



NO SAFE HARBOR
*Challenges in Obtaining
Immigration Legal Services
in New York State*

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NO SAFE HARBOR

Challenges in Obtaining Immigration Legal Services in New York State

TOP LINE FINDINGS

- The main barriers to immigrants obtaining legal representation are:
 - › Political
 - › Geographic
 - › Financial Burdens
 - › Long Wait Lists
 - › Language Access
- The main barriers to organizations' abilities to provide representation are:
 - › Lack of sufficient overall funding
 - › Lack of funding that addresses service needs
- There are 158 organizations providing legal services to immigrants in New York State, 121 of which are in New York City.
- The main needs for legal services are: defense against removal, family-based petitions, asylum, and representation with regard to criminal-immigration issues.
- The biggest investment in immigration legal services by New York State is to provide services with regard to citizenship applications (80%).
- New York City funding was more evenly spread between removal defense, less-complex-simple cases, and general support. However, over twenty percent of available funding was retained by New York City government agencies to administer programs.
- The new Federal White House administration has exacerbated an already existing crisis of representation.

INTRODUCTION

New York has always been a gateway to 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.¹ Over 200 languages are spoken throughout the State² and over 30% of New Yorkers speak a language other than English at home.³ Of these foreign born New Yorkers, 20% of the population, or 850,000, are undocumented.⁴

New York's diversity is an asset in 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.⁵ They play roles in every sector, from finance and banking, to law, to STEM fields to farming, domestic work, manufacturing, and hospitality industries.⁶ 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.⁷ with a 41.9% increase between 2000 and 2011.⁸ In fiscal year 2016, over 90,000 immigrants became naturalized citizens in the metropolitan area of New York City, Newark, and Jersey City.⁹ Over 23% of registered voters in the state are considered "New Americans," who are naturalized citizens or US-born children of immigrants.¹⁰

Despite the enormous contributions immigrants make to New York State, there is still an enormous gap in critical services made available to them. Notably, immigrants, particularly low-income immigrants, face significant challenges in obtaining legal representation. This challenge stems mainly from an overly-complicated and increasingly outdated legal system

1 American Immigration Council, *New Americans in New York* (Jan. 1, 2015), available at <https://www.americanimmigrationcouncil.org/research/new-americans-new-york>.

2 "New York City Population: Population Facts," Department of City Planning available at <https://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page> (last visited Dec. 16, 2016)

3 "Quick Facts New York," United States Census Bureau available at <http://www.census.gov/quickfacts/table/PST045215/36> (last accessed Dec. 16, 2016).

4 Migration Policy Institute: "Profile of the Unauthorized Population: New York" available at <http://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY>

5 "New Americans in New York," American Immigration Council Fact Sheet (Jan. 1, 2015), available at <https://www.americanimmigrationcouncil.org/research/new-americans-new-york>

6 New American Economy Fact Sheet: "Immigrants and the Economy in New York" available at <http://www.newamericaneconomy.org/locations/new-york/>.

7 JieZong and Jeanne Batalov, "College-Educated Immigrants in the US" Migration Policy Institute <http://www.migrationpolicy.org/article/college-educated-immigrants-united-states> (Feb.3, 2016)

8 Id.

9 Naturalization Fact Sheet" U.S. Citizenship and Immigration Services <https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet> (last updated Dec. 8, 2016)

10 Id.

that has become nearly impossible to navigate without the help of an attorney, while at the same time refusing immigrants unable to pay an attorney a right to free counsel as exists in criminal or family court proceedings.

Recent changes in immigration policy from the new Federal administration have further challenged due process issues and have made it imperative for New York to ensure that immigrant members of our communities have access to legal help. Legal services are crucial to helping immigrants achieve legal status, obtain work authorization, and stabilize their lives in New York State so that they may even further increase their contributions to our economic and civil life. In this increasingly arbitrary immigration enforcement regime, lawyers also ensure that basic due process requirements are met and can challenge the legality of destructive policies in court. Yet the 158 organizations in New York State serving immigrant communities struggle to meet the crushing demand for their services.

II. METHODOLOGY

The methodology of data collection for this report was fourfold: 1) a detailed survey consisting of 75 questions was circulated to legal service providers throughout New York State. Responses were collected during the month of November, with a total of 33 responses. A supplemental survey adding two questions was circulated in the month of January and received 15 responses. 2) Follow-up interviews with legal service providers were conducted to gather closer snapshots of the legal needs reported by organizations. 3) Lastly, 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. Generally these sources include Transactional Records Access Clearinghouse (TRAC), which is run by Syracuse University and organizes data around immigration court proceedings.¹¹

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.

¹¹ <http://trac.syr.edu/>

III. CHALLENGES IN ACCESSING LEGAL SERVICES

There are many obstacles to immigrant New Yorkers obtaining legal representation, starting with political, legal and legislative, and geographic barriers. Spatial availability of lawyers and immigration legal service providers varies greatly between metro New York and more rural areas. Additionally, different immigrant communities face obstacles unique to that community, for reasons such as language access and cultural trends that make seeking help or approaching figures of authority more difficult. Some communities may also overlap in terms of geographic and cultural origin, compounding other barriers such as trauma, intimidation, or awareness of legal consequences.¹²

TYPES OF LEGAL SERVICE PROVIDERS

Legal services are provided through a variety of ways in New York State. The organizations that responded to the survey fell in one or more of the following categories:

1. Organizations that provide different types of legal services, with at least one department dedicated to immigration legal services;
2. Organizations that only provide immigration legal services;
3. Organizations that provide representation in all types of immigration legal services with the exception of business based immigration Organizations that provide only certain types of immigration 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). Community based organizations that provide limited legal services as part of their
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).

LEGAL & LEGISLATIVE BARRIERS

The U.S. immigration legal system as a whole continues to deteriorate under the weight of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and subsequent reform laws, which have transformed our immigration system into a quasi-criminal system without due process protections of assigned counsel. Over the past twenty years, IIRIRA has criminalized immigration by narrowing who can attain legal status and broadening who can be excluded. The results have been catastrophic. Families have been broken apart, moth

¹² "More People to Listen: A Report of the Bronx Domestic Violence Roundtable and Bronx Legal Services" Legal Services NYC: Bronx Legal Services <http://www.legalservicesnyc.org/storage/PDFs/bronx%20ipv%20report.pdf> (Sept. 30, 2016), page 104).

ers and children have been jailed, and asylees have been sent home to certain death. IIRIRA also has had devastating procedural ramifications, with the entire immigration court system backlogged with tens of thousands of cases.

