

February 7, 2021

The Honorable Helene E. Weinstein
Chair, Standing Committee on Ways and Means
LOB923, Capitol Building
Albany, NY 12248
wamchair@nyassembly.gov

The Honorable Liz Krueger
Chair, Standing Finance Committee
Room 416, CAP, Capitol Building
Albany, NY 12247
financechair@nysenate.gov

**Testimony of the Vera Institute of Justice in
Support of the New York Immigrant Family Unity Project (NYIFUP)**

**Submitted to the Joint Legislative Budget Hearings on Public Protection, Human Services, and
Local Government**

Dear Chairperson Weinstein and Chairperson Krueger,

On behalf of the Vera Institute of Justice (Vera), I write to urge you to include in the FY 2022 Senate and Assembly one-house budgets renewed and increased funding for the New York Immigrant Family Unity Project (NYIFUP) and immigrant legal services funded under the Liberty Defense Project (LDP).

Governor Cuomo included \$10 million for LDP in his FY 2022 Executive Budget, but to meet the growing and immediate need for such services and to keep NYIFUP strong, we specifically urge you to fund immigrant legal services under LDP at \$15.3 million, which would allow \$6.5 million to be allocated to NYIFUP in FY22. Such sustained and increased funding will promote health for those most vulnerable to the worst effects of COVID 19 and center dignity and due process for immigrant communities that will continue to face dangerous detention and the harmful destabilization caused by federal immigration enforcement.

Background

As you may know, the mission of Vera is to drive change and to build and improve justice systems that ensure fairness, promote safety, and strengthen communities. Over the past fifteen years, Vera's Center on Immigration and Justice has led nationwide efforts to advance universal representation – the concept that every person facing deportation is entitled to zealous legal representation. In spite of extremely high stakes – the possibility of permanent family separation and forced return to dangerous or deadly conditions in another country – immigrants in detention are not guaranteed a lawyer if they cannot afford to hire one.

With New York's investment, NYIFUP became the country's first and only statewide universal representation system for detained immigrants facing deportation. The program began in 2013 as a response to a study organized by Judge Robert Katzmann of the U.S. Court of Appeals for the Second Circuit. Judge Katzmann's Study Group on Immigrant Representation found that two-thirds of detained immigrants in New York State were unrepresented, and that unrepresented detained immigrants had only

a three percent chance of succeeding in their removal proceedings.¹ The NYIFUP New York City pilot program, administered by Vera and funded by the New York City Council, pioneered universal representation for detained indigent immigrants who were unrepresented at their initial deportation hearings at the Varick Street Immigration Court.

Based on the initial success of the project and increased need, NYIFUP expanded to full scale across all of New York State in 2017 through the state's Liberty Defense Project. LDP ensures critical legal services for immigrants facing deportation. By funding NYIFUP, New York State has made representation accessible for anyone across the state who is detained, facing deportation, and unable to afford an attorney. With the expansion of statewide NYIFUP services, Vera administers representation for detained people in immigration proceedings in upstate New York and for those whose cases are transferred from an Upstate immigration court to New York City.

Over the past few years, immigrants have been attacked, criminalized, and ripped apart by federal policies. While these policies did not begin with the prior administration, they took on a particularly deliberate brutality and hostility over the last few years. **During this moment of change and opportunity, leaders across all levels of government must renew and double-down on their commitment to protect immigrants and move forward the solutions our communities need, such as securing strong support for NYIFUP and the entire LDP.** That investment is made even more critical as immigrants are among those shouldering the harshest impacts of the COVID 19 pandemic.

NYIFUP's Impact

New York's investment in NYIFUP has brought critical benefits to New York since its inception, and especially during the current pandemic. One in three New York children have an immigrant parent, and more than one quarter of the State's workforce is foreign born.² New York immigrants own more than 300,000 businesses and have an estimated \$118 billion in annual spending power.³ An early evaluation of the NYIFUP pilot in New York City revealed that clients served through the program had lived an average of 16 years in the United States and were projected to contribute \$2.7 million in state, local, and federal tax revenue each year.⁴ They are responsible for life-saving work during the global pandemic that sustains our economy and safeguards health and safety in our communities, and are disproportionately on the front lines as essential workers during the pandemic. With immigrants 3.5 times more likely to obtain release from detention with a lawyer at their side and ten times more likely to prove their right to remain permanently in the United States, NYIFUP has reunited families, returned employees and business owners to the economy, and maintained confidence among New York immigrants that their government stands with them in this difficult time.⁵ NYIFUP lawyers have vindicated violations of their clients' constitutional rights, brought litigation to secure release for those detained in violation of the law, and obtained federal court rulings to strengthen COVID-19 protocols in detention centers.

