

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

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

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

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

Through this work, the NYIC and its staff are intimately aware of the obstacles immigrants and their advocates and legal representatives face in accessing justice, one of which has been the overly-complex and opaque network of courts that New Yorkers must navigate in order to obtain legal relief. This system has proven itself far too complicated for immigrant New Yorkers, and daunting to communities that feel targeted by federal government policies. The language access issues, in particular, compound the fear and often end up dissuading immigrants from approaching the court system at all. The current court structure is also time and resource intensive for immigration attorneys, who must spend hours educating various judges and clerks in multiple courts as to the realities of our immigration laws. Finally, as a result of the overly complicated learning process to appear in State courts, many immigration and pro-bono attorneys simply chose not to do so, creating additional burdens in providing immigration legal representation and obstacles for community members in accessing such help at a time where federal policies have made that work already far more challenging. My testimony below will address each of these challenges and how they are addressed by the current proposal in turn.

Demographics of New York's Immigrant Communities

There are over an estimated 4 million immigrants living in New York, approximately 1 million of whom are undocumented.¹ Immigrant New Yorkers make up nearly 25% of the state's population², with a third of all immigrants living in "mixed status" families or households, where one or more member may be a US Citizen or green card holder. Over three-quarters of New York's immigrants are between the ages of 16 and 64³. They account for nearly 25% of homeowners in our State, nearly 10% of college students, and nearly 20% of US Citizen New Yorkers have at least one immigrant parent⁴. Immigrants are our neighbors, our community members, our colleagues. They account for 77% of the taxi drivers that keep our cities moving, 65% of the house cleaners and maids that help us manage our households and keep our hospitality industry running, 63% of nurses, psychiatric workers, and home health aids that care for our sick and elderly, and 55% of construction workers that keep our state growing and strong⁵.

Immigrant Communities' Fear Of Government Institutions

Immigrants often have a deep distrust of government institutions and court systems, mainly because many come from countries with weak or non-existent governments and where law enforcement and judicial systems, especially, are prone to corruption. By way of example, nearly half of undocumented immigrants in New York come from Mexico (18%), China (10%), Ecuador (7%), the Dominican Republic (7%), and El Salvador (6%)⁶. For each of these countries, the US Department of State has found widespread corruption, with numerous examples of government corruption over the years (Mexico and Ecuador)⁷, court judgments often going un-enforced, especially against powerful entities (China)⁸, government officials engaging in corruption with impunity even after court findings of such conduct (Dominican Republic)⁹, and impunity remaining endemic and court judgments inconsistent (El Salvador)¹⁰. Since the 2016 elections and a rise in anti-immigrant policies from the US Federal Government, advocates, local governments and local law enforcement have noticed a marked increase in the distrust immigrant communities show towards our country's institutions as well.

The proposal to simplify New York State's Court System will help counter these trends and

¹ Migration Policy Institute State Immigration Data Profile for New York, available at: <https://www.migrationpolicy.org/data/state-profiles/state/demographics/NY> (last accessed November 19, 2019)

² New American Economy State Profile: New York available at : <https://www.newamericaneconomy.org/locations/new-york/> (last accessed November 19, 2019)

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Migration Policy Institute Profile of the Unauthorized Population: New York available at: <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/NY> (last accessed November 19, 2019)

⁷ US Department of State Country Report on Human Rights Practices: Mexico (2018) and US Department of State Country Report on Human Rights Practices - Ecuador (2018)

⁸ US Department of State Country Report on Human Rights Practices - China (2018)

⁹ US Department of State Country Report on Human Rights Practices - Dominican Republic (2018)

¹⁰ US Department of State Country Report on Human Rights Practices - El Salvador (2018)

increase immigrants' confidence in accessing the courts. The current, overly-complex networks, each with their own rules and processes to initiate and navigate cases, appear labyrinthian to most New Yorkers. To immigrant communities, they are one more administrative complex built to dissuade and confuse, where their claims may be lost or misunderstood, and where their rights will be overshadowed by administrative back and forth. More streamlined rules will lead to less complexities and more operational transparency, which will make it easier for advocates and attorneys to explain how courts work to their immigrant community members. This, in turn, will make the Courts appear more accessible and inviting and increase confidence in the system as a whole.

Language Access

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

In the last few years, the New York court system has significantly improved language access services to Limited English Proficient (LEP) litigants. For example, the court system has begun translating many manuals and pamphlets instructing pro se litigants on how to bring or defend a lawsuit.¹¹ Judges have also been provided with "bench cards" to better assist them in interacting with LEP litigants,¹² while the New York courts websites provide a glossary of housing court terminology in Simple Chinese, and orders of protection are translated into Spanish.¹³ Yet, even with these promising initiatives, there is a shortage of court interpreters in New York courts. A recent report, produced by Legal Services NYC, notes that although New York State court rules mandate interpretation for LEP and deaf or hard of hearing litigants in civil and criminal cases, there is a lack of qualified, certified interpreters in the court system and in clerks offices. There are also few signs in languages other than English to assist LEP litigants navigate courthouses and understand courthouse procedures.¹⁴

The dearth of proper language services for immigrants creates many delays and adjournments in court for LEP litigants.¹⁵ Frequently, courts schedule an interpreter, who does not speak the proper language or dialect of the non-English speaking litigant.¹⁶ At other times, courts only have access to

¹¹ Interpreting Justice: Language Access in the New York Courts, Legal Services NYC (December 2016).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Interpreting Justice: Language Access in the New York Courts, Legal Services NYC (December 2016).

¹⁶ *Id.*

interpreters who speak a certain language during specific days of the month.¹⁷ 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 services providers to provide interpretation and translation services to ensure that immigrants can adequately present their cases in court and at government agencies. In a recent survey of immigration legal service providers conducted by the New York Immigration Coalition, the top languages in which attorneys provided services to immigrant clients included Spanish (52% of providers), French (25% of providers), Russian (11%), Mandarin (11%), and Arabic (11%). Additionally, 33% of the legal services providers reported using telephone interpretation services as an added way to provide immigrant clients with language services.

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

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

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

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

Under the current system, there are significant inconsistencies between the various courts as to how these types of cases are handled. Advocates spend an enormous amount of time training court

¹⁷ *Id.*

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

A simplified court system would help ensure that policies are carried out evenly across all courts, and in accordance with one consistent interpretation of New York law, further ensuring equality across all communities. This is particularly crucial at a time when immigration authorities have increasingly routinely appeared to arrest non-citizens at their state court hearings, creating a chilling effect on immigrant New Yorkers' ability to exercise their rights to defend themselves against criminal charges or to avail themselves of the protection of our courts¹⁸. Immigration attorneys and prosecutors alike have noted examples of criminal defendants not appearing in court to obtain adjournments in contemplation of dismissal orders, dismissal of charges, or mount their defense out of fear of being arrested by immigration enforcement. Given the dramatic impact criminal convictions, or even simple arrests, can have on an individual's immigration status, it is imperative that immigrant New Yorkers have faith that the state courts are not part of the federal deportation pipeline.

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

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

¹⁸ Immigration Defense Project: "Impact of ICE in courts" available at <https://www.immigrantdefenseproject.org/wp-content/uploads/Safeguarding-the-Integrity-of-Our-Courts-Final-Report.pdf>

Conclusion

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

Respectfully submitted,

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