficiary is “not lawfully present” (awful immigration status) at the time an application or petition is denied.²⁵⁸ Since USCIS’s creation in 2003, it has primarily served as the benefits adjudications arm of the DHS, responsible for only about 12% of all NTAs that are issued for enforcement purposes.²⁵⁹ Previously, in

“ We can’t explain the extensive delays in adjudication to clients. Clients stop trusting us—they end up getting a second opinion, thinking that it’s our fault, that it’s because we have done something wrong that their case has been rejected or denied. It is difficult for them, but also for us. It is hard to work this hard and feel that clients question our commitment and ability because they cannot fathom that the government is this dysfunctional. A client for whom we had filed a U visa in 2016—she became really frustrated by the delays in adjudication of her case. She could not understand why she was not receiving a work permit. She grew tired of our trying to explain that the government is taking over four years to make an initial decision on U visa cases and ended up going to the attorney in Brooklyn who was indicted for filing fraudulent applications for an intake. He filed an application for her for a form of relief for which she was ineligible just to get her a work permit. That application was denied, and she now risks being placed in removal proceedings. As a result of this, we may have to fight her case from a defensive position and expend many more resources to prevent her removal—resources that we had not budgeted for this case, which we took as a simple affirmative U visa.”

most cases individual USCIS agents could consider whether the specific facts of a

255 U.S. Citizenship and Immigration Services, “Notice to Appear Policy Memorandum” (last updated Feb. 26, 2019), <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>.

256 Catholic Legal Immigration Network, Inc., “Practice Pointers: USCIS Issues New NTA Guidance Memo” (July 31, 2018), <https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-populations/Practice-Pointer-USCIS-New-NTA-Guidance-Memo.pdf>.

257 American Immigration Lawyers Association, “AILA Policy Brief: New USCIS Notice to Appear Guidance” (July 17, 2018), <https://www.aila.org/infonet/aila-policy-brief-new-uscis-notice-to-appear>.

258 *Id.*

259 *Id.*

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case warranted the issuance of an NTA.²⁶⁰ The memorandum limits the exercise of such prosecutorial discretion to cases approved by a review panel that includes a supervisory officer and a USCIS Office of Chief Counsel attorney.²⁶¹

The June 2018 NTA memo states that its purpose is to “better align with enforcement priorities” and it expands the class of noncitizens deemed a “priority” for immigration enforcement to include, among other categories, any removable noncitizen who has been charged with any criminal offense that has not been resolved, and any removable noncitizen who has committed acts that constitute a chargeable criminal offense.²⁶² The memo notes that the federal government “will no longer exempt classes or categories of removable aliens from potential enforcement.”²⁶³ The new memo represents a shift from the prior memo’s goal of “promoting the sound use of [DHS and DOJ] resources” to a position where essentially all removable individuals are an enforcement priority.²⁶⁴

The 2018 NTA guidance contains no “carve-outs” for the basis for denial and therefore mandates NTA issuance even in cases that are denied for a technical deficiency.²⁶⁵ Instead of providing these individuals the opportunity to reapply and

regularize their status through lawful channels, they will instead be placed in removal proceedings where they will be deemed ineligible to adjust, and will either be ordered removed or, at best, granted voluntary departure.²⁶⁶

Advocates believe that the NTA policy memo will further burden the overloaded immigration courts with low-priority cases, and maintain that it has already created a chilling effect that deters people who are eligible for immigration benefits from applying to regularize their status, since they now risk being placed in removal proceedings if their applications are denied.²⁶⁷

USCIS’s Shifting Priorities

USCIS’s traditional mandate has been to administer and adjudicate immigration benefits. The agency was created to focus exclusively on its customer service function, processing applications for visas, green cards, naturalization, and humanitarian benefits.²⁶⁸ However, under the present administration, USCIS is being tasked with enforcement obligations.²⁶⁹ For example, the NTA policy memo instructs staff to issue an NTA to anyone who is unlawfully present when an application, petition, or benefit request is denied — which includes virtually

260 National Immigration Law Center, “The Reference to Public Benefits in USCIS’s Policy Memo on Notices to Appear” (Aug. 2018), <https://www.nilc.org/issues/economic-support/nta-memo-and-public-benefits/>.

261 National Immigration Law Center, “The Reference to Public Benefits in USCIS’s Policy Memo on Notices to Appear” (Aug. 2018), <https://www.nilc.org/issues/economic-support/nta-memo-and-public-benefits/>.

262 U.S. Citizenship and Immigration Services, “Notice to Appear Policy Memorandum” (last updated Feb. 26, 2019), <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>; Catholic Legal Immigration Network, Inc., “Practice Pointers: USCIS Issues New NTA Guidance Memo” (July 31, 2018), <https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-populations/Practice-Pointer-USCIS-New-NTA-Guidance-Memo.pdf>.

263 *Id.*

264 *Id.*

265 American Immigration Lawyers Association, “AILA Policy Brief: New USCIS Notice to Appear Guidance” (July 17, 2018), <https://www.aila.org/infonet/aila-policy-brief-new-uscis-notice-to-appear>.

266 *Id.*

267 National Immigration Law Center, “The Reference to Public Benefits in USCIS’s Policy Memo on Notices to Appear” (Aug. 2018), <https://www.nilc.org/issues/economic-support/nta-memo-and-public-benefits/>.

268 Joshua Breisblatt, “USCIS Is Slowly Being Morphed Into an Immigration Enforcement Agency,” *Immigration Impact* (Jul. 9, 2018), <http://immigrationimpact.com/2018/07/09/uscis-guidance-immigration-benefit/#.XeMlpjJKi1s>.

269 *Id.*

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all undocumented applicants, as well as individuals whose lawful status expires while their request is pending.²⁷⁰

Rather than taking measures to remedy its “crisis-level” delays in processing applications and petitions, USCIS is diverting resources and personnel to ICE and CBP enforcement functions.²⁷¹ In an October 16, 2019 news release titled, “Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals,” USCIS, blaming Congress for failing to fix the immigration system, wrote:

Absent congressional action to provide targeted fixes to our immigration system, USCIS rushed personnel and resources to our southern border and implemented a number of significant policy changes and reforms designed to help reduce the loopholes in our nation’s asylum system that allowed for crisis levels of abuse and exploitation.²⁷²

The same article asserts that USCIS will hire 500 new staff for the Asylum Division by the end of December 2019 and specifically target individuals with prior military and law enforcement expertise.²⁷³ In addition, 233 USCIS employees were “deployed directly to the nation’s southern border through the DHS

Volunteer Force in support of U.S. Customs and Border Protection” while approximately 167 other USCIS employees “were deployed to offices across the country providing critical legal services and mission support to U.S. Immigration and Customs Enforcement.”²⁷⁴

In addition, DHS proposes to increase USCIS application and petition fees in December 2019, and approximately \$112.3 million of the revenue from these proposed fee increases will be transferred to ICE.²⁷⁵ It is indisputable that USCIS is prioritizing the missions of DHS’s enforcement agencies over its own statutory mandate to efficiently administer our legal immigration system.²⁷⁶

Proposed Fee Increases

DHS published a proposed USCIS fee schedule on November 14, 2019.²⁷⁷ The proposed changes include new and/or increased fees for adjustment of status, asylum, DACA renewals, and naturalization, as well as proposing to eliminate fee waivers that allow vulnerable immigrants to maintain their status.²⁷⁸

The proposed changes in the USCIS fee schedule will have a disparate impact on low-income immigrants and vulnerable populations. Fees for naturalization, adjustment of status, DACA, and asylum are all increasing. Fee waivers are largely being

270 *Id.*

271 Jason Boyd, “Ten Destructive Measures Advanced Under USCIS Acting Director Ken Cuccinelli,” *American Immigration Lawyers Association* (Oct. 23, 2019), <https://thinkimmigration.org/blog/2019/10/23/ten-destructive-measures-advanced-under-uscis-acting-director-ken-cuccinelli/>.

272 U.S. Citizenship and Immigration Services, “Cuccinelli Announces USCIS’ FY 2019 Accomplishments and Efforts to Implement President Trump’s Goals” (Oct. 16, 2019), <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals>.

273 *Id.*

274 *Id.*

275 U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

276 Jason Boyd, “Ten Destructive Measures Advanced Under USCIS Acting Director Ken Cuccinelli,” *American Immigration Lawyers Association* (Oct. 23, 2019), <https://thinkimmigration.org/blog/2019/10/23/ten-destructive-measures-advanced-under-uscis-acting-director-ken-cuccinelli/>.

277 U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

278 Catholic Legal Immigration Network, Inc., “Be a Fee Schedule Fighter: Join Us in Opposing the Administration’s Latest Wealth Test on Immigrants” (Nov. 15, 2019), <https://cliniclegal.org/fee-schedule-changes>.

eliminated, with some statutory exceptions (VAWA self-petitioners, battered spouses of certain nonimmigrants, U visas, T visas, and TPS). Increasing fees and eliminating fee waivers make applying for vital immigration benefits harder for low-income immigrants. The sharp increase in fees for naturalization and adjustment of status will likely deter immigrants from naturalizing or adjusting status, and increases in DACA renewal fees will further disadvantage young immigrants. Additionally, the imposition of a fee for affirmative asylum applicants places yet another burden on some of the most vulnerable people in the world.²⁷⁹

Affirmative Asylum. In an unprecedented move, DHS is proposing that affirmative applicants for asylum or withholding of removal pay a \$50 fee to have their requests processed, as well as a \$490 fee for their initial I-765 Employment Authorization Document (EAD) application. Fees of this kind have never been imposed on those seeking this form of humanitarian protection. If this fee were to go into effect, the United States would be *only the fourth country in the world* to levy such a fee on asylum seekers.²⁸⁰

Table 8.

Asylum Fees in Other Countries²⁸¹

Country	Fee amount	Fee in USD	Notes
Australia	AUD 35	\$25	No fee for a detained applicant.
Fiji	FJD 465	\$221	Allows for fee waivers.
Iran	IRR 12,321,000	\$293	For a family of 5 with some fee exemptions.

Deferred Action for Childhood Arrivals (DACA).

The agency is also proposing a new \$275 fee for requests to renew Deferred Action for Childhood Arrivals (DACA), which DACA recipients would pay in addition to the increased \$490 filing fee for Form I-765. Currently, renewing DACA requesters pay \$410 for employment authorization and \$85 for biometrics. However, USCIS is proposing to raise the employment authorization fee to \$490 and to include the biometrics fee into the proposed \$275 I-821D fee. Thus, the cost of a DACA renewal will increase from \$495 to \$765, an overall increase of 55%.²⁸²

²⁷⁹ *Id.*

²⁸⁰ Catholic Legal Immigration Network, Inc., “Be a Fee Schedule Fighter: Join Us in Opposing the Administration’s Latest Wealth Test on Immigrants” (Nov. 15, 2019), <https://cliniclegal.org/fee-schedule-changes>.