¹ New York Immigrant Representation Study Steering Committee, "Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings – New York Immigrant Representation Study Report: Part 1," *Cardozo Law Review* 33, no. 2 (2011), available at <https://justicecorps.org/app/uploads/2020/06/New-York-Immigrant-Representation-Study-I-NYIRS-Steering-Committee-1.pdf>.

² Vera Institute of Justice, "Profile of the Foreign Born Population in the State of New York," (New York: Vera Institute of Justice, 2020), <https://storage.googleapis.com/vera-web-assets/audio/foreign-born-population-nys.pdf>.

³ *Ibid.*

⁴ Jennifer Stave, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siulc, and Noelle Smart, *Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2017), <https://perma.cc/3BWE-KSFD>.

⁵ Ingrid V. Eagly and Steven Shafer, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review* 164, no. 1 (2015), <https://perma.cc/7J65-CZCM>.

During the pandemic, the stakes for people facing deportation while incarcerated in immigration detention could not be higher, and legal representation can mean the difference between life and death. Detained immigrants face increased public health risks as detention facilities are a vector of the spread of COVID-19.⁶ Conditions inside detention facilities, where people are crowded in close quarters with limited access to soap and sanitizing agents, create high risk for the rapid spread of this dangerous virus.⁷ As of January 20, 2021, ICE has reported that 8,946 people in detention have tested positive for COVID-19 across 126 facilities, an increase of over 1,700 positive cases since November, despite decreasing numbers of people in detention during this time. At any point between March 14, 2020 and January 2, 2021, a total of 110,141 people have been detained by ICE. Estimates published by Vera suggest ICE is severely underreporting the prevalence of COVID-19 in detention. At the time our epidemiological model was published, we estimated the true number of people in ICE detention with COVID-19 to be as much as 15 times higher than official numbers.⁸ **The threat to the health of detained immigrants, detention staff, and surrounding communities continues to compound, deepening the crisis and thwarting communities' efforts to stem the spread of the virus.**⁹

In this environment, winning freedom from detention has never been more critical. NYIFUP lawyers have been fighting tirelessly on behalf of those detained, even as ICE continued to irresponsibly arrest community members and resist calls for humanitarian release. While the new federal administration is taking steps to ameliorate some of the harms inflicted on immigrant communities, **the former administration instituted more than 400 anti-immigrant policies and appointed hundreds of immigration judges.**¹⁰ **Reversing that harm will only be possible with dedicated legal advocacy.** Ensuring that immigrants can benefit from new opportunities to obtain release from detention and immigration relief will also require legal representation to understand and exercise any new legal options. Finally, immigrant New Yorkers were separated from their families and threatened with deportation long before the former administration came to power and these practices and systemic injustices will continue under the new administration without bold action at every level of government.

By ensuring equal access to due process for all, NYIFUP is also a critical component of state efforts to address systemic racial injustice. The racial biases and inequities that plague our criminal legal system pervade the immigration system. Black immigrants, who are more likely to be stopped, arrested, and incarcerated, are disproportionately funneled into the immigration enforcement system as a

⁶ Vera Institute of Justice, *COVID-19: Criminal Justice Responses to the Coronavirus Pandemic*, (New York: Vera Institute of Justice, 2020), <https://www.vera.org/projects/covid-19-criminal-justice-responses/covid-19-data>.

⁷ Erica Bryant, *Detention May Become Death Sentence for Vulnerable Detainees*, Vera Institute of Justice, March 25, 2020, <https://www.vera.org/blog/covid-19-1/detention-may-become-death-sentence-for-vulnerable-detainees>.

⁸ Dennis Kuo, Noelle Smart, Zachary Lawrence, and Adam Garcia, *The Hidden Curve: Estimating the Spread of COVID-19 among People in ICE Detention* (New York: Vera Institute of Justice, 2020), <https://perma.cc/2TT2-32GA>.

⁹ For additional information see Gregory Hooks, *The Early Arrival of COVID-19 in Counties and Regions with Large Prison and Jail Populations*, (Northampton, MA: Prison Policy Institute, 2020), https://www.prisonpolicy.org/reports/covidspread_timing.html.

¹⁰ Sarah Pierce and Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, (Washington DC: Migration Policy Institute, July 2020), https://www.migrationpolicy.org/sites/default/files/publications/MPI_US-Immigration-Trump-Presidency-Final.pdf.

result of that contact with the criminal legal system.¹¹ NYIFUP reunites families and serves communities who are criminalized and targeted by over-policing and increased immigration enforcement. They help secure the release of people from detention, seek to disrupt the pipeline between the criminal and immigration systems, restore due process, and build community trust.

For as long as New York faces the destabilizing impact of federal immigration enforcement, New York's guarantee of counsel will provide a beacon of hope for those torn from their homes by immigration officials.

New York's National Leadership and Public Support

Public officials across the country have recognized the strength of investing in immigrant communities. **More than 40 jurisdictions across the country have followed New York's lead by funding deportation defense in their own communities.**¹² During the pandemic, its accompanying fiscal challenges, and since the November election, these jurisdictions have recognized that investing in representation for immigrants in detention is a critical component of efforts to safeguard health and stability, and a powerful investment in support of communities of color. After New York State sustained its \$10 million LDP investment in the FY21 budget, with \$5.1 million to support NYIFUP, New York City reauthorized its \$16.6 million commitment to NYIFUP in July and New Jersey doubled its state deportation defense fund to \$6.2 million in September.¹³ In November, Harris County, TX invested \$2.5 million to establish a new program and Denver, CO more than doubled its fund because of the increased need amid the pandemic.¹⁴ These national efforts are a powerful affirmation of the success of New York's pioneering leadership. As a result, the movement for universal representation for immigrants continues to grow across the country.

New Yorkers resoundingly agree that investment in NYIFUP is sound public policy. A poll conducted by the Vera institute in partnership with Lucid found that **93% of New Yorkers support government funded lawyers for people in immigration court.**¹⁵

An opportunity for increased impact

With an **FY22 investment of \$6.5 million**, NYIFUP teams will be able to continue to represent all eligible people in detention in upstate New York, ensure needed training and supervision is in place, advance powerful new avenues of litigation, and provide important social service support to clients.

¹¹ Jeremy Raff, "The 'Double Punishment' for Black Undocumented Immigrants," *Atlantic*, December 30, 2017, <https://perma.cc/R7UZMKF7>.

¹² "The SAFE Initiative: Driving the Momentum for Universal Representation," accessed February 4, 2021, <https://www.vera.org/initiatives/safe-initiative>.

¹³ "The City Council of the City of New York, Fiscal Year 2021 Adopted Expense Budget, Adjustment Summary/Schedule C," June 30, 2020, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/06/Fiscal-2021-Schedule-C-Cover-REPORT-Final.pdf>; American Friends Services Committee, "NJ Coalition for Immigrant Representation Applauds Increased Funding to Detention and Deportation Defense," Sept. 29, 2020, <https://www.afsc.org/resource/nj-coalition-immigrant-representation-applauds-increased-funding-to-detention-and>.

¹⁴ Houston Public Media, "Harris County Commissioners Approve \$2 Million Deportation Defense Fund," Nov. 10, 2020, <https://www.houstonpublicmedia.org/articles/news/politics/immigration/2020/11/10/385883/harris-county-commissioners-to-vote-on-2-million-deportation-defense-fund/>; Westworld, "Aurora Council Considering Immigrant Legal Defense Fund, Protections," Nov. 20, 2020, <https://www.westword.com/news/aurora-immigration-ice-detention-legal-defense-colorado-11847163>

¹⁵ Vera Institute of Justice, "Public Support in New York State for Government-Funded Attorneys in Immigration Court," March 2020, <https://www.vera.org/downloads/publications/taking-the-pulse-new-york.pdf>.

NYIFUP legal teams face increasing and resource-intensive demands in protecting vulnerable clients from unsafe detention conditions during the pandemic and confront a barrage of federal immigration policies that will continue to complicate representation for years to come. They currently take on federal litigation to ensure safety and dignity for immigrants on a limited basis, without funding, when they can galvanize the resources. New York should invest in this impactful work, enabling the NYIFUP providers to build their federal litigation capacity and deepen New York's national influence in favor of dignity and due process in the field of immigration law.

In addition, social worker capacity needs to be increased, as their trauma-informed expertise provides critical support to clients as they work with attorneys to relay the experiences underlying their legal claims, helps to prevent re-traumatization throughout the process, and assists in meeting clients' social services needs upon release. A \$6.5 million investment in NYIFUP would increase social work capacity, supporting clients in addressing challenging life circumstances and promoting smooth and safe transitions when people are released from detention as they return home.

