

Testimony by the New York Legal Assistance Group (NYLAG)

before the NYC Council Committee on Immigration regarding:

**Preliminary Budget for Fiscal Year 2025, the Preliminary Capital Plan for Fiscal Years 2024-2028,
and the Fiscal 2024 Preliminary Mayor’s Management Report.**

March 5, 2024

Chair Avilés, Council Members, and staff, good afternoon and thank you for the opportunity to speak to the Immigration Committee about the Preliminary Budget for Fiscal Year 2025. My name is Melissa Chua, and I am the Co-Director Immigrant Protection Unit at the New York Legal Assistance Group (NYLAG). NYLAG uses the power of the law to help New Yorkers in need combat social, racial, and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence survivors, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

We appreciate the opportunity to testify to the Immigration Committee regarding the budget for Fiscal Year 2025. NYLAG is proud to operate in a City that values its immigrant citizens and supports much-needed services to them through its annual budget. Long-term, continued investment in legal services – including the deep expertise housed within our organizations -- is crucial to meeting the current and future needs of immigrant families in New York. We cannot treat the question of legal services and supports for new New Yorkers as a temporary issue. Instead, we support the investment in expertise, programming, and services to continue to meet the ongoing and ever-changing legal needs of the immigrant community in New York City. Legal service providers need funding that meets our costs and supports our ability to provide innovative, culturally and linguistically competent services, and assist immigrants in navigating the complexities of immigration legal system.

The Current Immigration Landscape

Although New York City has welcomed large numbers of migrants seeking refuge in the last nearly two years the lack of significant new investment in legal services organizations has resulted in a diminished ability to leverage our deep expertise to serve newly arrived immigrants and the overstretching of existing programming at the expense of existing clients.

There has been a large influx of migrants at the Southern Border since the Spring of 2022. While initially the majority of families and individuals coming to New York from the Southern Border were initially from Venezuela, the newly arrived immigrants now come from a number of different countries from all over the world, including Ecuador, Peru, Colombia, Afghanistan, Mauritania, Guinea, Russia, and Burkina Faso. The vast majority of these families and individuals are granted entry into the United States in order to begin removal (deportation) proceedings and are asked to report to Immigration and Customs Enforcement (ICE). However, the breakdown of the ICE surveillance programs and the inability of the Immigration Courts to process and schedule hearings for these migrants has created an urgent crisis in the immigration legal field. These individuals and families are desperate for information to translate documents, guide them as to the requirements and next steps, and advise them how to navigate this broken system. Many migrants are rapidly approaching their one-year anniversary in the United States and must file an application for asylum to preserve their right to seek protection. Where and how they can file this complex twelve-page English only application is a major source of confusion as most people are in a procedural limbo and will need legal assistance in filing. Obstacles to quality, free legal advice and guidance will cause families to seek information from poorly skilled or unscrupulous providers who prey on their desperation.

Continued Investment in Legal Expertise and Long-Term Programming

To meet the incredible need for legal services, a vision for the long-term that invests in flexible programming and expertise is vitally important. Last year, in response to the large numbers of newly arrived immigrants, community-based organizations and legal Service providers, NYLAG among them, came together to develop innovative programming to maximize the limited legal resources and personnel and to provide community oriented, high quality legal assistance. One of the programs that was developed

during this process was the Pro Se Plus Project (PSPP), which was established through private investment and now receives support from the City and State. The PSPP, a collective of organizations including NYLAG, African Communities Together, Central American Legal Assistance (CALA), Catholic Migration Services (CMS), MASA, UnLocal, and Venezuelans and Immigrants Aid (VIA), aims to empower recently arrived migrants with the knowledge and tools to advocate for themselves throughout their immigration process and mobilizes community supporters. The PSPP believes that while full representation remains essential, *pro se* assistance that is robust and delivered by lawyers and non-lawyers who have meaningful training and supervision can fill some of the gaps in services. PSPP is also founded on the belief that while *pro se* application assistance is an important initial step, it is only the first part of a long and complicated process during which continued support and information are crucial. Since its inception at the end of last year to date, PSPP has provided information, training, and *pro se* assistance to over 10,000 immigrants and supporters throughout New York City.