²⁸¹ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

²⁸² Catholic Legal Immigration Network, Inc., “Be a Fee Schedule Fighter: Join Us in Opposing the Administration’s Latest Wealth Test on Immigrants” (Nov. 15, 2019), <https://cliniclegal.org/fee-schedule-changes>.

Fee Waivers. DHS is proposing to eliminate existing fee waivers except for those enumerated by statute (i.e., VAWA self-petitioners, battered spouses of certain nonimmigrants, U visas, T visas, and TPS). Among the fee waivers largely eliminated are those for applications for naturalization, adjustment of status, green card replacement and renewals (Form I-90), and employment authorization.²⁸³

Naturalization. DHS is proposing to increase the naturalization applications (Form N-400) fee by \$530 or by 83%, raising the fee from \$640 to \$1,170. Additionally, USCIS is proposing to eliminate the Form N-400 Reduced Fee as well as fee waivers for the N-400. This will increase the burden on low-income immigrants seeking to naturalize.²⁸⁴

Changes to Biometric Fees. DHS is proposing to eliminate the separate \$85 biometric service fee for most case types, including

the I-485 Application to Adjust Status, the I-539 Application to Change or Extend Status, and the N-400 Application for Naturalization. Rather than requiring a separate payment for this service, the agency would incorporate the cost of collecting biometrics into the fee charged for the underlying benefit.

A separate biometrics fee of \$30 would continue to be collected for two case types where the underlying benefit fee cannot be adjusted by USCIS –Temporary Protected Status (TPS) requests and Executive Office of Immigration Review (EOIR) motions, appeals, and benefits requests.²⁸⁵

Transfer of USCIS Funds to Enforcement Agencies. The proposal would transfer approximately \$112.3 million in USCIS filing fees to ICE enforcement operations, despite the staggering backlog of cases that USCIS has yet to adjudicate.²⁸⁶

²⁸³ *Id.*

²⁸⁴ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019); *Catholic Legal Immigration Network, Inc.*, “Be a Fee Schedule Fighter: Join Us in Opposing the Administration’s Latest Wealth Test on Immigrants” (Nov. 15, 2019), <https://cliniclegal.org/fee-schedule-changes>.

²⁸⁵ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

²⁸⁶ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019); *Catholic Legal Immigration Network, Inc.*, “Be a Fee Schedule Fighter: Join Us in Opposing the Administration’s Latest Wealth Test on Immigrants” (Nov. 15, 2019), <https://cliniclegal.org/fee-schedule-changes>.

Table 9.

Selection of Current and Proposed Fee Increases by Immigration Benefit²⁸⁷

Immigration Benefit Request	Current fee	Proposed fee	Difference (\$)	Percent change
I-130. Petition for Alien Relative	\$535	\$555	\$20	4%
I-131. Application for Travel Document	\$575	\$585	\$10	2%
I-131. Travel Document for an individual age 16 or older	\$135	\$145	\$10	7%
I-131. I-131 Refugee Travel Document for a child under the age of 16	\$105	\$115	\$10	10%
I-131A. Application for Carrier Documentation	\$575	\$1,010	\$435	76%
I-192. Application for Advance Permission to Enter as Nonimmigrant	\$585/\$930	\$1,415	\$830/485	142/52%
I-193. Application for Waiver of Passport and/or Visa	\$585	\$2,790	\$2,205	377%
I-212. Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	\$930	\$1,040	\$110	12%
I-290B. Notice of Appeal or Motion	\$675	\$705	\$30	4%
I-360. Petition for Amerasian Widow(er) or Special Immigrant	\$435	\$455	\$20	5%
I-485. Application to Register Permanent Residence or Adjust Status	\$1,140/ \$750	\$1,120	-\$20/ +\$370	-2/49%
I-539. Application to Extend/Change Nonimmigrant Status	\$370	\$400	\$30	8%
I-589. Application for Asylum and for Withholding of Removal	\$0	\$50	\$50	N/A
I-601. Application for Waiver of Ground of Excludability	\$930	\$985	\$55	6%
I-601A. Application for Provisional Unlawful Presence Waiver	\$630	\$960	\$330	52%
I-690. Application for Waiver of Grounds of Inadmissibility	\$715	\$770	\$55	8%
I-751. Petition to Remove Conditions on Residence	\$595	\$760	\$165	28%
I-765. Application for Employment Authorization	\$410	\$490	\$80	20%
I-821D. Consideration of Deferred Action for Childhood Arrivals (DACA Renewal)	\$0	\$275	\$275	N/A
I-881. Application for Suspension of Deportation or Special Rule Cancellation of Removal	\$285/\$570	\$1,800	\$1,515/ \$1,230	532/ 216%
I-929. Petition for Qualifying Family Member of a U-1 Nonimmigrant	\$230	\$1,515	\$1,285	559%
N-300. Application to File Declaration of Intention	\$270	\$1,320	\$1,050	389%
N-336. Request for a Hearing on a Decision in Naturalization Proceedings	\$700	\$1,755	\$1,055	151%
N-400. Application for Naturalization	\$640/\$320	\$1,170	\$530	83%
N-470. Application to Preserve Residence for Naturalization Purposes	\$355	\$1,600	\$1,245	266%

287 U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 62,280 (Nov. 14, 2019).

Weaponizing the Public Charge Ground of Inadmissibility

“Public charge” was first introduced in 1882 as part of the Immigration Act of 1882. The statute reads that if upon examination at a port of entry “there shall be found among such passengers any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a charge,” they are to be denied entrance to the United States.²⁸⁸ The language and approach largely used today was published in the 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds. Here, “Public charge,” for immigration purposes, is interpreted as someone determined to be “primarily dependent on the government for subsistence.”²⁸⁹

On August 14, 2019, the U.S. Department of Homeland Security published a finalized proposal to broaden the definition of people that could be considered a “public charge” and therefore be considered inadmissible to enter the United States or be denied permanent residency. Essentially, by codifying what it means to be public charge and what public benefits are included in section 212(a) (4) of the Immigration and Nationality Act, the proposed rule attempts to drastically re-interpret the meaning of public charge.²⁹⁰

The new public-charge rule would give the government broad discretion to deny adjustment and admission to a large share of those seeking permanent resident status based on family relationships.²⁹¹ In addition,

the Migration Policy Institute predicts that the new standards for determining when an immigrant is likely to become a public charge could cause a large number of the nearly 23 million noncitizens and U.S. citizens in immigrant families using public benefits to disenroll.²⁹² The public charge rule has been referred to as a “racially-motivated wealth test [that] rigs the rules against immigrants and their families who are on the pathway to a green card.”²⁹³

Under the Administration’s proposed change, a person who uses one or more of an expanded list of public benefits, including cash assistance, Medicaid (but not for children or pregnant women), Supplemental Nutritional Assistance Program (SNAP, or food stamps) and housing subsidies²⁹⁴ for a period totaling to 12 cumulative months of use within 36 months would be deemed a “public charge.”²⁹⁵ It’s important to note that under this rule, if a person uses multiple types of benefits within the same month, each benefit would count towards the 12-month usage.

The rule also gives extraordinary discretion to immigration officers and sets forth a number of heavily weighted positive and negative factors. For example, DHS would consider it to be a negative factor if the individual is younger than 18 or older than 61, and a positive factor if the individual is between the ages of 18 and 61.²⁹⁶ An example of a heavily weighted negative factor is someone who is not a full-time student and is authorized to work, but is unable to

288 Act of Aug. 3, 1882, ch. 376, 22 Stat. 214.

289 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689 (Mar. 26, 1999).

290 See Immigration and Nationality Act, 8 U.S.C § 1101 et seq. (1965).

291 Jeanne Batalova, Michael Fix, & Mark Greenberg, “Millions Will Feel Chilling Effects of U.S. Public-Charge Rule That Is Also Likely to Reshape Legal Immigration,” *Migration Policy Institute* (Aug. 2019), <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>.

292 *Id.*

293 The Protecting Immigrant Families Campaign, “Public Charge: DHS, DOS, FAM and Related Issues” (Nov. 1, 2019), <https://www.aifa.org/File/Related/19050634b.pdf>.

294 Jeanne Batalova, Michael Fix, & Mark Greenberg, “Millions Will Feel Chilling Effects of U.S. Public-Charge Rule That Is Also Likely to Reshape Legal Immigration,” *Migration Policy Institute* (Aug. 2019), <https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary>.

295 Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019).

296 *Id.*

demonstrate current employment, recent employment history, or a reasonable prospect of future employment.²⁹⁷ The rule states that this heavily weighted negative factor will not in and of itself render an applicant likely at any time to become a public charge in the totality of the circumstances analysis, but given the amount of discretion the officers have, it is difficult to understand how someone seeking admission would not be deemed inadmissible in this scenario.²⁹⁸

In October 2019, the federal courts of the Southern District of New York, the Northern District of California, and the Eastern District of Washington issued preliminary injunctions stopping the new “public charge” regulations just days before it was to go into effect.²⁹⁹ However, the proposal has already taken a toll on immigrants, keeping them from accessing necessary benefits for fear of reprisal. In a study by the Urban Institute, one in seven adults in immigrant families reported avoiding public benefit programs as a result of the public charge rule.³⁰⁰

Trauma and Resiliency

The heightened enforcement and punishing rhetoric that are now part of the daily dialogue on immigration have had devastating effects on immigrant communities’ mental health. The impact on immigrant children,³⁰¹ DACA recipients,³⁰² and immigrant communities overall is well-documented.³⁰³ As the scope of this report would not allow us to do justice to those complex issues, we are not exploring them here. However, the impact on communities’ mental health and wellbeing poses its own challenges when trying to provide legal representation and, more broadly, is an area that requires attention and concern. That is why this report recommends, in part, tying legal services funding to funding for mental health professionals to work specifically with immigrants facing deportation.

Similarly, and as illustrated throughout this report in immigration attorneys’ own words, the deteriorating legal landscape has had a profound effect on immigration attorneys.

297 *Id.*

298 *Id.*

299 Elliot Spagat & Deepti Hajela, “Judges Block Green Card Denials for Immigrants on Public Aid,” *AP News* (Oct. 11, 2019), <https://apnews.com/434064b5cef44161bb3291cb4e8ffecd>.

300 Hamutal Bernstein et al., “With Public Charge Rule Looming, One in Seven Adults in Immigrant Families Reported Avoiding Public Benefit Programs in 2018, Urban Institute” (May 21, 2019), <https://www.urban.org/urban-wire/public-charge-rule-looming-one-seven-adults-immigrant-families-reported-avoiding-public-benefit-programs-2018>.

