



## Memorandum in Support

February 14, 2023

NYSBA #5

S. 999  
A. 170

By: Senator Hoylman-Sigal

By: M of A Cruz

Senate Committee: Finance

Assembly Committee: Codes

Effective Date: 90 days after passage

**AN ACT** to amend the Executive Law to establish the right to legal counsel in immigration court proceedings and providing for the administration thereof.

**LAW AND SECTION REFERRED TO:** Adding a new Section 94-c to the Executive Law.

### **THE NEW YORK STATE BAR ASSOCIATION** **SUPPORTS THIS LEGISLATION**

The The New York State Bar Association strongly supports the Access to Representation Act (S.999/A.170), legislation that will advance New York State’s national leadership in support of access to counsel and immigration policy that is welcoming and centers human dignity. This legislation would promote the State Bar Association’s House of Delegate’s June 15, 2019 Resolution in support of the enactment of a New York State statutory right to counsel in immigration proceedings.

#### *The Access to Representation Act*

Although immigration removal cases involve one of the most highly complex areas of United States law, immigrants targeted by federal officials for deportation do not have the right to a lawyer if they cannot afford one. New York State has been the national leader in supporting legal services for immigrants, but thousands are still forced to fight for their lives in immigration court on their own.<sup>1</sup> The Access to Representation Act would support strong and stable communities and promote fairness and dignity by establishing a right to a government-funded lawyer for people at risk of deportation in New York State.

The stakes could not be higher for people facing deportation—permanent separation from families and communities and possible return to dangerous or deadly conditions in another country—yet legal assistance is available to only those who can afford it. Having a lawyer makes a dramatic difference: 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

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<sup>1</sup> “Individuals in Immigration Court by Their Address, Pending Cases With and Without Attorneys,” TRAC Syracuse University, available at <https://trac.syr.edu/phptools/immigration/addressrep/>.

likely to be released from detention.<sup>2</sup> For non-detained people, 60 percent with lawyers win their cases compared to 17 percent of those without a lawyer.<sup>3</sup>

Supporting a right to counsel for immigrants will benefit all New Yorkers. Immigrants in this state own more than 300,000 businesses, account for one quarter of the workforce, and have an estimated \$118 billion in annual spending power.<sup>4</sup> During the global pandemic, they have been responsible for life-saving work that sustains our economy and safeguards health and safety, and they have been disproportionately on the front lines as essential workers.<sup>5</sup> Despite making invaluable contributions, immigrants carry enormous burdens in New York. Not least among those burdens, the risk of contracting and dying from COVID-19 is higher for immigrants than for their native-born neighbors.<sup>6</sup>

New York's leadership in advancing publicly-funded immigration legal services like the New York Immigrant Family Unity Project and the Liberty Defense Project has made it a respected national model. More than 50 states, counties, and cities have now followed New York's lead by investing in deportation defense programs.<sup>7</sup> These jurisdictions have invested in these programs as a component of their efforts to safeguard public health and safety and to stand with immigrants and communities historically targeted by racial injustice.

Now the time has come for New York's next step in support of immigrant communities, with the visionary passage of the Access to Representation Act and the establishment of a groundbreaking right to representation for all people in New York facing deportation.

With the passage of the Access to Representation Act and other policies in support of a welcoming immigration system that centers human dignity, New York can continue to stand with its immigrant neighbors in the face of federal enforcement. The former presidential administration implemented over 400 anti-immigrant executive actions,<sup>8</sup> most of which continue in effect, negatively targeting immigrants and limiting due

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<sup>2</sup> 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>.

<sup>3</sup> *Id.*

<sup>4</sup> Vera Institute of Justice, "Profile of the foreign-born population in The State of New York," <https://www.vera.org/audio/foreign-born-population-nys.pdf>.