Under the 14th amendment, undocumented immigrants have constitutional rights, including the fundamental 5th amendment right to due process of the law and right to counsel.¹³ However, the right to obtain counsel is at an immigrant's own expense.¹⁴ Unsurprisingly, many undocumented immigrants working in low-wage jobs do not have the resources to secure competent paid representation, or are being held in detention facilities with little access to help or the outside world. At the same time, nearly all pro bono legal service providers in New York are at near maximum capacity.¹⁵

For many immigrants in need of counsel, the difference between having a lawyer and not is often the difference between life and death.¹⁶ When immigrants have counsel, they are much more likely to have their claims heard. For example, when women and children had access to legal representation in deportation proceedings, 73% were found to have legitimate claims and were allowed to remain in the United States from 2012 to 2014.¹⁷

Providing legal representation in one of the most complex areas of law would help lower costs of the current immigration system. ICE's annual budget for detention is about \$2 billion dollars, where providing counsel and releasing those with counsel would cut down on detention costs immensely, as approximately 380,000 to 442,000 people are detained awaiting proceedings per year.¹⁸

Providing representation also speeds up processing times for those with legitimate claims, and lessens the current backlogs in immigration courts. Legal representation for immigrants protects the integrity of the judicial system by preventing miscarriages of justice 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.

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

14 *Id.*

15 NYC LEGAL SERVICE PROVIDER SURVEY (NOV. 2016).

16 From January 2014 to October 2015 alone eighty-three US deportees have been murdered after their forced deportation to El Salvador, Honduras, and Guatemala. Sibylla Brodzinsky and Ed Pilkington "US Government Deporting More Central American Migrants To Their Death" *The Guardian* (Oct. 12, 2015)

17 TRAC Fact Sheet: Representation for Children in Immigration Court (Nov. 25, 2014) available at <http://trac.syr.edu/immigration/reports/371/>

18 Nicki Fleischner "Weekly Chart: The Cost of US Immigrant Detention" *Americas Society/Council of the Americas* (Sep. 8, 2016); Human Rights First Fact Sheet "Immigration Detention: How Can the US Government Cut Costs?"

POLITICAL BARRIERS

Immigration has become one of the most hot-button issues in our national conversation. With opinions sharply divided on, for example, how to address the 11 million undocumented immigrants living in the United States, the thousands of refugees arriving daily at the Southern Border, and the ongoing debate on sanctuary city policies, meaningful immigration reform has been stalled in Washington for a very long time.

In 2017, immigrant communities face new fears of even harsher enforcement and less hope of reform as Donald Trump, who ran on a largely nationalist, anti-immigrant platform, assumes control of the Executive Branch while Congress remains firmly conservative. From public statements by the President made during the campaign and since the election, fiercely anti-immigrant political appointments, and tough rhetoric from Congressional republicans, it is clear that the next four years will be challenging for immigrants and their allies. Advocates widely expect the return of work-place raids. Expansions of who is deemed a “criminal alien” have already begun, if only to allow the President to meet his promise to deport “2 to 3 million” immigrants within his first year in office. In addition, promises to overturn prior executive actions mean that 750,000 young immigrants, who benefited from Deferred Action for Childhood Arrivals (DACA), now once again live in fear. In turn, these fears make immigrants more susceptible to fraud as unscrupulous providers prey on those fears, and put immigrant victims at risk of deportation.

In New York, the welcoming spirit that has been the hallmark of this state is also at risk. While Hillary Clinton won the State’s overall vote, Donald Trump beat her in 46 of 62 counties,¹⁹ most of them in rural areas where the immigrant labor force is necessary but heavily discriminated against. The Senate remains in the control of Republicans, including some that have run on fiercely anti-immigrant platforms. Already in 2016, New York saw anti-immigrant laws being introduced at the state level, specifically targeting refugees.²⁰ This follows years of local ordinances and other municipal acts targeting immigrants, largely outside of the main urban centers.

Because of this sharp divide in the political landscape in New York, overall public funding for immigration legal services have been less than hoped for. State funded initiatives to support legal services for immigrants have been limited. New York City has shown itself a leader in creating municipal responses to address immigrant’s legal needs, but even those funding streams fall short in many instances. Yet, the geographical divide is one of the most glaring obstacles to accessing immigration legal services in New York State.

¹⁹ National Review: “New York’s Vote was a Microcosom of America in 2016” (Dec. 8, 2016)

²⁰ S6253, Sen Reg, Sess. 2015-2016 (NY 2016)

GEOGRAPHIC BARRIERS

Organizations that provide immigration legal services are highly concentrated in New York City. Of the 158 organizations providing immigration legal assistance in New York State, 121, or 77%, operate within the five boroughs of New York City.²¹ By contrast, the remaining 37 organizations were spread out throughout the rest of the state, with rural areas being the most underserved.²² Advocates interviewed outside of New York City noted the scarcity of both non-profit and private bar attorneys in rural areas.²³ This lack of available resources led to many immigrant New Yorkers spending large sums of money on hiring private lawyers in urban areas, requiring taking unpaid days off from work and incurring significant travel costs.²⁴ Many others become victims of fraudulent providers, who seek to exploit the gap in the market.²⁵

The geographic disparity in the distribution of immigration legal resources is significant, and leaves many immigrants outside of New York City vulnerable to harsh immigration policies because it effectively cuts them off from access to services. New York State does not offer driver's licenses to undocumented immigrants, and public transportation options become scarcer and more unaffordable as communities get further away from expensive urban centers. Apart from expense, needing to travel hours to meet with an attorney often means taking entire days off from work, which results in lost wages and, sometimes, jeopardizes continued employment.²⁶

Finally, the geographic barriers are compounded in that trained, experienced lawyers are often difficult to find outside urban areas. In New York City, 58% of organizations also hire Department of Justice accredited representatives, who are non-lawyer staff of nonprofit organizations accredited by the US Department of Justice to provide low-cost immigration legal services.²⁷ In contrast, 81% of organizations outside New York City rely on accredited representatives.²⁸

While accredited representatives can handle many straightforward immigration cases, and with time can become expert in complex matters as well, many do not have the ability to perform the complicated legal analysis which is often required when helping undocumented immigrants.²⁹ This scarcity of lawyers creates dual obstacles for potential clients: simply finding representation and finding quality representation from the limited options that may be available to them.³⁰