Support for this work will continue to serve immigrants in New York while also presenting a powerful example to the new administration in Washington of a promising way to transform our immigration system into one that promotes public health, family unity, and economic stability, rather than division and destruction in our communities. Governor Cuomo included \$10 million for LDP in his FY 2022 Executive Budget. This is a strong start, but it is not sufficient to secure fully funded immigration legal services for all who need them. **To keep the work strong and fully funded, we urge the Senate and Assembly to include in your FY 2022 one-house budgets \$15.3 million for the entire Liberty Defense project, which would enable a \$6.5 million allocation to NYIFUP.**

For additional information or resources, please contact Shayna Kessler at skessler@vera.org or (917) 828-1753. Thank you for your consideration.

Sincerely,



Shayna Kessler
Senior Planner
Center on Immigration and Justice
Vera Institute of Justice

Appendix A

What is NYIFUP?

- NYIFUP is a **NY statewide public defender program** that ensures that every immigrant who is detained and unable to afford a lawyer is provided with one.
- **After years of brutal federal attacks that exacerbated barriers to immigrant safety and freedom, NYIFUP brings hope for the restoration of due process, family unity, and community stability.**
- New York City funds NYIFUP representation for detained people in downstate immigration courts. In the midst of the COVID-19 crisis, the City sustained its commitment to NYIFUP at \$16.6 million in FY21.
- In upstate New York, immigrants face increasingly dangerous detention conditions and unprecedented challenges in immigration court.
- **As the state faces the continued impact of the pandemic, investment in immigrant communities is more important than ever. To defend the health, safety, and freedom of immigrant New Yorkers, predominantly people of color, New York should invest \$6.5 million in upstate NYIFUP in FY22.**

Why does New York's leadership on NYIFUP matter?

- More than 70,000 people have been newly detained during [the pandemic](#), even as health experts continue to warn about the [acute risk](#) detention poses to people held in such facilities and the surrounding communities. **Without legal representation, release from detention is nearly impossible.**
- In New York State, there have been nearly [1,500 immigration raids](#) since 2015, and over 90 since March 2020 alone.
- The Trump administration implemented [over 400 anti-immigrant executive actions](#) that negatively target immigrants and limit due process. The radiating impacts of criminalization, mass detention, family separation, and deportation require bold and immediate action.
- New York can combat this disruption and pave the way for a new vision of justice for immigrant communities by continuing to support NYIFUP.
- More than 42 states and localities have joined New York to invest in programs like NYIFUP, including New Jersey, which doubled its deportation defense fund amid the pandemic.

New York's national leadership, on the map

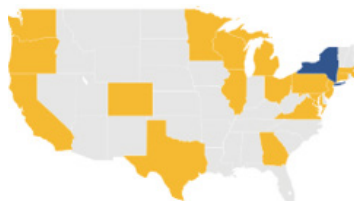
2017: New York leads the country by establishing the first and only statewide removal defense program for every detained, income-eligible immigrant facing deportation in the State.



Today: 21 jurisdictions in 11 states have piloted **NYIFUP replication programs** as a part of the Vera Institute's SAFE Initiative.



Growing Momentum: More than 42 jurisdictions in 18 states have **followed New York's lead** and are currently funding deportation defense.



NYIFUP restores due process, defends family unity, and stabilizes communities.

Dignity and Fairness: Everyone facing deportation deserves a fair day in court even if they cannot afford a lawyer.

Racial Equity: NYIFUP disrupts the pipeline that unfairly subjects Black immigrants to immigration enforcement.

Release from the Danger of Detention: Represented immigrants are [up to ten times more likely](#) to establish a right to remain in the United States. [Forty-three percent of detained clients](#) represented across the country through programs modeled after NYIFUP achieve release on bond or parole.

Stable families, communities, and economy: Tearing immigrants – predominantly people of color – from their homes causes harm and insecurity that radiates throughout communities. [An evaluation of the NYIFUP Pilot in New York City](#) revealed that clients served through the program had lived an average of 16 years in the United States and were projected to contribute \$2.7 million in tax revenue each year. Nearly half the clients were parents to thousands of U.S. children.

Making an Impact in New York State

NYIFUP is saving lives, promoting safety for those most acutely vulnerable to COVID-19, and supporting strong and stable immigrant communities, predominantly Black communities and other communities of color. These are two NYIFUP clients' stories:*

* Names and identifying details have been changed to protect anonymity.

George's mother brought him to the United States from his native South Asian country when he was a small child, then abandoned him. After a difficult childhood, George became a lawful permanent resident and the devoted father of U.S. citizen children. George has lived in the Capital Region for over thirty years and worked various jobs to help support his family. Nevertheless, ICE detained him and wrongly charged him with being deportable, threatening to send him to a country whose language he no longer speaks. Fearful as the COVID pandemic made detention more treacherous than ever, George worked closely with his NYIFUP attorney to prepare for his trial. Ultimately, George and his lawyer won; the immigration judge agreed that ICE was wrong to try to deport him. Released from detention, George is now looking forward to reuniting with his family and finding a job in carpentry.