<sup>5</sup> Fiscal Policy Institute, "Legal Status for Undocumented Essential Workers: New York Gains," estimating there are 380,000 undocumented essential workers in NYS, <https://fiscalpolicy.org/legal-status-for-undocumented-essential-workers-new-york-gains>

<sup>6</sup> Organisation for Economic Co-operation and Development, "What is the impact of the COVID-19 pandemic on immigrants and their children?" October 19, 2020, <http://www.oecd.org/coronavirus/policy-responses/what-is-the-impact-of-the-covid-19-pandemic-on-immigrants-and-their-children-e7cbb7de/#:~:text=COVID%2Drelated%20mortality%20rates%20for,lower%20seniority%20on%20the%20job.>

<sup>7</sup> See map of publicly funded deportation defense programs, "Advancing Universal Representation Initiative," Vera Institute of Justice, <https://www.vera.org/ending-mass-incarceration/reducing-incarceration/detention-of-immigrants/advancing-universal-representation-initiative>.

<sup>8</sup> Migration Policy Institute, "Dismantling and Reconstructing the U.S. Immigration System: A Catalog of Changes under the Trump Presidency," July 2020, [https://www.migrationpolicy.org/sites/default/files/publications/MPI\\_US-Immigration-Trump-Presidency-Final.pdf](https://www.migrationpolicy.org/sites/default/files/publications/MPI_US-Immigration-Trump-Presidency-Final.pdf)

process today. In New York State, there have been nearly 1,500 immigration raids since 2015, and nearly 300 since January 2020 alone.<sup>9</sup> For those in immigration detention, U.S. Immigration and Customs Enforcement’s (ICE) failures have led to over 40,000 cases of COVID in ICE jails nationally as of April 2022, reaching an all-time peak of over 3,000 reported cases in the winter of 2022.<sup>10</sup> Fueled by “the recent deluge of new cases” filed by federal immigration authorities,<sup>11</sup> a ballooning backlog of immigration court cases continues to grow, with over 175,000 cases pending in New York’s immigration courts alone, 2.5 times the number of cases just five years ago.<sup>12</sup>

Because the promise of federal immigration reform remains elusive, it is crucial that New York State advances policies that promote freedom, fairness, and family unity. Supporting a right to representation for everyone facing immigration proceedings, including the grave risks of deportation and dangerous federal detention conditions, will do just that.

Passage of the Access to Representation Act will ensure that thousands in New York who currently confront immigration court without a lawyer will at last have the security of representation. At the same time, recognizing the complex needs of individuals facing removal proceedings, New York State should also expand access to social workers and other critically-needed support services to assist such individuals with addressing the trauma many faced both in their countries of origin and also often in ICE detention. Social service support can also help people access the resources they need to rebuild long-term stability after being freed from detention and the threat of deportation. In addition, for those facing immigration proceedings while detained by ICE, litigation in federal court is often the only means of gaining release from unlawful and dangerous detention conditions, but resources for such federal litigation are scarce. To promote due process and dismantle the harm caused by years of anti-immigrant policies, the Access to Representation Act would ensure increased access to federal litigation in this complex legal field.

For as long as immigrant New Yorkers are torn from their families and communities by the federal government, New York’s leadership in support of deportation defense representation for immigrants will be a powerful demonstration of this state’s firm and ongoing commitment to its immigrant communities. New York’s national leadership is also an exceptionally powerful demonstration to the Biden administration, providing a proven example of a sensible policy to begin transforming our immigration system into one that is welcoming and upholds dignity, due process, and stability for those caught up in that system.

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<sup>9</sup> Immigrant Defense Project and Center for Constitutional Rights, “IceWatch,” <https://raidsmap.immdefense.org/>.

<sup>10</sup> Noelle Smart and Adam Garcia, Vera Institute of Justice, “Tracking COVID-19 in Immigration Detention: a Dashboard of ICE Data,” <https://www.vera.org/tracking-covid-19-in-immigration-detention>.

<sup>11</sup> “Immigration Court Backlog Now Growing Faster Than Ever, Burying Judges in an Avalanche of Cases,” TRAC Syracuse University, Jan. 18, 2022, <https://trac.syr.edu/immigration/reports/675/>.

<sup>12</sup> “Immigration Court Backlog Tool, Pending Cases and Length of Wait by Nationality, State, Court, and Hearing Location,” TRAC Syracuse University, Available at [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/).

Passing the Access to Representation Act and becoming the first state in the nation to establish a statutory right to representation for immigrants facing deportation will support strong and stable immigrant communities and demonstrate the promise of welcoming immigrant policies to other states and the federal government.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation.