

## **Access to Representation Act S7261 / A9125**

As immigration enforcement reaches an all-time high in New York State, communities and their advocates have increasingly looked for ways to protect and defend individual members from the deportation pipeline. A report released by the New York State Bar Association in June, 2019 highlighted the impact that having legal representation can have on someone's ability to defend themselves against deportation charges. Specifically, the report showed that only 15% of never-detained unrepresented immigrants won their cases, versus 78% of never-detained immigrants who were able to have an attorney represent them. Similarly, 32% of represented, detained immigrants were able to win relief from deportation versus merely 3% of un-represented, detained immigrants. The report also noted that, according to a statistical survey of the outcomes of the New York Immigrant Family Unity Project (NYIFUP), the pioneering public defender model for detained immigrants launched in 2013 in New York City, having an attorney increases the likelihood of success and relief from deportation by 1,100%.

In response to the needs articulated by community members, and based on the evidence highlighted in the NYSBA report, the New York Immigration Coalition is working on legislation to create a statutory right to counsel for all immigrants, a summary of which is included below.

### **Who is covered by the bill?**

Any New Yorker who makes less than 200% of the federal poverty guidelines (\$51,500 for a family of four) and is either currently in removal proceedings in front of an immigration judge or already has a deportation order with a basis to challenge that order. Individuals who do not live in New York, but have a strong connection to New York, could also be given an attorney on a case-by-case basis. The right to a lawyer will apply when a New Yorker is going through a deportation hearing before the immigration courts located in New York or New Jersey, or when a Department of Homeland Security office located in New York is moving forward with expedited removal. The right to a lawyer will also apply in family court for minors who need special findings orders, in federal district courts in connection with habeas petitions to challenge someone's detention, and in appeals before the Board of Immigration Appeals, the federal District or Circuit courts and the US Supreme Court.

### **What kind of services will these lawyers provide?**

Lawyers will be required to provide consultations, ongoing continuous legal representation throughout someone's case before the immigration courts, representation on any appeals to the Board of Immigration Appeals (BIA) or federal courts, filing of motions to reopen or reconsider when there is a basis to file such a motion, representation before family court to obtain special

findings orders for Special Immigrant Juvenile Status (SIJS) applications, and Habeas petitions to challenge someone's detention.

## When will the right begin and when will it end?

Someone will have a right to a lawyer as soon as the Notice to Appear (NTA) is filed in immigration court to start a deportation case against the person. If someone already has a deportation order, they will have a right to a lawyer as soon as Immigration and Customs Enforcement (ICE) begins to try to enforce the order. The right to a lawyer will end once the case is ended by the last court hearing the case, once there are no more possible appeals or basis to request re-opening of the deportation order, once the person moves out of New York or has an income too high to qualify them for a free lawyer, or when they decide they no longer want to work with a state-appointed lawyer.

## Who will oversee the system to appoint lawyers?

The system would be administered by the Office for New Americans (ONA), an agency within the Department of State, in conjunction with an advisory committee of nine (9) members that would be appointed by the Governor, the Senate, and the Assembly. ONA, working with the Advisory Committee, will have flexibility in the partnerships and systems it develops to connect individuals to lawyers. The Governor would appoint five (5) individuals to the Advisory Committee, including an equal number of representatives from non-profit legal service organizations and community based organizations, as well as one private attorney. The Speaker of the Assembly and the President of the Senate would each get two appointments. At a minimum, the Advisory Committee will advise on case rates, ways to get services to underserved areas, community engagement efforts, ensuring language access, and other efforts by the state to support those facing deportation. The Advisory Committee will issue its own yearly report. Committee members will serve two-year terms without compensation.

## What Data Will the Administrator Collect?

In order to analyze and improve the provision of legal services for immigrants in New York ONA will establish performance measures and collect non-confidential information about the types of cases, case loads, financial and in-kind costs and resources, outcomes, and other information and will use this data. ONA will be required to provide a yearly report to the Governor and legislature on the program.

## How Will These Legal Services Be Funded

The law directs New York to provide enough funding in its budget to carry out this right, and also allows ONA to seek private sources of funding. However, it also explicitly prevents New York

City or other localities with existing funding streams from stopping to pay for those services.