301 See California Immigrant Policy Center, *The Children’s Partnership*, The Effect of Hostile Immigration Policies on Children’s Mental Health 2–3 (2017).

302 Josue De Luna Navarro, “For Undocumented Immigrants, Our Enforcement Policies Drive a Public Mental Health Crisis,” *USA Today* (Nov. 12, 2019, 5:00 AM), <https://www.usatoday.com/story/opinion/voices/2019/11/12/daca-undocumented-immigrants-mental-health-stress-trauma-column/2562126001/>.

303 See, e.g., Olivia Sanchez, “Endless fear: Undocumented Immigrants Grapple with Anxiety, Depression Under Trump,” *USA Today* (Aug. 25, 2019, 1:04 PM), <https://www.usatoday.com/story/news/nation/2019/08/25/undocumented-immigrants-struggle-mental-health-survival-mode/1816672001/>.

Attorneys report:

“ ...when I think about my clients, I constantly feel something like survivors guilt for being born in the US, safe, in a non-violent relationship, with healthy children from whom I have never been separated. Professionally, I wonder how much longer I can try to practice law in a field where the government continually breaks and undermines the law. I do not know how to effectively guide junior colleagues when the experience I have built up is no longer relevant because of nonstop changes to law and policy. I do not know how to effectively counsel clients when I have no way of assessing risk for them, given how long affirmative petitions pend and how much could change between time of filing and time of adjudication. I also feel terrible for even voicing these thoughts because I know that the difficulties of my mostly-affirmative practice in NYC are nothing at all compared to that of the attorneys who handle only removal defense, who do detained work, who are working at the border, or who are working with MPP clients.”

“ I graduated from law school and started my legal career in 2017. Essentially all of my internships and extra-curricular activities during law school had been immigration related and I loved the field. It was always challenging and heart-breaking because the [immigration] system is so broken, but there was a semblance of due process and general consistency. I experienced vicarious trauma while participating in internships, but usually had time to heal from it when I was focusing on school between intern positions. I still had hope that we could work towards fixing the system and help individual clients. I took this eagerness to my first full-time law job as an immigration attorney for a small nonprofit. Despite the attacks already launched by the Trump administration early in the year, I knew I was joining a community of passionate people and I would be able to work on a case-by-case basis for the next four years. However, things devolved very quickly. My office environment was very challenging for me. I did not feel supported by my supervisor and I was the only attorney in the office who worked directly with clients. It would be extremely isolating in any circumstances, but was compounded by the fact that the law was changing for the worse on a near daily basis. The learning curve was exponentially growing. Not only did I have to adjust to being a fulltime attorney and handling a case load in a complicated area of law (essentially) on my own, I also had to keep up with the ever-morphing landscape. With the laws changing so frequently, it became increasingly difficult to advise clients or even to find legal remedies for them. This led to more losses, more devastating news, and more broken lives. Vicarious trauma and burn out were commonplace to me. I had nightmares about what my clients told me. I couldn't stop worrying about what would happen to my clients. I was constantly hyper-alert.

- “ After a year or so, the challenging work environment, the isolation, the difficult legal landscape, and trying to handle the normal stresses of everyday life caught up to me. It felt that I was treading water constantly, but my legs were about to give out. I needed some sort of life vest. I finally started to reevaluate my situation when I became very ill. I went to several doctors, but could not find a cure or even what was making me sick. This crisis forced me to take a step back and reflect on my health, though. I started to undergo a more intensive therapy routine, eat healthier, and exercise. I began applying for new jobs. Through finding a workplace that better suits my needs and building healthy habits, my illness subsided and I started to feel more energized.
- “ It is still very difficult work for me. I still experience vicarious trauma, but have developed skills to better manage it. The ever-worsening, bigoted laws against the immigrant community continue to discourage me, but I have more bandwidth to process it. The emotional strain I feel from my clients’ traumatic events coupled with the fear of deportation that they live with every day always sits in my chest. It has made me feel distrustful and jaded. However, the other supports and healthy coping skills have prevented it from physically affecting me (so far). Without my therapist, generous annual leave, and team support, I would not be able to continue doing this work which I am so passionate about.
- “ The last three years I’ve witnessed an increase in disrespect from the court and government trial attorneys towards my clients and the non-profit advocates I work with, along with an unabashed lack of impartiality from the judges that has made me question my sanity. I wish that was an exaggeration. I firmly believe that the increased enforcement, performance quotas and hiring of judges with little to know background in immigration has heightened the level of vitriol in the courts and has made an already tense environment become outright hostile. My clients are [as a result], of course, traumatized, but it has [also] handicapped many of our young advocates who have left the field, or even the practice of law entirely, because of sheer burnout. We’ve been put into a position where we have to come out guns blazing and are then made to feel like we are wasting the Court’s time advocating for our client’s rights. For example, bond proceedings, which are supposed to be informal in nature, have become the preferred method of judges for reducing their dockets. Clients with little to no criminal history are being denied bond at an outrageous pace. If my client has been arrested and the criminal case against them is pending, the government claims that we can’t meet our burden to show non-dangerousness, even when the alleged conduct is non-violent. If the client has been arrested and the case is closed, we bring in Certificates of Disposition, but the government now asks for complaints; we provide those, and they ask for police reports. If a case is dismissed, they want a letter from the DA certifying the nature of the dismissal. They want letters from the alleged victim, but once we provide those letters, they argue, without any basis, that the victim must’ve been coerced and that it doesn’t prove the charged conduct never happened. It really makes one question reality, the rule of law, one’s competence, the concept of justice itself. The last three years have been disempowering. I maintain my commitment to work for indigent, detained Respondents, but I wonder how long before I’m entirely spent and before my sole legal advice is that it is simply not worth it to try.

- “ *My workload has increased dramatically as a result of the Trump Administration’s war on immigrants. I work about 70 to 75 hours per week, up from 60 hours per week before. I regularly wake up in the middle of the night thinking about work. I’m stressed all the time. I stopped going to the gym, gained 20 pounds, and am tired all the time. I am mindful of vicarious trauma and try to take time out every now and then, particularly massages on the weekend, but it’s hard to carve out the time. It doesn’t feel sustainable.*
- “ *I’m so grateful to be doing this work because I get to be on the front lines of the fight for American values from the current assault on the rule of law by this administration. I do live with a constant sense of horror at what is happening to immigrants in our country. I went into therapy to develop coping skills to manage my grief and anger at my inability to protect all my clients from deportation and violence upon deportation, which I highly recommend. I limit my exposure to news, exercise and meditate/pray, which I’d recommend to anyone. I stay grounded by reminding myself that I am just one person, working with so many other great people, and that we honor and bear witness to our clients’ experiences whether or not we prevail in a given case. I always remind myself that someday this will all be history and I will be able to tell my children that I was on the side of justice.*

New York & The Borders

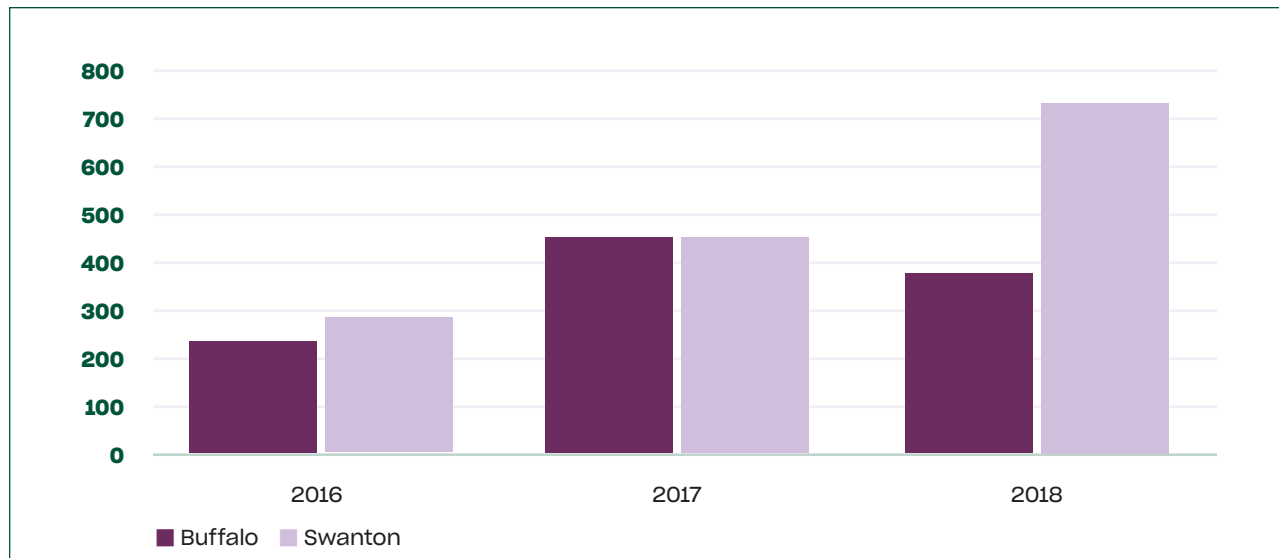
Challenges along the Northern Border

While much attention has been paid to the crisis at the US' Southern Border, New York's border with Canada has come with its own challenges. Border Patrol has far more ability to carry out warrantless enforcement actions within 100 miles of the border, and such activity has seen a sharp increase under the Trump administration. Advocates in northern NYS report frequent Border Patrol roadside checkpoints, with the highest prevalence seeming to be in North Country. Watertown, in particular, is home to Fort Drum and known for having a heavy federal law enforcement presence.

Border Patrol also frequently boards Greyhound Buses and Amtrak trains traveling in the Northern part of the State,³⁰⁴ and can also be found at transit hubs questioning travelers about their citizenship.³⁰⁵ These activities have resulted in a sharp uptick of Border Patrol arrests between the Buffalo Sector, which covers the counties of Erie through Oswego, and the Swanton Sector, which covers the Eastern part of New York, including North Country, and Vermont:

Figure 11.

Border patrol arrests for Buffalo and Swanton Sectors FY 2016 – FY 2018



304 Adiel Kaplan, "Border Patrol Searches Have Increased on Greyhound, Other Buses Far From Border," *NBC News* (June 5, 2019, 4:30 AM), <https://www.nbcnews.com/politics/immigration/border-patrol-searches-have-increased-greyhound-other-buses-far-border-n1012596>.

305 Chris Baker, "Federal Agents Patrol CNY Bus Station Asking, 'Are you a U.S. citizen?'," *Central NY News* (Jan. 30, 2019), https://www.syracuse.com/news/2018/05/federal_agents_patrol_cny_bus_station_asking_are_you_a_us_citizen.html.