21 Immigrant Advocates Network Legal Service Provider Directory, available at <https://www.immigrationadvocates.org/nonprofit/legaldirectory/>

22 *Id.*

23 Interviews with advocates: Emma Kreyche (Workers Justice Center), Sister Mary Beth Moore (Centro Corazon de Maria), Janet Rolon (Community Resource Center), Gail Golden (Rockland Immigration Coalition)

24 *Id.*

25 *Id.*

26 Interview with Advocate: Betsy Plum (New York Immigration Coalition)

27 US Department of Justice Recognition and Accreditation Rosters, available at <https://www.justice.gov/eoir/recognition-accreditation-roster-reports>

28 *Id.*

29 NYIC Legal Service Provider Survey (Nov. 2016), Interview with Advocate: Betsy Plum (New York Immigration Coalition)

30 "Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings" New York Immigrant Representation Study (Study Group on Immigrant Representation), Cardozo School of Law http://www.cardozolawreview.com/content/deno-vo/NYIRS_Report.pdf (Dec. 2011)

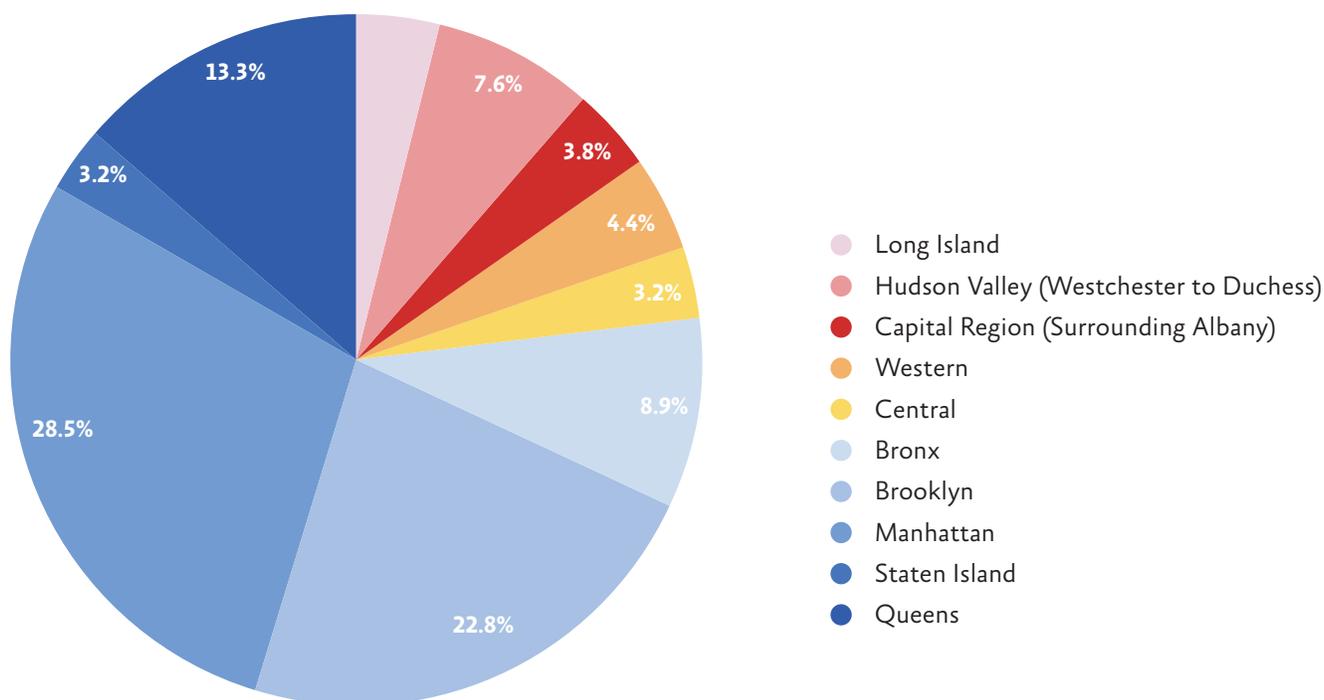
Table 1: Legal Service Providers, By Region

Region	Legal Service Providers (Total)*	Recognized by the Office of Legal Access Programs**
Long Island	7	6
Lower Hudson Valley (Westchester to Dutchess)	12	10
Capital District (Surrounding Albany)	6	4
Western New York	7	6
Central New York & Finger Lakes	5	4
New York City	121	70
Total	158	100

*Source: Immigrant Advocates Network Legal Provider Directory

**Source: Roster of Recognized Agencies maintained on website of the Executive Office for Immigration Review

Fig. 1: Legal Service Providers, By Region



WAIT LISTS

Because most organizations lacked capacity to meet the demand for services, it can be difficult for community members to find services.³¹ Organizations reported wait times for an appointment being between immediate and three months, with one third offering appointments 1 to 2 weeks after a request, and 14% offering appointments two to three weeks after a request. Only 35% of organizations had waitlists, and providers noted that they often did not maintain them because they were too overwhelming.³² Of organizations that did maintain waitlists, the highest numbers of cases in those lists were for citizenship and naturalization services.³³ Follow-up interviews with legal service providers in the months since the election have indicated that the demand has skyrocketed and wait list backlogs are increasing.

LANGUAGE ACCESS

Access to appropriate language services is an enormous need for immigrants seeking legal assistance. Of the 8.5 million people living in New York City, half speak a language other than English at home and nearly 1.8 million people or 25% of the City's population are not English proficient.³⁴

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.³⁵ Judges have also been provided with "benchcards" to better assist them in interacting with LEP litigants,³⁶ while the New York courts websites provide a glossary of housing court terminology in Simple Chinese, and orders of protection are translated into Spanish.³⁷ 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 few signs in languages other than English to assist LEP litigants navigate courthouses and understand courthouse procedures.³⁸

Furthermore, although the federal court system provides interpreters for federal criminal cases or in immigration removal proceedings,³⁹ these interpreters are only available in cases commenced by the U.S. government. The Southern District of New York's website explicitly

31 For more on legal service provider capacity, see "IV. Challenges in Providing Representation", *infra*.

32 NYC Legal Service Provider Survey (Nov. 2016).

33 *Id.*

34 New York City Department of Planning Fact Sheet available at <http://www1.nyc.gov/site/planning/data-maps/nyc-population/population-facts.page> (last retrieved January 23, 2017).

