

Access to Representation

Ending State Support for Deportation, Detention and Mass Incarceration: Campaign for Access, Representation, and Equity (CARE) for Immigrant Families

Unlike in criminal proceedings, where defendants will be given a lawyer if they cannot afford one, immigrants do not have a right to a government-paid attorney in immigration court. Those who cannot afford to hire a private attorney must find a nonprofit able to help or represent themselves. But immigrant New Yorkers lack affordable legal services, especially outside of New York City. Approximately 50,000 people in New York lack representation. Moreover, the uncertainty around continued funding for immigration legal service providers has made it hard for organizations to hire and retain staff, and to guarantee clients they will have lawyers for the duration of their cases. Having a lawyer represent someone in deportation proceedings makes an enormous difference. 60% of undetained immigrants with lawyers win their cases, versus 17% who don't have legal help. Detained immigrants with legal representation are 10 times more likely to win their cases compared to those who lack counsel, and are seven times more likely to be released from custody than those without counsel.

New York State can make sure that no immigrant fails to access the defenses and protections available to them under the law solely for lack of an attorney to make their case. The State should do its part to provide due process, fairness, and access to justice for immigrants facing deportation proceedings. By becoming the first state to enact a right to counsel for immigrants and, in the meantime, by renewing and adding to its initial investment, New York can once again show itself to be a leader in enacting commonsense policies that uplift all New Yorkers.

Recommendations:

Pass the first-in-the-nation Access to Representation Act to ensure a right to counsel for all immigrants facing deportation in New York (S999/A170)

and guarantee that no one must defend themselves against a trained government lawyer alone to protect themselves and their families from deportation. The Access to Representation Act will mandate that the State appoint a lawyer to anyone in New York who has a case before an immigration judge or who has a basis to appeal or request to reopen an old deportation order, and meets income requirements. The law will also guarantee stable funding streams for immigration legal services, easing uncertainty on both the legal representatives and their clients.

Allocate \$100 million in the FY24 New York State budget to meet urgent and long-term legal and social service needs of immigrant families in New York.

- Invest \$55 million in launching the first year of the Access to Representation Act. This law establishes a critically important right to legal representation in deportation proceedings – the current crisis exposes a longstanding gap between the legal representation that people need, and what is available.
- Increase immigration legal services funding, including the budget line known as the Liberty Defense Project, to \$35 million from its current \$12 million. This additional funding will ensure that existing programs including the New York Immigrant Family Unity Project (NYIFUP), have the resources they need for training, recruitment, and ongoing representation.
- Allocate \$10 million to meet urgent needs of asylum seekers and other immigrants: Ensure that New York is equipped to welcome immigrants newly arriving in our state by investing \$10 million in emergency legal and social service support to meet the urgent needs of the newest New Yorkers as they establish stability and safety in this state. These services would help meet immediate needs of communities in crisis, including legal screenings, triage and referrals, know your rights, and volunteer trainings.