306 "Total Illegal Alien Apprehensions by Month," *U.S. Border Patrol*, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/bp-total-monthly-apps-sector-area-fy2018.pdf>. (last visited Dec. 11, 2019).

In addition, anti-immigrant policies in the U.S. have led immigrant communities and their allies to look North to Canada and its far more immigrant-friendly policies for safety and stability. Attorneys report an increase in questions from clients regarding Canadian options for legal migration. Many more, however, are seemingly taking matters into their own hands and heading Northward. The Safe Third Country Agreement (STCA), however, often stands in their way. The agreement, signed long before the present administration, requires asylum-seekers to request asylum in their country of first arrival, and forces Canada to return regular border crossers from the U.S. back to U.S. authorities. To avoid that fate, many others try their luck at irregular border crossings. Ground zero for these has become Roxham Road.³⁰⁷

Barring an STCA exception, those who do attempt to cross through the legal border crossing are returned to US officials, who often detain them before processing them for deportation.³⁰⁸ The local county jail, Clinton County, has a contract to hold up to 45 ICE detainees at any given time, though ICE can send detainees to any jail in the country where they have bed space.³⁰⁹ Though statistical evidence does not exist, interviews with detainees demonstrate that, at least some may have been eligible for immigration relief in the United States but chose not to pursue it.

The Southern Border Moves to New York

In the summer of 2018, amid the family separation crisis at the Southern border. ICE

transferred large numbers of recently-arrived asylum seekers to the Albany County Jail to make more bed space at facilities closer to the U.S.-Mexico border.

Because of the procedural posture of their cases, which effectively treated these individuals as if they were still at the Southern Border seeking admission to the U.S., none of the nearly 400 individuals transferred to Albany County between July and December 2018 qualified for funded services in the region. As a result, local non-profits launched an unprecedented legal rapid response effort that was staffed by volunteers from throughout New York State and beyond.

This effort, the Detention Outreach Project (“DOP”), assisted all immigrant detainees that were in need of counsel at the Albany County Jail in preparing for their Credible Fear Interviews (“CFIs”) as well as connecting them to other help. Attorneys leading the DOP were able to address medical needs, reunite separated family members, and, once an individual had passed their CFI, ensure they were connected to state-funded lawyers to represent them in immigration court.

Once they passed their CFIs, detained migrants at the Albany County Jail were represented by the state-funded New York Immigrant Family Unity Project (NYIFUP), which provides free lawyers to detained immigrants who cannot otherwise afford an attorney. By the end of 2018, the Albany County Sheriff made the decision to end his office’s relationship with ICE and no more asylum seekers were transferred there.³¹⁰ The impact of the DOP however, continues to be felt: At a time when national CFI passage rates

307 Susan Ormiston, “How Thousands of Asylum Seekers Have Turned Roxham Road Into a DeFacto Border Crossing,” *CBC News* (Sept. 29, 2019 4:00 AM), <https://www.cbc.ca/news/canada/the-national-roxham-road-immigration-border-1.5169249>.

308 *Id.*

309 *Id.*

310 Mallory Moench, “New York First State to Bar ICE Arrests in Courts Without Judicial Warrant,” *Timesunion* (Apr. 28, 2019, 7:51 PM), <https://www.timesunion.com/news/article/New-York-first-state-to-bar-ICE-from-making-13776007.php>.

hovered around 75%, the DOP's success rate was 93%.³¹¹

At the same time, the Office for Refugee Resettlement (ORR) placed over 300 young children, separated from their parents at the border, in the care of shelters in New York, prompting lawyers to launch emergency efforts to provide representation and, when possible, reunification with their family members.³¹²

In the Spring of 2019, ICE once again transferred large groups of asylum seekers to facilities in Northern New Jersey and the lower Hudson Valley, all pre-CFI.³¹³ Unfortunately, lack of capacity and cooperation from some of the facilities meant that organizations were not able to respond to this one-time transfer. Advocates also report that small transfers of pre-CFI asylum seekers continue on an

irregular basis from the Southern Border to the detention facility in Batavia, New York. Even when asylum seekers remain in the South, their cases may nonetheless make their way to New York. Attorneys report that an increasing number of immigration judges from the New York courts have been taken off their regular dockets to instead hear cases, via Video, for individuals detained in Louisiana and Mississippi.

Finally, as migrants are released from facilities in the South, many with no prior connections to the United States have made their way North. One shelter in particular, Casa Vive in Buffalo, has received large influxes of Congolese asylum seekers who crossed through Mexico intending to go to Maine but who diverted when the city of Portland became overwhelmed.³¹⁴

311 Case data on file with the New York Immigration Coalition.

312 Liz Robbins, "Hundreds of Separated Children Have Quietly Been Sent to New York," *N.Y. Times* (June 20, 2018), <https://www.nytimes.com/2018/06/20/nyregion/children-separated-border-new-york.html>.

313 Stephen Rex Brown, "Feds Transferred Over 230 Undocumented Immigrants Detained Near Mexico Border to NYC-Area Jails," *New York Daily News* (May 29, 2019, 3:30 AM), <https://www.nydailynews.com/new-york/ny-borders-cross-ers-nyc-20190529-jspoiokm7bd3foedvon2nlkoku-story.html>.

314 Manny Fernandez, "A New Migrant Surge at the Border, This One From Central Africa," *N.Y. Times* (June 16, 2019), <https://www.nytimes.com/2019/06/16/us/border-africans-congo-maine.html>.



Universal Representation in New York – Challenges and Potential Solutions

As evidence of the tremendous positive impact a qualified attorney can have on the outcome of immigration proceedings continues to accumulate, the list of challenges to creating a model that would allow immigrants access to lawyers regardless of income continues to grow.

Many localities throughout the country have begun to work their way towards universal representation of immigrants facing proceedings in their jurisdictions, though what universal representation entails varies from place to place. Generally, it is accepted that universal representation means providing a publicly-funded lawyer to indigent and low-income immigrants facing deportation. In nearly all cities and states that have created funds for these purposes, the initial focus has been on detained immigrants, though some areas, notably California and New York, have expanded services to non-detained individuals.

In 2019, the Immigrant Advocates Response Collaborative (I-ARC) gathered legal experts and community leaders throughout the state to examine what a Universal Representation model in New York should look like, what challenges lay ahead, and to begin identifying solutions that would allow us to provide a lawyer to immigrants facing deportation in New York State. The summary

of these findings, examined in a series of teach-ins, are laid out below and offer a checklist of sorts for an ideal system.

1. Takes on all cases regardless of perceived viability

Benefits: Community members would no longer have to go to a series of organizations before hopefully finding an attorney willing to take on their cases and community members would have faith that their rights are being preserved. At the same time, legal representatives would have broader experience and help make the overall all system more efficient by ensuring that all cases are competently prepared and all individuals have the correct information to make educated decisions on how to proceed.

Challenges: Currently, providers are nowhere near the capacity they would require to meet the demands they are faced with, and this could, in turn, compromise the quality of representation. In addition, it would remove the discretion of representatives to focus more time on cases that have a better chance of being successful.

Proposed Solutions: To increase capacity a universal representation model will have to replicate and grow proven *pro bono* models as well as find ways to engage private bar attorneys, possibly through assigned-counsel models paid for by the State. In addition, it will be crucial to support the mental well-being of attorneys to create a resilient work force, particularly in times of severely anti-immigrant policies.

2.

Provides Representation in Affirmative & Defensive Proceedings

Benefits: Everyone in need will have access to lawyers, regardless of ability to pay, which will ensure that a maximum number of immigrants qualifying for legal status in the United States will be able to obtain it. Additionally, legal representatives will have better-rounded professional experiences and there will be less risk of an individual becoming a victim of fraudulent practices by unscrupulous providers.

Challenges: Even with sufficient funding to provide all who need it with a legal representative, organizations would still face capacity issues as there are not sufficient attorneys and support staff to meet the need.

Proposed solutions: New York communities and providers should determine a priority process to determine where to focus efforts to improve access to counsel. In addition, with the support of state and local governments, we must focus on increasing the number of accredited representatives and support staff (paralegals, caseworkers, social workers e.g.) to support the provision of legal services and ensure attorneys focus their time on the cases with the most complex legal issues.

3.

Offers Competent Representation

Benefits: A universal representation system only works if immigrants have access to competent representation. This is the only way to ensure that all immigrants have their rights defended equally. In turn, an increase in competent representation means more efficient adjudications with more positive outcomes, a better functioning system overall, less erroneous outcomes and deportations, and more faith by the community in the system.

Challenges: Quality control of representation is challenging, particularly at the scale needed to implement universal representation. In addition, there are concerns that improved outcomes could give false hope that all cases are meritorious and, eventually, turn ICE into a smarter adversary.

Solutions: To ensure competent representation, it would be essential to support supervisor and mentorship positions, as well as professional development and education of legal representatives. The profession as a whole would need to be diverse and have benchmarks built in to grants for quality measurements.

4.

Is Accessible by the Community

Benefits: No Universal Representation model can operate at full potential without the community trusting it to help them. Creating a system that is responsive to community concerns and that they feel comfortable accessing is integral to its success.

Challenges: In current times, it is difficult to have clients trust the legal system overall. In addition, it can be especially difficult for individuals with accessibility challenges to avail themselves of resources meant to protect their rights.

Proposed Challenges: To increase physical accessibility, particularly in more rural areas of the State, we must work not just with communities but with community-based allies to train and support them as they seek to help immigrants access legal representation. To foster trust in the system it will be critical to train lawyers and all support staff on how to properly communicate and interact with immigrant clients and to provide services that more broadly meet needs of clients in an interdisciplinary way. For clients with disabilities or other accessibility issues, an assessment of current practices and compilation of current resources would be necessary.

5.

Has Built-in Language Access

Benefits: With equal access to interpretation, all immigrant communities would have equal

access to legal services, would be able to fully participate in their cases, and would ensure better quality of representation as communications would be easier to manage

Challenges: The main challenges to having language access built in to a universal representation system is the lack of quality interpreters, the high costs associated with such services, and the logistics of coordinating availability of interpreters (e.g. in person vs. by phone).

Proposed Solutions: To increase access to interpreters we should work both with interpreter communities to encourage the creation of interpreter co-ops and similar mechanisms while making the training and certification process easier to access and navigate. Attorneys should also be trained on how to better work with interpreters.

6.

Does Not Have Carve-Outs:

Benefits: A system that provides services without limitation, such as carve-outs that prevent categories of individuals from being represented because of past criminal history, e.g., is a system that recognized the inherent dignity and right to due process of every individual and honors everyone's right to zealous representation. It eliminates discrimination in service delivery and ensures that all those needing of legal representation will obtain it.