35 Interpreting Justice: Language Access in the New York Courts, Legal Services NYC (December 2016).

36 *Id.*

37 *Id.*

38 *Id.*

39 *Id.*

promotes the use of “a trusted family member or friend” to assist with interpretation.⁴⁰ 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.⁴¹

The dearth of proper language services creates many delays and adjournments in court for LEP litigants.⁴² Frequently, courts schedule an interpreter who does not speak the proper language or dialect of the non-English speaking litigant.⁴³ At other times, courts only have access to interpreters who speak a certain language during specific days of the month.⁴⁴ 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 child care, or seek time off from work, these delays are a burden that limits their access to justice.

Limited language services also mean that a huge burden is placed on legal service providers to provide interpretation and translation services to ensure that immigrants can adequately present their cases in court and at government agencies. The legal service providers that responded to the survey detailed that the top languages in which they provide services to immigrant clients include Spanish (91% of providers), French (35% of providers), Mandarin (9%), and Arabic (9%). Additionally, 9% of the legal services providers reported using telephone interpretation services as an added way 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. Without access to interpreters, a vast section of the state’s population is denied the means to properly seek help in a variety of legal matters.

FINANCIAL OBSTACLES

Ability to pay for services also poses a significant barrier to immigrants seeking legal representation. Over half of survey respondents noted that between 90 and 100% of their clients lived below the poverty line, and 65% of respondents noted that at least 2/3rds of their clients live below the poverty line.⁴⁵ 50% or more of the clients or family members of clients of half of survey respondents receive means tested benefits.⁴⁶ Sixty-one percent of respondents had at least one client living in a homeless shelter, with 20% reporting having at least 50 clients in shelters.⁴⁷ One legal service provider noted that “this was becoming a problem”.⁴⁸

40 New York City Fact Sheet “Representing Yourself in Federal Court (Pro Se)” http://www.nysd.uscourts.gov/courtrules_prose.php?prose=faq.

41 The Role and Use of Interpreters in Domestic Field Office Interviews, U.S. Citizenship and Immigration Services PM-602-0125.1 (January 17, 2017). USCIS only provides interpreters for asylum, credible fear and Nicaraguan Adjustment and Central American Relief Act interviews.

42 Interpreting Justice: Language Access in the New York Courts, Legal Services NYC (December 2016).

43 Id.

44 Id.

45 New York Immigrant Coalition, *supra* note 14.

46 Id.

47 Id.

48 Id.

OTHER CHALLENGES

Age

In one-on-one interviews, some respondents noted that age can often be a factor in whether someone will seek to obtain legal assistance.⁴⁹ 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 who may experience obstacles such as illiteracy or language access, typically have a harder time accessing legal services.

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.⁵⁰ In one-on-one interviews, other providers noted that gender and age sometimes were factors in seeking out legal help, particularly if the client was from a culture where women or younger individuals are not permitted to make decisions on their own.⁵¹

CHALLENGES IN PROVIDING REPRESENTATION

FUNDING

Overall State Funding

State-wide public funding for immigrant legal services has been extremely limited. Most state funding on this issue is directed to the Office for New Americans (ONA), which provides grants to 27 community-based organizations and 6 legal service providers to provide services limited to citizenship, Deferred Action for Childhood Entrants (DACA) screenings, and beginning in 2016, limited U & T visa help.⁵² In FY 2016, ONA re-granted nearly \$5.7 million to community-based groups to carry out these services. In addition, ONA provides a small grant of \$50,000 to help providers representing unaccompanied children on Long Island.⁵³ The Assembly has also provided \$400,000, and the Independent Democratic Caucus in the Senate has given \$250,000, to a state-wide New York Immigrant Family Unity Project (NYIFUP), which provides legal representation to detained immigrants at the Batavia Federal Detention Center and the Ulster County Correctional Facility. Finally, civil legal service providers can 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.

49 Advocate Interview: Molly Delano (Hostos Community College)

50 Bronx Legal Services and Bronx Domestic Violence Roundtable: "More People to Listen: Legal and Social Services Needs of Bronx Communities Affected by Intimate Partner Violence:" (<http://www.legalservicesnyc.org/storage/PDFs/bronx%20ipv%20report.pdf>)

51 Advocate Interview: Emma Mondadori (International Rescue Committee)

52 See www.newamericans.ny.gov

53 "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) available at <https://www.dos.ny.gov/press/2015/immigrant2-23.html>

Table 2: New York State Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Awardees	Amount
Office for New Americans	Citizenship services, DACA screenings, and limited U & T Visa applications.	27 opportunity centers, 6 legal counsels, 1 trainer and technical assistance providers.	\$5,738,100
Office for New Americans	Representation of Unaccompanied Children on Long Island	Long Island Unaccompanied Children Collaborative	\$50,000
Assembly	NY Immigrant Family Unity Project	Vera Institute of Justice	\$400,000
Senate Independent Democratic Caucus	NY Immigration Family Unity Project	Vera Institute of Justice	\$250,000
Assembly	Legal Services/Additional Appropriations	Various Legal Service Providers	\$700,000
Total			\$7,138,100

Table 3: New York State Funding Streams Dedicate to Immigration Legal Services by Type

Type	Source	Awardees	Amount
Citizenship	Office for New Americans	27 opportunity centers and 6 legal counsels	\$5,625,000
DACA*	Assembly appropriations	Legal Services NYC – DREAM Clinics	\$150,000
Unaccompanied children representation	Office for New Americans	Long Island Unaccompanied Children Collaborative	\$50,000
Detained immigrants representation	Assembly and Senate Independent Democratic Caucus	Vera Institute of Justice	\$650,000
General immigration legal services	Assembly appropriations	Various legal service providers	\$550,000
Related (training, pro se assistance software)	Office for New Americans	New York Immigration Coalition and Immigrant Advocates Network	\$113,100
Total			\$7,138,100

*ONA opportunity centers also handled DACA screenings, but not application assistance.