PSPP aims to empower the communities we serve through multiple means. The first is robust community education in multiple languages about the U.S. immigration system, and basic services and requirements that intersect with that system (school enrollment, worker's rights, health insurance, identification). Because of deep confusion about the process, and inconsistencies in paperwork and the changing landscape of how migrants are processed, broad group orientations and general information packets are a good starting point for all migrants but are insufficient to properly address the needs. Noncitizens want and need individual guidance and counsel on their options, next steps, and process. The PSPP is centering community-based organizations such as Venezuelan Immigrant Assistance (VIA), MASA, and African Communities Together to provide linguistically and culturally appropriate orientation, information, and guidance. Alongside these community education materials, the PSPP provides trainings to mobilize community supporters to grow the community of individuals supporting newly arrived immigrants.

However, legal orientation must be accompanied by a renewed investment in robust advice and counsel, *pro se* application assistance, and ongoing removal defense representation. Although the number of immigrants in removal proceedings has skyrocketed to more than one million pending cases nationwide

while funding for removal defense legal services has largely remained static. As has often been reported, having legal representation makes a significant difference in the outcome of an asylum claim. It is critical that the city re-invest in attorneys to provide robust advice and counsel and full representation to not only this population of newly arrived asylum seekers but the thousands of other New York-based asylum seekers who have been on the waitlists of non-profit organizations for years. These are not legally distinct populations, and the need should be addressed holistically. Additionally, with the ever-fluctuating policies at the border, there are likely to be additional waves of migrants coming into the U.S. and to New York in the upcoming months and years and any programming and services should be forward looking and flexible to address future needs as well as the needs from migrants who migrated to New York City this summer.

To respond to this everchanging and growing need, alongside community education, PSPP provides screenings for full immigration relief, robust *pro se* application assistance done by volunteers under highly experienced immigration attorneys, and connection to full representation where possible. Since beginning our programming earlier this year, PSPP has provided full legal screenings to approximately 2000 individuals and families to provide options for immigration relief, triage cases with upcoming deadlines, and provide individualize advice and counsel for large numbers of migrants. PSPP also assists with simple services such as change of addresses and changes of venue and gives guidance and information on the difference between an ICE check-in and an Immigration Court hearing, guides people on how to find out about upcoming court hearings, and eligibility criteria for asylum and other immigration relief. In addition, while PSPP is supported by immigration attorneys with deep asylum experience, we also leverage the existing knowledge in our organizations to screen for all forms of relief, including U and T visas, family-based immigration relief, and TPS, connecting newly arrived immigrants with services for each type of relief where appropriate.

PSPP also works with volunteers, pro bono attorneys, and community supporters to prepare asylum applications *pro se*. However, PSPP believes the initial application for asylum is merely the first step to securing long term stability and protection for families. After assisting with the preparation and filing of

the *pro se* application, PSPP then supports in the critical next steps of an asylum applicant's journey, understanding that many newly arrived immigrants will have to navigate the entire process alone. PSPP answers follow-up questions about filings, provides guidance and support through the next phases of the immigration process, and, when the time is appropriate in a case, connect applicants when possible with full representation. To support asylum applicants through their immigration process, PSPP provides robust trainings about asylum law, immigration court and its processes, and are in the process of producing supporting materials for filings to be made broadly available. We also leverage our deep immigration expertise to provide continuing support for later applications that applicants may become eligible for, such as employment authorization and TPS. For example, as soon as the redesignation of Temporary Protected Status (TPS) was announced for Venezuelan nationals, PSPP staff began reaching back out to *pro se* applicants we had served to inform them and start scheduling them for assistance applying for TPS. Similarly, PSPP staff tracks the filing of asylum applications, reaching back out to individuals who are nearing 150 days after filing for asylum to let them know they can return to PSPP providers to apply for employment authorization.