Challenges: Representing immigrants with serious immigration convictions requires time and expertise not all attorneys have, and the lack of experience on these topics is particularly acute in more rural areas of

the state, where resources are further apart. Because they require more work, these types of cases also reduce overall caseloads.

Proposed Solutions: To more effectively and uniformly represent individuals with criminal convictions, stakeholders should focus on increasing collaboration and training among legal representatives and build up support networks for both providers and community members. This could include better support for mentors and supervisors, required training on these topics, and recruitment of lawyers with specific skill sets (e.g. criminal law experience).

by also incorporating social workers, case managers, and other supportive staff. This allows community members will have all of their needs are met and understand the process and emotionally supported while the provision of legal services is more culturally sensitive and trauma informed.

Challenges: There is a lack of social workers and case managers with the relevant language skills. In addition, there needs to be clarity around each player’s roles in the provision of legal services or there is a risk that clients will be confused.

Proposed solutions: There should be consistent reinforcing of roles and a directory of services provided by various outside organizations that can be consulted to complement those offered within the organizations. Information on news updates and know your rights materials should be available to all.

7. Includes Supportive Services

Benefits: Legal services must be viewed as including more than just legal representatives



Conclusion

New York State leads the country in investments made to support immigration legal services and, as a result, has a robust network of providers who have increased collaboration and inter-agency support over recent years. To fully maximize the impact of its investments, however, New York must find ways to stabilize its investments as it also strengthens the ways in which providers connect with communities to provide support.

Recommendations

1.

Make providing and expanding access to counsel for immigrants a priority in funding streams and policy decisions. While there has been a growing awareness that a fundamental flaw in our current immigration legal system is the lack of guaranteed legal counsel, the Trump administration has exploited the cracks in the outdated system to slow down all forms of immigration while undermining due process and individual rights. In the current climate, a right to counsel has become imperative as not only do individuals need additional help navigating immigration laws, but even agencies charged with adjudicating or enforcing those same laws are often left confused and unsure as to how to proceed under conflicting, and at times unlawful, directives from Washington.

2.

New York State should create a statutory right to counsel for New Yorkers facing deportation. Passing such a law is the only way to guarantee that funding must be included in the budget every year for these services, giving both attorneys and their clients confidence that each case will have legal representation through the multiple years it usually takes to complete deportation proceedings.

3.

Until such a bill is passed, the New York State Budget should include at least \$25 million in its FY2021 budget, up from \$17 million in the FY2020 budget, specifically for immigration legal and related services. The increased funding should be used to restore the funding cut from ONA Opportunity Centers in FY2019 as well as bring the number of centers back up to 27 from its current 23 (\$2.7 million). This would allow ONA to prepare an additional 400 citizenship applications, host an additional 48 intake days, and restore English classes for approximately 3,000 New Yorkers. The remaining funding increase (\$5.3 million) should be spent on legal services and community-based organizations supporting legal representation, to provide legal services to an additional 1,000 New Yorkers. These grants should be divided between new organizations that currently do not receive state funds and are geographically diverse and increased funding levels to current grantees. The increase funding would mean that current grantees would have enough resources to continue working on cases opened in the last funding cycle, while also having the capacity to take on new cases as they arise.

4.

Invest in capacity building: Geographic, linguistic, and other barriers prevent immigrants from accessing vital legal services. Funding should enable organizations to make

Recommendations

capital investments in areas surrounding language lines, technology, and physical space to allow them to grow, as well as to develop staff to best supplement lawyers with accredited representatives and legal support. This should include time, resources, and funding to develop cross-state partnerships and technology tools that would help bring services to geographically remote and underserved areas.

5.

Provide meaningful support of supervisory positions: Current funding structures are often tied to numbers of people served, requiring supervisors to carry their own caseloads. This, in turn, prevents them from effectively overseeing and teaching junior staff, or from properly supervising *pro bono* attorneys. With changes in how deliverables are counted, specifically in regard to supervising attorneys, New York could more effectively tap into the large *pro bono* pools available in the state, which could in turn expand capacity, and numbers of persons served.

6.

Invest in critical integration and support services: Many attorney hours are often spent on work that could easily be carried out by others, such as case-workers (who could assist with connecting immigrants to necessary social services), mental health professionals (who could provide forensic evaluations to strengthen asylum and family-reunification claims), and adult education and English for Speakers of Other Languages (ESOL) classes (to help immigrants become

self-sufficient). Investment in these services would allow attorneys to focus on legal work. Additionally, supporting other pro-immigrant policies such as sanctuary legislation would give immigrant communities stability, resources, and the confidence to come forward.

7.

Disburse funds and issue contracts for State and City grants in a timely and transparent manner to ensure that all providers have an equal chance to access public funds, to make these urgent services available to our communities as quickly as possible, and to allow for full evaluation and assessment of whether existing needs are being met and what, if any, course corrections may be necessary to achieve that goal. Contracts should also allow for year-to-year re-enrollment of open cases so that organizations are not forced to do unfunded work on cases that continue to require attention more than one year after they are original opened.

APPENDIX A

Profile Of New York's Legal Service Providers:

Results Of NYIC Survey

Organizational Structure

How many attorneys does your organization have?

- Based on the survey, 30% of organizations have three or less attorneys on staff. 30% of organizations have ten or more attorneys on staff. More than 70% of organizations have ten or less attorneys on staff.

How many partially accredited and fully accredited DOJ Accredited Representatives does your organization have?

- Based on the survey, more than 60% of organizations do not have any partially accredited Department of Justice Accredited Representatives. Over 90% of organizations have three or less partially accredited DOJ Accredited Representatives. Approximately 8% of organizations have four or more partially accredited DOJ Accredited Representatives.
- 86% of organizations who responded to the survey do not have any fully accredited DOJ Accredited Representatives. Only 16% have one or more fully accredited representatives.

How many supervising attorneys do you have on staff? (supervising attorneys are defined as someone who supervises at least one staff attorney or DOJ Accredited Representative)

- More than 75% of organizations have three or less supervising attorneys on staff.

How many paralegals do you have on staff? (Not including Accredited Reps)

- Approximately 86% of organizations have three or less paralegals on staff. A third of organizations do not have paralegals on staff. About 8% of organizations staff 10 or more paralegals on staff

How many clerical staff do you have on staff?

- Over 90% of respondents have a clerical staff of three or less individuals in their organization. 30% of organizations do not use clerical staff. About 8% of organizations have a clerical staff of five or more.

How many social workers do you have on staff?

- Over half (58%) of respondents do not use social workers in their organization.

Consultations/screenings per month

- More than 1/3 (36%) of organizations take in approximately 20-25 consultations/screenings a month. 27% of organizations take in 100 or more consultations and screenings a month.

Number of cases in the last year

- Almost a quarter (22%) of organizations take in between approximately 200-400 cases a year. Over 40% of organizations average over 400 cases a year.

Wait time for an initial screening/consultation

- Over half (55%) of organizations have a wait time of 1-4 weeks for an initial screening. Nearly 20% have a wait time of over 6 weeks.

Waitlists

- Over 60% of organizations do not maintain a waitlist. Only a quarter of organizations maintain a waitlist. Organizations reported wait times between two weeks to five months. 1/3 of those organizations offered appointments 2-4 weeks after the initial request. For half of the organizations that maintain a waitlist, the average time for a case to get off the waitlist is between 2-6 months.

In what language are services provided?

- Based on the survey, over half of the organizations provide services in Spanish. Nearly 60% of organizations have Access to Language Line. The legal service providers that responded to the survey detailed that the top languages in which they provide services to immigrant clients include, Spanish (52%), French (25%), Arabic (11%), Russian (11%), and Chinese (11%).
- What percentage of your attorneys/accredited representatives have 0-5 years of immigration law experience?

Percentage of attorneys with over 10 years of immigration experience

- Over 1/3 of organizations do not have attorneys with over 10 year of immigration experience.

Average case load of supervising staff (full/nearly full/half/a handful)

- Nearly 70% of the organizations state that the supervising attorneys maintain a full or nearly full average caseload. Less than a third of the organizations state that their supervising attorneys maintain a half of an average caseload or a handful of cases.

Does your organization offer support for vicarious trauma and resiliency?

- 44% of organizations offer support for vicarious trauma and resiliency. — what does maybe mean?
- 97% of organizations are interested in receiving more support/workshops to help staff with vicarious trauma and resiliency.

CLIENT PROFILES

What percentage of clients...

Live below federal poverty line

- Nearly 70% of survey respondents track if their clients live below the federal poverty line. For the majority (92%) of the organizations that track this information, 50-100% of their clients live below the federal poverty line.

Receive public benefits

- Nearly two thirds of survey respondents track the percentage of clients receiving public benefits such as TANF, SNAP, HASA, etc. For 60% of the organizations that track this information, 50-100% of their clients receive public benefits.

Eligible for Medicaid

- 72% of organizations track their clients' eligibility for Medicaid. For more than half of the organizations that track this information, 80-100% of their clients are eligible for Medicaid. For nearly 85% of organizations that track this information, the percentage of clients eligible for Medicaid is equal to 50% or higher.

Live in shelters

- Nearly 70% of organizations track whether their clients live in shelters. For 64% of organizations that track this information, 10% or less of their clients live in shelters.

Identify as LGBTQ

- Two thirds of the organizations that responded to the survey track the percentage of clients that identify as part of the LGBTQ community. For 44% of those organizations, 5-20% of their clients identify as LGBTQ.

Were previously detained in Family Detention

- Two thirds of organizations keep track of the percentage of clients previously detained in Family Detention. For 44% of those organizations, 5-10% of clients have been previously detained in family detention.

Were previously detained upon arrival at the border

- Nearly 70% of organizations track the percentage of clients who were previously detained upon arrival at the border.

Were previously detained after being present in the U.S.

- Two thirds of organizations track the percentage of clients who were previously detained after being present in the U.S. For 1/3 of those organizations, 5-10% of their clients were detained after entering the U.S. For 37% of organizations that track this information, none of their clients are detained after being present in the United States.

Are currently detained

- 72% of organizations track the percentage of clients currently detained. For nearly 70% of those organizations, none of their clients are currently detained.

Victims of gang violence

- 58% of organizations track the percentage of clients that have been victims of gang violence. For 1/3 of those organizations, 5-15% of their clients are victims of gang violence. For 42% of those organizations, 20-50% of their clients are victims of gang violence.

Victims of gender-based violence

- Close to 2/3rds of organizations track the percentage of clients that have been victims of gender-based violence. For a quarter of those organizations, 5-10% of their clients are victims of gender-based violence. For 34% of organizations, 20-40% of clients are victims of gender-based violence. For 30% of the organizations, 50-100% of clients are victims of gender-based violence.

Victims of domestic violence

- Close to two thirds of survey respondents track the percentage of clients that have been victims of domestic violence. For over 50% of organizations, 5-25% of clients are victims of domestic violence.

Victims of police/government violence

- 58% of organizations track the percentage of clients are victims of police or government violence. For over half of the organizations, 5-20% of their clients are victims of police or government violence.

Victims of wage theft or other labor issues

- Half of the organizations who responded to the survey track the percentage of clients who are victims of wage theft or other labor issues. For half or those organizations, 0-5% of their clients are victims of wage theft or other labor issues.

Clients facing other proceedings

- A little over half of the organizations track the percentage of clients who faced other proceedings such as housing. For 47% of organizations, about 10-20% of their clients faced other proceedings.

Clients that have been victims of fraud (immigration services fraud, employment fraud, housing fraud, insurance fraud, etc.)

- Over half of the organizations track the percentage of clients who have been victims of fraud. For over a 1/3 of those organizations, 25-40% of clients have been victims of fraud.

Top services provided by organizations

- The top five most common services provided by organizations are Non-detained Removal Proceedings, U Visas, Naturalization, DACA, and Non-detained BIA Appeals.

Referrals given?

- 88.9% of the organizations that responded to the survey offer referrals if it cannot take on a case.

Top legal service needs in the communities

- The top five legal service needs in the communities the organizations currently serve, with 1 being the highest, are the following:
 1. Removal Defense
 2. Asylum & Complex Case Representation (family based/consular processing/crim-imm)
 3. Humanitarian Rep (U&T/Deferred Actions/Humanitarian Parole)
 4. Federal Appeals/Federal Litigation
 5. Light Touch Cases

Top changes in the last three years

- Based on the survey, the top five changes in the last three years are lengthier cases, more RFES, more psych-social impact on attorneys, more appeals, and more losses.

CASE LOAD

Case Type	% of Organizations that handle these type of cases
Non-detained Removal Proceedings	88.9%
U VISAS	86.1%
Naturalization	80.6%
DACA	80.6%
Non-detained BIA Appeals	80.6%
SIJS Cases	77.8%
I-751	77.8%
I-90 (stand alone, i.e. not for existing clients with previous matters in your office)	77.8%
VAWA I-360	75%
FOIA (stand alone, i.e. not for existing clients with previous matters in your office)	75%
Affirmative Asylum Cases	72.2%
T Visas	72.2%
Family-based I-130 Petitions	69.4%
Post-order Motion to Reopen	66.7%
N-600	63.9%
TPS	58.3%
Federal Appeals (including Habeas, Mandamus, and Petitions for Review)	55.6%
Humanitarian Parole/PIP/Traditional	52.8%
Family based consular processing	50%
Credible Fear/Reasonable Fear Interviews	44.4%
Detained Removal Cases	38.9%
Stays of Removal (stand alone, i.e. not for existing clients with previous matters in your office)	33.3%
Detained BIA Appeals	30.6%
A	2.8%
Deferred Action – USCIS; post order deportation process	2.8%

FUNDING

Are fees charged?

- 75% of organizations do not charge a fee to clients. 11% charge a fixed or sliding scale fee.

Public Funding

- 60% of organizations receive public funding from the New York State and New York City funds.
- 34% of organizations receive Federal funding. 17% of the organizations do not receive public funding.

Private Funding

- 37% of organizations receive private funding from Immigrant Justice Corps. 20% receive private funding from the Robin Hood Foundation, 10% receive funding from both the New York Community Trust and law firms. 13% of the organizations do not receive private funding.

APPENDIX B

Testimony of the New York Immigration Coalition in Support of the Proposal to Consolidate New York's Trial Level Courts

Testimony of the New York Immigration Coalition

In Support of the Proposal to Consolidate New York's Trial Courts
November 21, 2019

Dear Senator Hoylman, Assemblymember Dinowitz, Senators and Members of the Assembly,

On behalf of the New York Immigration Coalition, I write in support of the proposal to simplify New York's Courts.

The New York Immigration Coalition (NYIC) is the largest and oldest statewide advocacy and policy umbrella organization for more than 200 multi-ethnic, multi-racial, and multi-sector organizations that work with immigrants and refugees in New York. With member organizations located in every borough in New York City and every county in the state, collectively serving communities that speak more than 65 languages, we have a long history of coordinating collaborative efforts with members and key allies to reach target populations and respond to issues. Various programs at the NYIC are dedicated to supporting access to justice for immigrant New Yorkers, including the Immigration Legal Policy program, the Immigrant Services Support Department, and the Immigrant Concerns Training Institute (ICTI). In addition, the Immigration Legal Policy program and the Immigrant Services Support Department jointly run the Immigrant Advocates Response Collaborative (I-ARC), a network of over 80 immigration legal service provider organizations and professional associations throughout New York State. Finally, the NYIC issues a yearly report on challenges to immigrant communities in obtaining legal representation in New York State.

Through this work, the NYIC and its staff are intimately aware of the obstacles immigrants and their advocates and legal representatives face in accessing justice, one of which has been the overly-complex and opaque network of courts that New Yorkers must navigate in order to obtain legal relief. This system has proven itself far too complicated for immigrant New Yorkers

and daunting to communities that feel targeted by federal government policies. The language access issues, in particular, compound the fear and often end up dissuading immigrants from approaching the court system at all. The current court structure is also time and resource intensive for immigration attorneys, who must spend hours educating various judges and clerks in multiple courts as to the realities of our immigration laws. Finally, as a result of the overly complicated learning process to appear in State courts, many immigration and pro-bono attorneys simply chose not to do so, creating additional burdens in providing immigration legal representation and obstacles for community members in accessing such help at a time where federal policies have made that work already far more challenging. My testimony below will address each of these challenges and how they are addressed by the current proposal in turn.

Demographics of New York's Immigrant Communities

There are over an estimated 4 million immigrants living in New York, approximately 1 million of whom are undocumented. Immigrant New Yorkers make up nearly 25% of the state's population, with a third of all immigrants living in "mixed status" families or households, where one or more member may be a US Citizen or green card holder. Over three-quarters of New York's immigrants are between the ages of 16 and 64. They account for nearly 25% of homeowners in our State, nearly 10% of college students, and nearly 20% of US Citizen New Yorkers have at least one immigrant parent. Immigrants are our neighbors, our community members, our colleagues. They account for 77% of the taxi drivers that keep our cities moving, 65% of the house cleaners and maids that help us manage our households and keep our hospitality industry running, 63% of nurses, psychiatric workers, and home health aides that care for our sick and elderly, and 55% of construction workers that keep our state growing and strong.

Immigrant Communities' Fear of Government Institutions

Immigrants often have a deep distrust of government institutions and court systems, mainly because many come from countries with weak or non-existent governments and where law enforcement and judicial systems, especially, are prone to corruption. By way of example, nearly half of undocumented immigrants in New York come from Mexico (18%), China (10%), Ecuador (7%), the Dominican Republic (7%), and El Salvador (6%). For each of these countries, the US Department of State has found widespread corruption, with numerous examples of government corruption over the years (Mexico and Ecuador), court judgments often going un-enforced, especially against powerful entities (China), government officials engaging in corruption with impunity even after court findings of such conduct (Dominican Republic), and impunity remaining endemic and court judgments inconsistent (El Salvador). Since the 2016 elections and a rise in anti-immigrant policies from the US Federal Government, advocates, local governments and local law enforcement have noticed a marked increase in the distrust immigrant communities show towards our country's institutions as well.

The proposal to simplify New York State's Court System will help counter these trends and increase immigrants' confidence in accessing the courts. The current, overly-complex networks, each with their own rules and processes to initiate and navigate cases, appear labyrinthian to most New Yorkers. To immigrant communities, they are one more administrative complex built to dissuade and confuse, where their claims may be lost or misunderstood, and where their rights will be

overshadowed by administrative back and forth. More streamlined rules will lead to less complexities and more operational transparency, which will make it easier for advocates and attorneys to explain how courts work to their immigrant community members. This, in turn, will make the Courts appear more accessible and inviting and increase confidence in the system as a whole.

Language Access

Across all aspects of immigrant life in New York, language access remains one of the most critical barriers to integration and ability to access government services, including the Courts. Of the estimated 2.2 million adults living in New York who lack English proficiency, a high school diploma, or both, 75% are immigrants. Immigrant children benefit from English instruction in schools, but still struggle to both learn a new language and, often, translate for their parents and community elders. When a person living in the United States does not speak English, even basic every-day tasks become monumentally harder. It is daunting to look for health services, talk to your children's teachers, interact with law enforcement, or even ask for directions in the street.

In the last few years, the New York court system has significantly improved language access services to Limited English Proficient (LEP) litigants. For example, the court system has begun translating many manuals and pamphlets instructing pro se litigants on how to bring or defend a lawsuit. Judges have also been provided with "bench cards" to better assist them in interacting with LEP litigants, while the New York courts websites provide a glossary of housing court terminology in Simple Chinese, and orders of protection are translated into Spanish. Yet, even with these promising initiatives, there is a shortage of court interpreters in New York courts.

A recent report, produced by Legal Services NYC, notes that although New York State court rules mandate interpretation for LEP and deaf or hard of hearing litigants in civil and criminal cases, there is a lack of qualified, certified interpreters in the court system and in clerks' offices. There are also few signs in languages other than English to assist LEP litigants navigate courthouses and understand courthouse procedures.

The dearth of proper language services for immigrants creates many delays and adjournments in court for LEP litigants. Frequently, courts schedule an interpreter, who does not speak the proper language or dialect of the non-English speaking litigant. At other times, courts only have access to interpreters who speak a certain language during specific days of the month. This requires that LEP litigants repeatedly return to court if an interpreter who speaks their language is unavailable. For low-income New Yorkers, who must pay for transportation, find childcare or seek time off from work, these delays are burden that limits their access to justice.

Limited language services also mean that a huge burden is placed on legal services providers to provide interpretation and translation services to ensure that immigrants can adequately present their cases in court and at government agencies. In a recent survey of immigration legal service providers conducted by the New York Immigration Coalition, the top languages in which attorneys provided services to immigrant clients included Spanish (52% of providers), French (25% of providers), Russian (11%), Mandarin (11%), and Arabic (11%). Additionally, 33% of the legal services providers reported using telephone interpretation services as an added way to provide immigrant clients with language services.

While both New York's Courts and its government agencies have adopted language access

policies, uneven distribution of resources across the myriad trial level courts in the State mean that access to interpreters, particularly for less common languages, and translated materials is not guaranteed in any given courthouse. By centralizing all resources and allowing advocates and community members to become familiar with one set of guidelines, the current proposal will lead to more equal opportunities to access the court system.