*New York City Funding*⁵⁴

Legal service providers in New York City, who make up nearly 77% of all providers, also have access to funding from the New York City government. New York City provided funding via several initiatives in FY 2017, namely: The New York Immigrant Family Unity Project (NYIFUP) to provide representation to detained immigrants facing deportation at \$6.2 million; the Un-accompanied Minors Initiative (UMI) and Immigrant Children Advocates Relief Effort (ICARE) project to represent unaccompanied refugee children and refugee adults with children from Central America who are placed on fast-tracked deportation procedures at \$1.5 million; the Immigrant Opportunity Initiative (IOI) which funds a variety of immigration legal services at \$8.3 million; and CUNY Citizenship Now! at \$2 million to place immigration attorneys at various agencies and Council District offices around the city to provide consultations in all areas of family and naturalization law and application assistance for Citizenship, Family-based petitions, DACA and TPS. In addition, Council Members made discretionary grants totaling \$50,000 to legal service providers in their own districts.

In addition to the New York City funding distributed to legal service providers, in 2015 the NYC Mayor's Office for Immigrant Affairs (MOIA) and the Human Resources Administration (HRA) launched ActionNYC to "expand capacity in the field of immigration legal assistance in NYC"⁵⁵ by doing targeted outreach, and employing trained non-lawyer staff of non-profits (labeled "navigators") to screen clients and help them with "straightforward" applications,⁵⁶ lawyers to supervise the navigators, and a clinic coordinator to organize monthly mass-assistance events. The total budget for the last 9 month period in FY 2016 was \$7.9,⁵⁷ \$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 schools). To cover the longer time period, 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. The clinic coordinator role was terminated and a new Legal Coordinator grant was created. Finally, MOIA received \$750,000 from private funders to administer citizenship services in libraries and schools through NYCitizenship,⁵⁸ of which \$375,000, of which \$375,000, or 50%, is given to one legal service provider.

54 New York City Office of Civil Justice 2016 Annual Report (June 2016), available at https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ%202016%20Annual%20Report%20FINAL_08_29_2016.pdf

55 Id at 56.

56 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." ActionNYC Addendum p. 22 (June 2015)

57 Liz Robbins, "New York to Aid Immigrants Amid Stalled Immigration Reforms" New York Times (Dec. 14, 2015).

58 New York City Office of Civil Justice 2016 Annual Report, p. 56

Table 4: New York City Funding Streams Dedicated to Immigration Legal Services by Funding Source

Source	Purpose	Awardees	Amount
New York City Council	Representation of detained immigrants, Central American refugee families, general immigration services	Various non-profit legal service providers	12,350,000
New York City Mayor	Straightforward applications, complex case representation, outreach, citizenship.	Various non-profit legal service providers and city agencies.	\$14,850,000
Total			\$27,200,000

Table 5: New York State Funding Streams Dedicate to Immigration Legal Services by Type*

Type	Source	Awardees	Amount
Citizenship	NYCNaturalize	1	\$375,000
Straightforward applications	ActionNYC (MOIA and HRA)	8 community organizations and 7 legal service providers	\$2,700,000*
Complex case representation	HRA	Two consortiums comprised of legal service providers and community based organizations	\$2,700,000
Detained immigrants representation	New York City Council	Vera Institute of Justice, Legal Aid Society, Bronx Public Defenders, Brooklyn Defender Services	\$6,200,000
Central American Refugees Representation	New York City Council	Various legal service providers	\$1,500,000
General immigration legal services	New York City Council and HRA	Various legal service providers through IOI	\$7,650,000
Administration of programs	HRA and MOIA	Mayors Office of Immigrant Affairs	\$6,075,000
Total			\$27,200,000

* Numbers with asterisks are approximate as current total funding made available to non-profit organizations is not public information. Some funding, including the ActionNYC Community Schools and Legal Technical Assistance Provider were not made via requests for proposals. In addition, 2017 ActionNYC funding was distributed via contract extensions in lieu of a second RFP process.

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 places 25 recent law school graduates at legal service providers for two year positions yearly (for a total of 50 fellows in the field at any given time).⁵⁹ 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.⁶⁰ Other major funders include community trusts, such as the New York Community Trust and Long Island Community Foundation, the Robin Hood Foundation, and the Four Freedoms Fund. Many providers also rely on individual donors, and 60% of those who answered the supplemental survey also charge some type of fees.⁶¹

LACK OF RESOURCES TO ADDRESS NEEDS

Funding that does not match need

Legal Service Providers noted the following five case types as those that they most frequently identified and were asked to handle (in order of prevalence).⁶²

1. Representation in Immigration Court for defense of removal (67% of providers)
2. Family based immigration (33% of providers)
3. Asylum (27% of providers)
4. Criminal-immigration issues (9% of providers)
5. Other (VAWA, SIJS, public benefit applications, money to pay for immigration fees)

State funding does very little to address these needs. Defense of removal accounts for 67% of the work required of legal service providers, yet is only 18% of the total funding made available by the State. Moreover, that funding only goes to fund services provided by 8 organizations: 3 organizations providing services to unaccompanied children on Long Island (\$50,000), 5 organizations providing services to detained immigrants held in the Batavia Federal Detention Facility and the Ulster County Correctional Facility (\$650,000), and 4 organizations that provide general services (\$550,000). Moreover, nearly 79% of funding from the State covers citizenship services, whereas based on survey answers, naturalization assistance only accounted for 8% of work done by legal service providers.

While NYC made significantly more funding available to legal service providers, the case-specific nature of the funding did not allow organizations to meet the need of most immigrants who came through their doors asking for help. As with the state, much funding was

59 NYIC Legal Service Provider Survey (Nov. 2016), Immigrant Justice Corps website: www.justicecorps.org

60 Immigrant Justice Corps website: www.justicecorps.org

61 NYIC Legal Service Provider Survey (Jan. 2017) 14.

62 New York Immigrant Coalition, *supra* note 14.

not directed to the types of cases legal service providers encounter most frequently. Seventeen percent went to services provided by ActionNYC (\$2.7 million in re-grants) and CUNY Citizenship Now! (\$2 million) for general consultations and straight-forward cases only. An additional 22% was kept by the Mayor's Office for Immigrant Affairs to administer programs. Twenty-eight percent of the funding was dedicated to defense of removal through NYIFUP and the Central American refugee initiatives (UMI and ICARE), which helped 3,029 immigrants who are currently facing deportation in the New York City immigration courts.⁶³ The remaining 33% comprises the IOI funds (\$8.3 million), which served a mix of complex and straight-forward cases.

