

January 21, 2022

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@nyenate.gov

**Testimony of the Vera Institute of Justice in
Support of Immigration Legal Services Funding in the New York State Budget**

**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 increase funding for immigration legal and social services in the Fiscal Year 2023 Senate and Assembly one-house budgets funded under the Liberty Defense Project (LDP) and the Office for New Americans (ONA). **Governor Hochul included \$12 million for LDP and \$8 million for ONA in her proposed FY23 budget, but to meet the growing and immediate need for such services, we specifically urge you to fund LDP at \$15.3 million and ONA at \$9.1 million.** This aligns with the Black, Puerto Rican, Hispanic, and Asian Legislative Caucus's People's Budget recommendation for FY 2023. Increased funding will promote health, safety, and an equitable recovery for those who have suffered most acutely during the pandemic. Immigrant communities continue to face dangerous detention and the harmful destabilization caused by federal immigration enforcement. Investing in legal and social services for immigrant communities helps ensure due process and dignity during a time of particular need and vulnerability. Simultaneously, we urge the passage of the Access to Representation Act (S.81A/A.1961), which will secure a permanent right to representation for people facing deportation in New York.

Background of New York's Investment in Immigration Legal Services and NYIFUP

Vera's mission is ending the overcriminalization and mass incarceration of people of color, immigrants, and people experiencing poverty. Over the past fifteen years, Vera has led efforts, nationwide and in New York, to advance universal representation, which would ensure that every person facing deportation has zealous legal representation. In spite of extremely high stakes – the possibility of permanent family separation and being forced to return to dangerous or deadly conditions in another country – immigrants are not guaranteed a lawyer if they cannot afford to hire one.

For immigrants in detention, access to a lawyer is especially critical. With an attorney, detained immigrants are over 10 times more likely to establish the right to remain in the United States and

3.5 times more likely to be released from detention.¹ With New York’s investment in the Liberty Defense Project, the New York Immigrant Family Unity Project (NYIFUP) was expanded across the state, establishing the country’s first statewide universal representation system for detained immigrants facing deportation.² The City of New York contributes a healthy \$16.6 million annual investment to NYIFUP, while New York State currently contributes \$5.1 million of LDP funds.³ With the requested increase to \$15.3 million in funding the LDP, state funding for NYIFUP could increase to \$6.5 million. In addition to NYIFUP, the rest of the programs under LDP and ONA ensure critical legal and social services for immigrants at risk of deportation. Nevertheless, thousands continue to fight for their lives in New York immigration courts without access to counsel, and many are unable to appeal to a federal court or access the support of a social worker because of limited state funding.

Immigration Enforcement and Detention Continue to Destabilize NY Families and Communities

The Biden Administration promised change, but immigrants are still at grave risk of enforcement and detention. We are currently observing the largest COVID-19 outbreak in immigration detention in the history of the pandemic. As of January 19, 2021, there were 2,224 confirmed cases, surpassing the previous maximum confirmed cases reported in detention in May 2021. And the latest spike is drastic: just one month ago, ICE reported 220 confirmed cases in detention.⁴

Despite the growing harm of the pandemic, ICE has continued to target communities with enforcement and policies that criminalize and harm immigrant families. Last year in New York City, ICE opened an expanding, new dedicated immigration court docket, subjecting nearly 13,000 new families as of December 2021 to rapidly paced deportation proceedings without lawyers.⁵ Across New York State, there have been more than 1,500 immigration raids since 2015, and more than 140 since March 2020 alone.⁶ Moreover, the harm of several years of anti-immigrant policies remains deeply entrenched in our system. The Trump administration alone enacted more than 400 anti-immigrant executive actions, negatively targeting immigrants and limiting due process.⁷

New York must step up to meet these grave challenges for New York residents and families. **With additional funding, New York can make progress towards a new vision of justice for immigrant**

¹ 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>.

² The NYIFUP pilot began in New York City 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. Peter Markowitz et. Al., “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>.

³ The New York City Council’s Fiscal Year 2022 Adopted Expense Budget Adjustment Summary / Schedule C, Jun. 30, 2021, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/07/Fiscal-2022-Schedule-C-Merge-6.30.21.pdf>.

⁴ Noelle Smart and Adam Garcia, *Tracking COVID-19 in Immigration Detention: A Dashboard of ICE Data*, Vera Institute of Justice, Nov. 18, 2020, accessed January 20, 2022, <https://www.vera.org/tracking-covid-19-in-immigration-detention>.

⁵ Trac Immigration, “Unrepresented Families Seeking Asylum on “Dedicated Docket” Ordered Deported by Immigration Courts,” Syracuse University, January 13, 2022, <https://trac.syr.edu/immigration/reports/674/>.

⁶ Immigrant Defense Project and Center for Constitutional Rights, *ICEwatch: Raids Tactics Map*, accessed January 20, 2022, <https://raidsmap.immdefense.org/>.