Overly Burdensome Systems Put Immigrants at Risk and Interfere with Access to Counsel

The Court system is critical for all New Yorkers seeking to protect or defend their legal rights. For immigrants, however, state courts can sometimes be the first necessary stop when trying to obtain legal status to remain in the United States. For those whose ability to remain depends on first obtaining certain adjudications by state courts, the current burdensome system can present even more dramatic challenges.

The two most common forms of relief that are predicated on state court findings are Special Immigrant Juvenile Status (SIJS), for immigrant youth who cannot return to their countries and cannot reunite with at least one parent, and U visas, for victims of certain crimes who have suffered significant harm. While both immigration applications are ultimately decided by the federal immigration agencies, usually the US Citizenship and Immigration Services (USCIS), both can require certain certifications from family courts (in all cases for SIJS but only certain cases for U visas). In addition, immigrant victims of domestic violence will often seek relief from family courts both for their immediate protection and also to assist them in applying for immigration relief in the long-term.

Under the current system, there are significant inconsistencies between the various courts as to how these types of cases are handled. Advocates spend an enormous amount of time training court personnel and educating judges on the various issues that arise at the intersection of immigration law and New York's family courts and on advocating for policies and procedures that will best protect immigrants appearing in court. Local culture also often affects how these cases are handled from one place to another. Conversely, word of mouth is often the single, most efficient carrier of information in immigrant communities and a simple anecdote of a bad experience in one specific court is often enough to dissuade an entire community from access the system as a whole.

A simplified court system would help ensure that policies are carried out evenly across all courts, and in accordance with one consistent interpretation of New York law, further ensuring equality across all communities. This is particularly crucial at a time when immigration authorities have increasingly routinely appeared to arrest non-citizens at their state court hearings, creating a chilling effect on immigrant New Yorkers' ability to exercise their rights to defend themselves against criminal charges or to avail themselves of the protection of our courts. Immigration attorneys and prosecutors alike have noted examples of criminal defendants not appearing in court to obtain adjournments in contemplation of dismissal orders, dismissal of charges, or mount their defense out of fear of being arrested by immigration enforcement. Given the dramatic impact criminal convictions, or even simple arrests, can have on an individual's immigration status, it is imperative that immigrant New Yorkers have faith that the state courts are not part of the federal deportation pipeline.

Appendix B

These variations in interpretation of law and policies, as well as the overall complex nature of the court system have one last chilling effect on immigrant New Yorkers' access to justice: Many immigration attorneys, who are experts in the hyper-complex world of immigration law, feel too daunted to learn how to practice in state courts. Before joining the NYIC, I was an attorney in private practice with a fairly substantial pro-bono caseload. However, I turned away cases that would have required me to appear in State Court because I did not feel I was competent to do so, and as a solo practitioner I had no ability to connect with a mentor who could teach me the proper procedures. Even if I had found a willing supervisor, however, it would have been difficult to find the time to do the added learning necessary for me to work on these cases. Now that I have transitioned in a role where I support a vast network of non-profit and pro-bono attorneys, I see this problem repeated over and over again as we struggle to find enough attorneys to represent immigrants.

These types of challenges can have devastating impacts on immigrant New Yorkers. For example, in the wake of the 2014 Unaccompanied Minor crisis that saw over 60,000 young immigrants resettle in New York, primarily Long Island, immigration advocates and attorneys were overwhelmed by the need to quickly introduce family court cases for many of these clients, most of whom needed guardianship or custody papers in order to access necessary services and, at times, apply for immigration benefits. The lack of available attorneys forced many to navigate the court system pro se, at times with the help of community advocates who were equally at a loss to understand the process.

Conclusion

The current system of overly complicated networks of courts has proved a daunting and, often, discouraging task for New York's immigrant communities. In addition, immigrants attempting to go through the court system in our state have often suffered from lack of resources to meet their specific needs as well as disparate interpretations of law and policy that have resulted in unequal results and imbalanced access to justice. For these reasons, we urge the legislature to adopt the proposals to consolidate New York's trial courts into a system that is far more accessible to all New Yorkers. Finally, it is incumbent upon us to ensure that any reform of the court system should include built-in protections so that immigrant New Yorkers seeking their day in our courts do not have to weigh that against the risk that they may end up in deportation proceedings because of Immigration and Customs Enforcement continued civil enforcement actions within the very halls of the courthouses.

Respectfully submitted,

Camille J. Mackler, Esq.
Director of Immigration Legal Policy
The New York Immigration Coalition

APPENDIX C

Senate Resolution

R2140

Senate Resolution No. 2140

BY: Senator STEWART-COUSINS

ESTABLISHING a plan setting forth an itemized list of grantees for a certain appropriation for the 2019-20 state fiscal year for the Office for New Americans for additional expenses and services related to programs which assist non-citizens

Resolved, that pursuant to and as required by moneys appropriated in section 1 of chapter 53 of the laws of 2019 which enacts the aid to localities, local assistance account from the Office for New Americans for additional expenses and services related to programs which assist non-citizens, including sub-allocation or transfer to any department, agency or public authority. Such services shall be limited to, legal services, case management, English-as-a-second-language, job training and placement assistance, and post-employment services necessary to ensure job retention, as required by a plan submitted by the temporary president of the Senate, setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating for such appropriation. Such plan and the grantees listed therein shall be subject to the approval of the director of the budget and thereafter shall be included in a resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to the senate upon a roll call vote in accordance with the following schedule:

Albany Law School	20,000
ARAB AMERICAN ASSOCIATION OF NY, INC.	10,000
Brooklyn Legal Services, INC.	10,000
CATHOLIC CHARITIES COMMUNITY SERVICES, ARCHDIOCESE OF NEW YORK	75,000
Catholic Charities of Orange, Sullivan & Ulster	20,000
Catholic Charities of Orange, Sullivan & Ulster	15,000
CHINESE AMERICAN PLANNING COUNCIL, INC.	10,000
EMERALD ISLE IMMIGRATION CENTER, INC.	20,000
EMERALD ISLE IMMIGRATION CENTER, INC.	20,000
EMPIRE JUSTICE CENTER, INC.	150,000
Fund for the City of New York- Center for Court Innovation (Legal Hand Jamaica)	5,000
Fund for the City of New York- Immigrant Defense Pro	10,000
GMHC HEALTH SERVICES, INC.	10,000

Appendix C

Haitian Americans United for Progress	5,000
Hispanic Brotherhood, Inc.	10,000
Hispanic Resource Center of Larchmont and Mamaroneck, Inc. a/k/a Community Resource Center	20,000
Imani House	10,000
Immigrant Families Together Foundation	20,000
Journey’s End Refugee Services	20,000
KONBIT NEG LAKAY, INC.	10,000
La Fuerza Unida, Inc.	20,000
Legal Aid Society	5,000
LONG BEACH LATINO CIVIC ASSOCIATION, INC.	10,000
LSNY-Bronx Corporation	15,000
LSNY-Bronx Corporation	20,000
LSNY-Bronx Corporation	10,000
LSNY-Bronx Corporation	20,000
Make the Road New York	20,000
Make the Road New York	20,000
Manhattan Legal Services	10,000
MercyFirst	15,000
Minkwon Center for Community Action, Inc.	10,000
MIXTECA ORGANIZATION INC.	10,000
Mobilization for Justice, Inc.	10,000
Mobilization for Justice, Inc.	10,000
Mobilization for Justice, Inc.	10,000
NASSAU-SUFFOLK LAW SERVICES COMMITTEE, INC.	20,000
Neighborhood Defender Service, Inc.	20,000
NEIGHBORS LINK CORP	10,000
NEIGHBORS LINK CORP	20,000
NEIGHBORS LINK CORP	35,000
NEW YORK LEGAL ASSISTANCE GROUP INCORPORATED	10,000
NEW YORK LEGAL ASSISTANCE GROUP INCORPORATED	10,000
NEW YORK LEGAL ASSISTANCE GROUP INCORPORATED	20,000
NEW YORK LEGAL ASSISTANCE GROUP INCORPORATED	10,000
Queens Community House, Inc.	10,000
Queens Law Associates Not-For-Profit Corporation	20,000
Queens Legal Services Corporation	10,000
Research Foundation of the City University of New York - Citizenship Now	20,000
Research Foundation of the City University of New York - Citizenship Now	10,000
Research Foundation of the City University of New York	20,000
Safe Horizon, Inc.	20,000
Sepa Mujer, Inc.	5,000
Vera Institute of Justice, Inc.	20,000
Volunteer Lawyers Project of Onondaga County, Inc.	20,000
Worker Justice Center of New York, Inc.	5,000

APPENDIX D

I-ARC Letter Regarding Changes at New York's Immigration Courts

The Honorable Jerry Nadler
Chair, House Committee on The Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable José Serrano
Chair, House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Nadler and Chairman Serrano,

We write on behalf of the Immigration Advocates Response Collaborative (I-ARC), a collaborative of 85 legal service providers and professional associations throughout New York, to ask that you increase oversight of the nation's immigration court system, starting with those in New York, which represent some of the most backlogged courts in the country.

Over the last two years, as the number of cases pending before our New York Immigration courts have grown exponentially, we have witnessed an alarming erosion of basic due process rights and interference with access to even the most basic principles of justice guaranteed under current immigration laws. This has resulted in the U.S. Department of Justice (DOJ) transformation from an independent agency to just another tool of the Trump Administration's anti-immigrant agenda. The result has been routine issuance of unjust deportation orders, separation of families and chaos within communities, and an erosion of access to counsel as not for profit counsel face a crushing workload.

Below is a list of the most egregious changes to the immigration court systems documented by immigration attorneys who interact with the Courts on a daily basis. We are eager to discuss this with you further and hope that, with your help and additional oversight, we may begin finding a solution together.

Excessive bonds

Even as *Matter of M-S-* is being challenged in federal courts, we have received frequent reports of bonds as high as \$50,000 for recently arrived asylum seekers detained at the Buffalo Federal Detention Facility.

- For individuals arrested in the interior, bonds are often in the double digits as well, with reports of \$25,000 bonds for individuals with no criminal history.
- These amounts are significantly higher than what providers had been reporting only a few years ago, and, since most detained immigrants are unlikely to be able to afford such high amounts, they are tantamount to giving no bond at all and forcing individuals into indefinite detention. These amounts are particularly egregious for recently arrived asylum seekers who often have no resources or connections in the community to help.

Accelerated hearings

- Judges in both the New York City and Buffalo area courts are no longer postponing hearings to allow U.S. Citizenship and Immigration Services (USCIS) to adjudicate pending applications for relief. Rather, they are forcing respondents to go forward based on their current situation, even if they will have legal status that allows them to remain in the United States once USCIS makes a decision on their applications. For example, if someone has a family-based green card application pending at the time that their hearing before the judge takes place, but USCIS has not yet made a decision on that application, the judge is required to order the individual removed because at that moment there is no legal status available to them, even though an application is making its way through the process. The extremely long delays in adjudications the New York USCIS offices are currently experiencing only compounds these problems.
- The Assistant Chief Immigration Judge (ACIJ) requires each judge at the detained Batavia court to hold 30 master calendar (pre-conference type) hearings and four individual (trial-type) hearings a day, leaving little time to address issues ahead of trial, and forcing each trial to take only one to one and a half hours before the judge makes their decision. Previously, individual hearings would usually be given two to four hour time slots, or more, if the parties believed the trial would be particularly complex. If the case was not completed in that time frame because unexpected issues arose, the judge would usually reset the case to be completed at a later date.
- Family Unity (FAMU) cases from Central America are on an expedited track, with all hearings scheduled ahead of time and before the government has even met its burden of proving someone is removable from the United States (see the [DHS Emergency Interim Report](#)). In typical removal cases, the burden is on the Government (DHS) to prove that someone is removable before any applications may proceed. With these instant procedures, the burden has effectively shifted to the individual to show that they qualify for asylum before the government has even gone through the steps of establishing, conclusively, that they are subject to removal from the United States. Should ICE be pursuing removal charges against someone who is, in fact, a U.S. Citizen (a not uncommon scenario), for example, the finding that they are not a citizen would effectively have been made without any opportunity for the applicant to argue their own citizenship.

Hearings held with various parties in remote locations

- At both New York detained courts (Batavia, NY, and Varick Street in New York City), judges and respondents are rarely in the same room, with at least one of them appearing via video (“VTC”). In some instances, the judge participates by video with an interpreter on speaker phone from a separate location.
- At the New York City Varick Street Detained Court, which recently opened four new courtrooms, including non-detained dockets, Immigration and Customs Enforcement (ICE) attorneys have made a blanket motion to appear via video from their offices. This severely impedes immigration attorneys’ ability to confer with opposing counsel to narrow down issues ahead of the hearing.
- Frustratingly, while immigration judges repeatedly allows ICE attorneys to appear by video, they often refuse to let immigrants or their lawyers appear by video. This has resulted in a very real consequence of limiting people’s access to immigration attorneys, since the pool of attorneys willing to represent in upstate courts has shrunk under this restriction regarding telephonic and video access.

Interference with ability to properly present a defense to deportation

- Judges are often requiring immigration attorneys to agree on the record to certain facts (stipulate) mid-way through cases, before all evidence has been reviewed and testimony completed. This means that legally-binding decisions on the facts of the case are made before an immigrant has had a chance to present all of their evidence.
- The ACIJ at the detained Batavia court has now required that all evidence be submitted 30 days before trial, contrary to the EOIR manual which requires evidence be submitted 14 days ahead of time, and despite the fact that obtaining evidence for or from detained clients is exponentially more difficult. This means that detained immigrants are not able to present their full defense to the deportation charges the U.S. Government is bringing against them.
- For asylum cases based on persecution on account of membership in a particular social group, judges are required to make a determination on whether there is a defined social group at the Master Calendar Hearing. This is before all evidence has been submitted and reviewed, and years ahead of the individual hearing, even though the law could change in the meantime.
- ICE attorneys now require all filings to be mailed electronically through their online portal, but the system has many glitches and evidence often does not get to the attorney on the case in time.
- The judges show a clear deference to government attorneys. There are many examples of ICE attorneys not bringing their files and the case being postponed multiple times, whereas Respondents’ requests for adjournments are rarely granted, even for good cause. ICE attorneys are allowed to bring laptops into court to facilitate note taking and document organizing, but Respondents’ attorneys are not always allowed electronics. EOIR took specific actions to help ICE set up high-speed Internet connections for ICE attorneys but refuses to help set up high-speed Internet for immigration lawyers. In some Buffalo courtrooms this prohibition extends to cell phones.

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- Newer judges appear to not know immigration law or EOIR procedures as outlined in the EOIR practice manual or Immigration Judge benchbook. They also do not appear to have been trained on how to work with trauma victims, on cultural sensitivity, or any other issues that would be relevant to working with asylum seekers and immigrants more generally. This further compounds the challenges these immigrants have in defending their claims, where re-traumatization from questioning by untrained fact finders can impede their ability to properly testify or support the presentation of their defenses to deportation. Recent examples include refusal to allow pastors to attend a hearing of a young, parentless and traumatized asylum seeker who had requested that they attend, and whose asylum case was not impinged by their presence. Another example is a judge's refusal to continue a case to another date even though the asylum seeker was clearly demonstrating symptoms of trauma throughout the hearing which impaired the testimony.
- Immigration judges routinely relax the rules or hold ICE attorneys to more lenient standards. For example, EOIR regularly allows ICE counsel to file legal documents without a valid certificate of service and will consider them even if they can't prove they were properly served on the immigrants. However, a similar filing by a Respondent's counsel would not be considered.

Undue burdens placed on defense attorneys

- Judges now require that attorneys submit briefs for all Particular Social Group based asylum cases at the initial, arraignment-type hearing that usually takes place within a few weeks of a deportation case being opened against someone, as opposed to allowing the attorney to orally argue the law during the final, trial-type hearing where a decision on the application will be made.
- Notices To Appear and hearing notices' dates often change without notice, requiring attorneys to create systems to regularly check the EOIR hotline and online portal to make sure they don't miss hearings.
- ICE will tell immigrants a fake date to appear in immigration court, wasting immigrants' time and money. EOIR fails to punish ICE for unreasonably wasting immigrants' time and money in legal fees.

Interference with judges' abilities to be impartial

- Judges' job performance evaluations are directly tied to the number of cases they complete each year. This creates a conflict of interest because judges are incentivized to close cases as fast as possible, regardless of how much time is needed to properly review a case and make a decision.

Obstacles to immigrants' abilities to access justice in the court

- Hearing dates frequently change, with hearings often being moved up on the calendar with no or insufficient notice. This is a particular problem for pro-se respondents, who won't know to be vigilant.

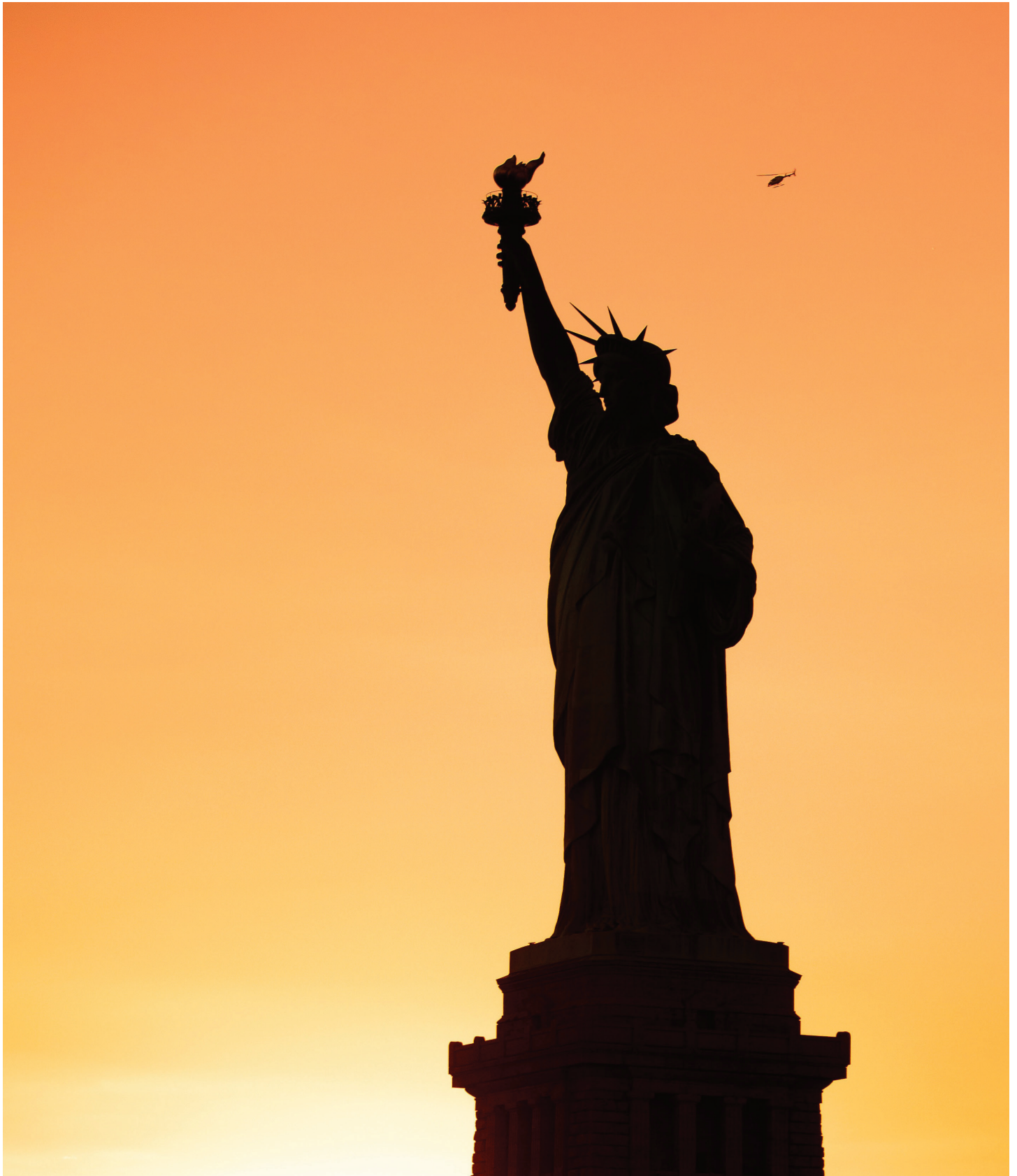
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- When new courtrooms were opened at the detained court at Varick Street, including non-detained dockets, the security staff was not trained and turned away Respondents coming for court telling them they were in the wrong place.
- Clerks in the Buffalo Immigration Court have been instructed to no longer answer the phones, and to not return calls asking for status updates on filed motions.

We look forward to working with your offices to further investigate these unfair and troubling practices by the Department of Justice, and to hold them accountable as appropriate. Contact Anu Joshi (ajoshi@nyic.org) or Camille Mackler (cmackler@nyic.org) for more information.

Sincerely,

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