Zane moved to New York City from an East African country as a young child. When ICE detained Zane, he faced being sent to a country he hardly remembers. Held in detention in Batavia, New York, just as COVID-19 cases spiked in the facility, Zane feared for his health and safety. With the help of his NYIFUP attorney, Zane demonstrated that ICE was wrong and that he deserved to stay in the U.S. as a lawful permanent resident with a green card. Zane was released from detention to reunite with his family in New York City. He plans to enroll in trade school and enlist in the U.S. Army.

The stakes facing immigrants fighting for freedom and their lives have never been higher.

New York state must stand with immigrants and communities of color by ensuring that NYIFUP is funded with \$6.5 million in FY22.

For additional information, contact Shayna Kessler of the Vera Institute of Justice at skessler@vera.org or 917-828-1753.

Appendix B

The State of New York

Immigrant population

The foreign-born population in the state of New York represents an important and diverse share of the state, many of whom live in mixed-status families.



20 million people reside in the state of New York.



4.5 million immigrants reside in the state of New York, or **23 percent** of the total state population.

Population at risk of deportation

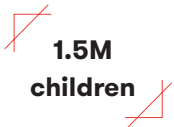
2M

2 million non-citizens residing in New York are potentially at **risk of deportation**.

2.5M

2.5 million of the **immigrants in New York** are **naturalized citizens** who are not at risk of deportation.

Children and families



There are **1.5 million children** in New York with at least one **immigrant parent**.



There are **1.3 million U.S. citizen children** with at least one **immigrant parent**.



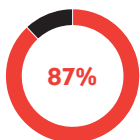
1 in 3

One in three children in New York has at least one **immigrant parent**.

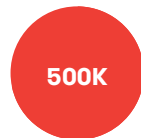


3 in 8

Three in eight children of immigrants have only **non-citizen immigrant parents**.



The **vast majority of children** in New York with at least one immigrant parent are **U.S. citizens**.



500,000 children in New York under the age of 6 have an immigrant parent.

Local community ties



3.8 million immigrants have lived in New York for **more than 15 years**.



71 percent of immigrants over the age of 25 living in New York are **high school graduates**.



770,000 immigrants in New York are **homeowners**.



50 percent of immigrants aged 25 or older have pursued **higher education**.

Economic and labor force contributions

Immigrants in the state of New York contribute critical tax dollars to the local economy and are indispensable members of the workforce.

\$169.4B immigrant-led households **earned \$169.4 billion.**

316K **316,000** immigrants in New York are **entrepreneurs.**

\$18.5B immigrants contributed **\$18.5 billion** in combined **state and local taxes.**

825K **825,000** people in New York are **employed by immigrant-owned firms.**

\$33.1B immigrants contributed **\$33.1 billion** in **federal taxes.**

28% **28 percent** of New York's workforce are immigrants.

\$117.8B This means immigrant-led households have an estimated **\$117.8 billion** in **spending power.**

\$135.1B Immigrant-owned firms **have yielded an estimated \$135.1 billion** in **total sales.**

Labor force participation

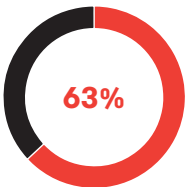
10M
workers

10 million workers comprise New York's labor force.

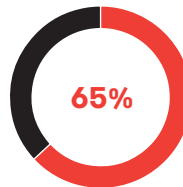


2.8 million immigrant workers comprise 28 percent of the state's labor force, or over **one in four.**

1 in 4



63 percent of the state's residents **participate in the labor force.**



65 percent of the state's immigrants **participate in the labor force**, higher than the share among the state's native-born population (63 percent).

Sources

U.S. Census Bureau:

"Age and Nativity of Own Children under 18 Years in Families and Subfamilies by Nativity of Parents," accessed July 24, 2019, 2017 American Community Survey (ACS) 1-Year Estimates, available through factfinder.census.gov.

"Selected Characteristics of the Foreign-Born Population by Period of Entry into the United States," accessed July 24, 2019, 2017 ACS 5-Year Estimates, available through factfinder.census.gov.

"Selected Characteristics of the Native and Foreign-Born Populations," accessed July 24, 2019, 2017 ACS 5-Year Estimates, available through factfinder.census.gov.

New American Economy (NAE):

"Immigrants and the Economy in . . .," by jurisdiction, in "Cities, States, and Districts," accessed July 24, 2019 available through <https://www.newamericaneconomy.org>.