⁷ Sarah Pierce and Jessica Bolter, *Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency*, Migration Policy Institute, July 2020, https://www.migrationpolicy.org/sites/default/files/publications/MPI_US-Immigration-Trump-Presidency-Final.pdf.

communities by strengthening immigration legal services programs. Simultaneously, passage of the Access to Representation Act will ensure that no person in New York will face the terrifying prospect of deportation without a lawyer.

New Yorkers resoundingly agree that investment in immigration legal services is needed. 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.**⁸

The Impact of NY’s Investment in Immigration Legal Services

New York’s investment in immigration legal and social services through ONA and LDP has brought critical benefits to New York, and especially during the pandemic. One in three New York children have an immigrant parent, and more than one quarter of the State’s workforce is foreign born.⁹ New York immigrants own more than 300,000 businesses and have an estimated \$118 billion in annual spending power.¹⁰ 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.¹¹ During the global pandemic, immigrants, who are disproportionately on the front lines as essential workers, have been responsible for life-saving work that has sustained our economy and safeguarded public health and safety.

Thousands of immigrants who are not in detention also face the terrible risk of being forced into immigration court to fight for their lives and to remain home in New York with their families and communities – all without access to counsel. **State-funded immigration legal teams like NYIFUP have stood with our immigrant neighbors, reuniting families, returning employees and business owners to the economy, and maintaining confidence among New York immigrants that their government stands with them in this difficult time.** They have vindicated violations of their clients’ constitutional rights, secured release for those detained in violation of the law, and obtained federal court rulings to strengthen COVID-19 protocols in detention centers.

By ensuring equal access to due process for all, universal representation is also a critical component of state efforts to address systemic racial injustice. Black immigrants, who are more likely to be stopped, arrested, and incarcerated, are disproportionately funneled into the immigration enforcement system as a result of that contact with the criminal legal system.¹² Universal representation programs reunite families and serve communities who are criminalized and unfairly targeted by over-policing and immigration enforcement.

New York as a National Model

Public officials across the country have recognized the strength of investing in immigrant communities. **More than 50 jurisdictions nationwide, including seven other states, have followed New York’s lead by funding and increasing investments in deportation defense in their own communities, including**

⁸ 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>.

⁹ Vera Institute of Justice, *Profile of the Foreign Born Population in the State of New York*, Vera Institute of Justice, 2020, <https://storage.googleapis.com/vera-web-assets/audio/foreign-born-population-nys.pdf>.

¹⁰ Ibid.

¹¹ 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” Vera Institute of Justice, 2017, <https://perma.cc/3BWE-KSFD>.

¹² Jeremy Raff, “The ‘Double Punishment’ for Black Undocumented Immigrants,” *Atlantic*, December 30, 2017, <https://perma.cc/R7UZMKF7>.

most recently Colorado and Nevada.¹³ These jurisdictions have recognized that investing in representation for immigrants is a critical component of an equitable recovery.

An Opportunity for Increased Impact

New York must take the next step: increasing its funding for this critical work for the first time since FY 2018 with a **\$15.3 million investment in LDP** and a **\$9.1 million investment in ONA**, and by passing the Access to Representation Act. With this investment, legal services teams will be able to continue to represent all eligible people in detention in upstate New York, serve one thousand new clients at risk of confronting a trained government attorney without legal help, expand capacity for social workers and other social services to support clients in addressing traumatic circumstances, and expand federal litigation capacity to ensure clients can access all avenues for relief under the law.

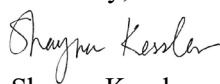
Immigrants in danger of deportation need social workers' trauma-informed expertise. Social workers provide critical support to clients as they work with attorneys—but currently, social worker capacity is too limited. Increasing social work capacity through increased funding is a crucial investment in both the wellbeing of clients and the strength of their legal cases, as social workers help clients relay the experiences underlying their legal claims to their attorneys, help to prevent re-traumatization throughout the process, and assist in meeting clients' social services needs while in detention and in the community.

Deportation defense teams also face 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 take on federal litigation to ensure safety and dignity for immigrants on a limited basis, when they can galvanize the resources. New York should invest in this impactful work.

This work will continue to serve immigrants and all New Yorkers, while leading a powerful example of promising immigration policy that promotes public health, family unity, and economic stability. The \$12 million for LDP and \$8 million for ONA in Governor Hochul's FY 2023 Executive Budget is not sufficient. **We urge the Senate and Assembly to include in your FY 2023 one-house budgets \$15.3 million for the Liberty Defense project and \$9.1 million for ONA.**

For additional information, please contact Shayna Kessler at skessler@vera.org or (917) 828-1753.

Sincerely,



Shayna Kessler
Senior Planner
Vera Institute of Justice

¹³ Vera Institute of Justice, "The SAFE Initiative: Driving the Momentum for Universal Representation," accessed January 20, 2022, <https://www.vera.org/initiatives/safe-initiative>.