Of the \$8.3 million that was given through IOI in 2016, \$3 million, or 36% of the total IOI fund, was baselined and distributed via an RFP administered by HRA and MOIA to fund consortiums of groups that provide legal services and perform outreach as well as case management. Because RFP responses and contracts are confidential, the breakdown between legal services and outreach services is unknown. Additionally, \$2.6 million, or 31%, provided via City Council was meant for general legal services, but most providers reported using the funds for simpler applications. This was largely due to the low case price of \$750, which did not allow providers to take on complex cases using this grant. Finally, in 2016 the Mayoral administration added \$2.7 million to the IOI fund specifically to take on representation of 1,000 complex cases referred by the ActionNYC sites. This additional amount was added to the awards given to the two consortiums funded through the baselined IOI money.⁶⁴

Table 6: Percentage of New York State Funding Streams Dedicated to Immigration Legal Services by Type*

Type	Source	Awardees	Percentage
Citizenship & Straight-forward Cases	NYCNaturalize, ActionNYC, CUNY Citizenship Now!	Various legal service providers and community based organizations	19%
Complex cases	ICARE, NYIFUP, \$2.7 million additional funds placed in IOI	Various legal service providers	38%
General Immigration Representation	Remaining IOI and Council appropriations	Various legal service providers	21%
Administration of programs	HRA and MOIA	Mayor's Office of Immigrant Affairs	22%

*Numbers with asterisks are approximate as current total funding made available to non-profit organizations is not public information. Some funding, including the ActionNYC Community Schools and Legal Technical Assistance Provider were not made via requests for proposals. In addition, 2017 ActionNYC funding was distributed via contract extensions in lieu of a second RFP process.

63 PRI The World "In New York City, Lawyers Make All the Difference For Immigrant Detainees Facing Deportation" (Sept. 20, 2016), noting that 1,898 individuals have been represented through NYIFUP and New York City Council release: "New York City Council Unaccompanied Minors Initiative Continues to Prevent Needless Deportations" noting that as of FY 2016, 1,131 cases have been represented.

64 New York City Office of Civil Justice 2016 Annual Report, p. 56

Lack of Capacity as A Result of Lack of Funding

Across the board, only 5% of organizations felt that they had capacity to meet the needs of clients who sought services from them. The main gaps in capacity identified by survey respondents were: ability to hire experienced supervising attorneys, ability to hire support staff, and the ability to obtain larger office space and equipment. In one-on-one interviews, some providers noted that the necessity of having legal staff play multiple roles over and above the provision of legal services, such as writing proposals, doing outreach, and connecting clients to other services, further reduced their ability to properly provide legal services.⁶⁵

SPECIFIC CONCERNS

In addition to the quantifiable responses in the survey of immigrant-serving organizations, many respondents offered narrative comments on the difficulties they face in providing legal services. The most common issues included representing asylum seekers, individuals with criminal records, the expedited “Surge Dockets” that fast-track certain deportation proceedings, and the need for additional services to help immigrants access citizenship.

Asylum

Asylum was identified as one of the biggest needs for support among legal service providers. Affirmative asylum backlogs (for applications filed by individuals not yet in immigration proceedings as well as unaccompanied minors) have increased exponentially in recent years, with the current average waiting time approximately 2 years from filing to interview.⁶⁶ These backlogs are attributable to migration patterns that have sent more individuals fleeing persecution to the United States, and New York, than ever before, as well as to higher incidents of fraud. Fueled by the backlogs, unscrupulous providers of legal services file false asylum applications to fulfill promises to their victims of providing work permits, even when the applicant may not understand the underlying application.⁶⁷

Legal service providers who offer asylum assistance, both in the affirmative context or when defensive applications are made before the immigration court, noted that related to their lack of capacity in taking on all cases for representation, they also had difficulty in obtaining forensic psychological evaluations to help them win their cases.

65 Advocate Interview: Marie Mark Immigrant Defense Project and Christina’Elhaddad (Arab American Association of New York).

66 Affirmative Asylum Scheduling Bulletin available at <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin>

67 Interview with Advocate: Camille Mackler (New York Immigration Coalition)

Crimmigration

Legal service providers noted a significant need for immigration representation not only before immigration proceedings but also in criminal proceedings.⁶⁸ Often, immigrants were not able to access attorneys who could help them understand the immigration consequences of their criminal pleas.⁶⁹ In response to that need, New York State recently created regional centers to assist public defenders and 18b Panel attorneys to better advise their clients of immigration consequences, but the initiative is still too new to assess impact.⁷⁰

Immigration Court Dockets

Two years ago, Immigration Courts adopted new docketing practices that gave priority to cases involving adults with children. This followed the Obama Administration's action to expedite removal of women and children in response to the sudden influx of families and unaccompanied minors across the U.S.-Mexican border that began during the summer of 2014.

According to data analyzed by the Transactional Records Access Clearinghouse (TRAC), adults with children were unrepresented in 27,015 (70%) out of the 38,601 adults with children closed cases.⁷¹ In the remaining 30% or 11,586 cases, individuals had obtained representation, and of those cases, 40% were accorded some form of immigration relief. This is in contrast to the only 3.8% of immigrants who were successful without legal representation.⁷²

The differences in success rate highlights the necessity of legal counsel for immigrants. Most immigrants in detention and removal proceedings do not have resources to find help. Court records indicate that only 1 in 15 immigrants (6.5%) managed to even file papers without representation.⁷³

In response to the sudden instatement of rocket dockets, seven non-profit legal service providers formed the Immigrant Children Advocates' Relief Effort (ICARE). This coalition provides legal representation to unaccompanied minors who are in removal proceedings, and includes The Legal Aid Society, The Door, Catholic Charities, Central American Legal Assistance, Make the Road New York, Safe Passage, and Kids in Need of Defense. While ICARE provided significant help to unaccompanied children, particularly those residing in the five boroughs of New York City, the lack of support for groups on Long Island, where 60% of the children reside, was problematic, and left many groups there unable to meet the dramatic need.⁷⁴

68 Advocate Interview: Marie Marks (Immigration Defense Project)

69 *Id.*

70 New York Office for indigent Legal Services Regional Immigration Assistance Centers, Available at <https://www.ils.ny.gov/content/regional-immigration-assistance-centers>

71 "With the Immigration Court's Rocket Docket Many Unrepresented Families Quickly Ordered Deported" TRAC Immigration <http://trac.syr.edu/immigration/reports/441/> (Oct. 18, 2016)

72 *Id.*

73 *Id.*

74 Office for Refugee Resettlement Unaccompanied Children Released to Sponsors by County available at <https://www.acf.hhs.gov/orr/unaccompanied-children-released-to-sponsors-by-county>.

Almost all providers who handle removal defense, however, noted the need for funding to represent clients on the “Adults with Children” dockets, where mothers and their small children routinely face judges alone. It is imperative to increase funding to service providers working with clients on the “Adults with Children” dockets, not only to protect immigrants being shuffled through this system, but to decrease backlogs, increase processing times, and maintain the integrity of a court system near its breaking point.

On January 31, 2017, the Executive Office for Immigration Review (EOIR) issued a docketing statement that ended the rocket dockets, and instead prioritized (1) detained cases, (2) cases of children still in custody of the Health and Human Services Administration, and (3) individuals released on a bond that was compelled by the Rodriguez court case, which prevents the administration from detaining immigrants for lengthy periods of time.⁷⁵ Although the end of the rocket dockets was welcomed by some advocates, the Administration’s increased use of detention, including the new policy of detaining everyone who is arrested by Immigration and Customs Enforcement (ICE), are cause for concern.⁷⁶ Although it is too early to tell the actual impact of these policy changes, reports from advocates on the ground are already indicating higher levels of arrest and detentions.⁷⁷

Citizenship

Since Donald Trump’s inauguration, applications for citizenship have surged, largely in response to the fear and uncertainty caused by his new, anti-immigrant policies.⁷⁸ Citizenship has long been tied to multiple benefits, including the ability to travel freely, to vote, to qualify for financial aid for education, and to obtain certain jobs. Citizenship also allows individuals to petition for certain family members to come to the United States. Economically, naturalized New Yorkers increase their income on average by 8-12%, potentially increasing total immigrant income by up to \$2.2 million annually and making even greater contributions to the GDP through “secondary effects of higher incomes on spending and demand”.⁷⁹

In New York, there are an estimated 915,000 residents eligible for naturalization.⁸⁰ Legal service providers estimate that approximately 10% of the eligible population apply for citizenship every year.⁸¹

75 EOIR Office of the Chief Immigration Judge memorandum: “Case Processing Priorities” (Jan. 31, 2017) available at bit.ly/EOIR-Docket

76 Kelly memorandum “Implementing the President’s Border Security and Immigration Enforcement Improvements Policies” (February 20, 2017).

77 Nicholas Kulish, Caitlin Dickerson and Liz Robbins “Reports of Raids Have Immigrants Bracing for Enforcement Surges” New York Times (Feb. 10, 2017).

78 Amy Taxin: “Immigrants are Rushing to Apply for Citizenship Amid Trump’s Immigration Moves” Associated Press (Feb. 21, 2017).

79 Manuel Pastor & Justin Scoggins “Citizen Gain: The Economic Benefits of Naturalization For Immigrants and the Economy - State-Level Results (New York)” (2012).

80 Robert Warren & Donald Kerwin “The US Eligible-To-Naturalize Population: Detailed Social and Economic Characteristics” Center for Migration Studies (2015).

81 Advocates Interview: Camille Mackler (New York Immigration Coalition).

GOING FORWARD UNDER THE TRUMP ADMINISTRATION

Unsurprisingly, the election and prospects of a Trump administration have shifted some organizations' focus, and both legal service providers and community-based organizations are anticipating more obstacles to immigration legal services as well as increased need for assistance.

HEIGHTENED ENFORCEMENT

Following through on promises made during the campaign, President Trump signed his first two executive orders on immigration, relating to border and interior enforcement, on January 25th, 2017.⁸² On February 21st, the Department of Homeland Security released a set of memos detailing how these executive orders would be implemented.⁸³ Some of the more significant changes under the orders and related memos include:

- The mandatory detention of all immigrants suspected of immigration violations;
- Expansion of the use of expedited removal, a process by which immigrants can be removed from the United States without first having a hearing before an immigration judge;
- Significant expansion of the categories of immigrants that are priorities for removal, unless an immigrant can prove immediately that he or she has been in the United States for more than two years;
- Ordering the hiring of 5,000 additional Customs and Border Protection (CBP) agents and 10,000 additional ICE agents;
- Reinstating "Secure Communities," and calls for a push to enter into more agreements with local law enforcement, which would allow local law enforcement agents to act as immigration agents;
- Calling for the construction of a wall along the Southern Border;
- Giving authority to deport individuals to a contiguous country while they wait for their deportation proceedings to take place;
- Terminating unaccompanied minor status for any child reuniting with one or both parents in the United States;
- Eliminating Privacy Act protections for any immigrant who is not a Lawful Permanent Resident.

⁸² Available at <https://www.dhs.gov/executive-orders-protecting-homeland>

⁸³ Id.

HATE CRIMES, ISLAMOPHOBIA AND HALT OF REFUGEE RESETTLEMENT

Since the 2016 Presidential election, hate crimes, Islamophobia, and anti-Islamic bias have been on the rise.⁸⁴ In the week after the 2016 Presidential election alone, the Council on American-Islamic Relations (CAIR) reported 111 anti-Islamic bias incidents, an unprecedented increase.⁸⁵ Islamophobia has also spread to refugee communities, with the White House claiming that immigration from majority-Muslim countries and refugee resettlement present threats to national security.⁸⁶ Despite an arduously stringent vetting process, and a record that shows clearly that the 784,000 refugees resettled in the U.S. since 2001 pose no risk to national security, the current administration has proposed a halt to new refugee admissions that would have serious consequences for New York State.⁸⁷

During FY 2016, upstate New York received over 95% of New York's refugee population, primarily in Buffalo, Rochester, and Syracuse.⁸⁸ Particularly in post-industrial urban areas that have struggled with depopulation and faltering economies, refugees have brought new economic opportunities.⁸⁹ Research on refugee resettlement in the Mohawk Valley has shown that refugees are a net fiscal benefit over the medium and long term, and tend to occupy low-wage jobs that have little effect on the wages or employment levels of native-born workers.⁹⁰

On January 26th, a third Executive Order was signed, 'Protecting the Nation from Foreign Terrorist Entry into the United States'. Implemented within 12 hours, the order suspended entries from seven Muslim-majority countries, suspended refugee admissions for 120 days, and suspended Syrian refugee admissions indefinitely.⁹¹ It also reduced the number of refugee admissions to 50,000 for FY 2017 and created an exemption for religious-based claims when the religion was a minority in the country of origin.⁹² If pursued, these policies would drastically cut federal funding for refugee-serving voluntary agencies throughout New York State, reducing their ability to help meet the needs of refugee and immigrant communities that are already here. Without federal funding for refugee-specific legal needs, such as family reunification petitions, applications for permanent residence, and citizenship, these needs would be added to the caseloads of existing statewide legal service providers that are already struggling to meet existing needs.

84 Mary Papenfuss "New York Police Link Hate Crime Surge to Presidential Campaign" Huffington Post (Feb. 25, 2017)

85 <http://www.islamophobia.org/2-uncategorised/182-anti-muslim-bias-incidents-post-election.html>

86 Executive Order: "Protecting the Nation from Foreign Terrorist Entry Into the United States" (Jan. 27, 2017)

87 Migration and Policy Institute Fact Sheet: "The US Record Shows Refugees Are Not a Threat" (Oct. 2015) available at <http://www.migrationpolicy.org/news/us-record-shows-refugees-are-not-threat> and Cato Institute Report "Terrorism and Immigration: A Risk Analysis" available at <https://www.cato.org/publications/policy-analysis/terrorism-immigration-risk-analysis>

88 New York Bureau for Refugee and Immigrant Affairs Fact Sheet: "BRIA Population Data for FFY 2016" available at <https://otda.ny.gov/programs/bria/documents/population-report.pdf>

89 Jess McKinley, *A Surprising Salve for New York's Beleaguered Cities: Refugees*, New York Times (Feb. 20, 2017), <https://www.nytimes.com/2017/02/20/nyregion/a-surprising-salve-for-new-yorks-beleaguered-cities-refugees.html>

90 Paul Hagstrom, "The Fiscal Impact of Refugee Resettlement in the Mohawk Valley" (June 2000) available at https://www.hamilton.edu/levitt/pdfs/hagstrom_refugee.pdf

91 Migration and Policy Institute Fact Sheet: "The US Record Shows Refugees Are Not a Threat" (Oct. 2015) available at <http://www.migrationpolicy.org/news/us-record-shows-refugees-are-not-threat>

92 Available at <https://www.dhs.gov/executive-orders-protecting-homeland>

The order was immediately the subject of multiple legal challenges, which represented 80% of the 50 lawsuits filed against the President in his first two weeks in office.⁹³ The first decision came on the evening of January 27, 2017, when the court for the Eastern District of New York ordered a nationwide ban on removals of anyone from the affected seven countries who possessed valid travel documents to the United States.⁹⁴ On February 3, 2017 a district court in Washington issued a temporary restraining order (TRO) that prevented the enforcement of the order anywhere in the country.⁹⁵ The TRO was affirmed by the 9th Circuit Court of Appeals on February 9, 2017.⁹⁶ As of the time of the writing of this report, the White House was preparing another executive order that would be address the deficiencies noted by the Courts in the prior order.

THREATS TO DACA

During the campaign, President Trump repeatedly promised to rescind President Obama's 2012 and 2014 Executive Actions called Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of American Citizens and Lawful Permanent Residents (DAPA), programs that provide deportation relief, work permits and access to certain public benefits for immigrants who came to the US before the age of 16, or who are the parents of US citizens or green card holders and meet other criteria.

DACA alone has provided deportation relief and temporary eligibility to work to more than 720,000 individuals nationwide and nearly 40,000 in New York State.⁹⁷ Although DACA and DAPA were explicitly exempted in the implementation memorandum published by DHS on February 21, 2017, prior threats to rescind DACA, and the apprehension and detention of two DACA recipients by ICE have caused many to fear for the future of the program.

93 Joel Rose "After Two Weeks in Office, Trump Faces More Than Fifty Lawsuits" National Public Radio (Feb. 2, 2017).

94 *Darweesh v. Trump*, (E.D.N.Y., Case No. 1:17-cv-00480).

95 *Washington v. Trump* (W.D. Wash., Case No. 2:17-cv-00141)

96 *Washington v. Trump* (9th Cir., Case No. 17-35105)

97 USCIS Statistics: Deferred Action for Childhood Arrivals Process (through FY 2016, 4th Quarter) available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals>

FRAUD

Dishonest individuals take advantage of immigrants and their desire to live in the United States by promising to help them receive legal status in exchange for exorbitant sums of money. Fraudulent service providers charge high fees and either do not do any work, or file applications to obtain benefits for which the client is not eligible. Often, fraudulent providers are not lawyers and are not authorized to provide legal services.

In New York State, it is a crime to provide immigration legal services if you are not a lawyer or someone authorized by the U.S. Department of Justice to help immigrants.⁹⁸ In the best case, the victim of immigration fraud only loses money, while in the worst case, the individual may lose their ability to apply for immigration status in the future, and sometimes may be placed in removal proceedings and deported.⁹⁹

Scammers often take advantage of uncertainty during periods of change in immigration law or policy.¹⁰⁰ and recently, fraudulent providers have taken particularly acute advantage of the dysfunction in our immigration system to prey upon immigrant communities.¹⁰¹ Asylum fraud and the so-called 'ten year visa' both manipulate the backlog in the immigration court system to provide clients with temporary work permits without advising them about the consequences of filing these applications, or even that they have been filed.¹⁰² As the current administration continues to target immigrants, reports of immigration legal service fraud have already increased.¹⁰³

98 USCIS Statistics: Deferred Action for Childhood Arrivals Process (through FY 2016, 4th Quarter) available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-821d-deferred-action-childhood-arrivals>

99 Id.

100 Id.

101 Id.

102 Id.

103 Advocate Interview: Camille Mackler (New York Immigration Coalition)

RECOMMENDATIONS

1. Make sure funding goes to strengthen the field: Current funding sources are insufficient to meet the crushing need immigration legal service providers are facing, or to provide help to the thousands of New Yorkers now living in daily fear. Providers with experience and expertise in areas of immigration law and policy are best positioned to provide the required services in necessary timelines. As much as possible, funding should go directly to providers to maximize use of the trust they have within their communities as well as their intrinsic knowledge of the immigration system.
2. Invest in capacity building: Geographic, linguistic, and other barriers prevent immigrants from accessing vital legal services. Funding should enable organizations to make capital investments in areas surrounding 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.
3. Support investments in 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 teaching junior staff, or from properly supervising pro-bono attorneys. With investments specifically in 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.
4. Invest in supportive 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 as a Second Language classes (to help immigrants become self-sufficient). Investment in these services would allow attorneys to focus on legal work.



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