Finally, legal triage and *pro se* assistance will not be able to fully address the entire need. There needs to be increased and continued investment in full representation for individuals and families who cannot proceed *pro se* who will need to challenge a removal order or appeal a case. There needs to be additional programming and funding for other models of service and traditional full representation. Moreover even with the introduction of the redesignation of TPS for Venezuelans, continued investment in asylum application assistance, including full representation is absolutely crucial. While TPS is an important protection from removal, it is as its name plainly indicates – temporary. While TPS can be extended theoretically every 18 months, it does not provide the holder any permanent protection from harm, nor does it allow for the permanent reunification of families. Moreover, while many of the recent asylum seekers are Venezuelan nationals who can benefit from TPS, it goes without saying that there are thousands of asylum seekers in New York City who are not Venezuelan nationals and cannot benefit from TPS. Given the diversity of the current migrant populations, case postures, and treatment by federal policies, there is no

one size fits all. New York City is fortunate to have a breadth of legal service providers with different talents, personnel, and areas of expertise and the City would be wise to encourage creativity and diversity in programming to serve existing needs and anticipate future needs.

Defunding and Diluting Existing Programs Contrary to Expert Opinions and Community Need

NYLAG has already seen many newly arrived immigrants who were ordered deported without the opportunity to present their claim for asylum or have been ordered deported after *pro se* hearings during which there were serious due process and other legal issues. Moreover, with the issues concerning mail created by the recent 30/60 day shelter rules, we anticipate that the number of individuals who are ordered deported *in absentia* for failure to receive notice of their hearings will increase over the next year. To preserve the rights of these asylum seekers and ensure that they continue to be able to work legally within the United States, an appeal or motion to reopen must be timely filed. However, these motions and appeals require a specific area of expertise that has been developed over the last five years of RRLC's post-order work.

Since July of 2022, NYLAG and its partners in the Rapid Response Legal Collaborative (RRLC) have already filed more than 140 Motions to Reopen and appeals, the majority of which have been for newly arrived migrants. One young man was ordered removed after he failed to appear for a hearing. The Immigration Judge had pressured him to appear with a lawyer and he could not find a legal service provider with capacity. He was then detained by ICE at his surveillance check-in. Fortunately, NYLAG was able to get his deportation halted at the last minute, get his case reopened by the Immigration Judge, and secure his release from ICE custody. In a number of other cases, NYLAG and the RRLC partners represented individuals who were ordered removed *in absentia* after having being denied entry to the immigration court by guards outside the courts. Indeed, of the over 50 cases filed by the RRLC for individuals ordered removed without due process over the past year, the vast majority – 82% – were reopened, a testament to the crucial expertise needed to respond to these cases in a short period of time.

Similarly, NYLAG has been inundated with requests to represent *pro se* applicants for asylum who have been ordered deported by judges in hearings that are rife with due process and other legal issues. In

one such case that NYLAG took on, a *pro se* survivor of domestic violence in her home country was denied asylum, notwithstanding the fact that the immigration judge found her to be credible. In that case, the asylum applicant attempted to testify about the horrific abuse that she had encountered at the hands of her husband but was cut off by the judge and had her application for asylum denied, in contravention of clear caselaw. NYLAG took the case on post-order for appeal and is currently providing full representation on her case.

Flexible and sustained funding for legal services providers must also include continued funding to provide legal services to individuals post removal order. We anticipate that *in absentia* orders will only continue to be issued in record numbers because of administrative errors due to the large number of immigrants being routed to removal proceedings and non-receipt of mail due to changing right to shelter policies, as immigrants in proceedings will certainly continue to fail to receive important notices necessary to ensure their attendance in court. Indeed, NYLAG and the RRLC partners continue to be inundated with requests for assistance for motions to reopen and rescind *in absentia* orders for newly arrived asylum seekers. Similarly, we anticipate that the need to handle appeals for *pro se* litigants will only increase. Timely appeals will be necessary to protect their rights and also to ensure that they can continue to have work authorization. Notwithstanding the growing need for post-order work for newly arrived asylum seekers, this past year, RRLC's funding was cut and we anticipate that it will be cut again, affecting our ability to utilize our deep expertise to act quickly and effectively in these spaces. Sustained and flexible funding is necessary to ensure the ongoing preservation of asylum seekers' rights and ensure their path to employment authorization and protection from harm.

Continued Support for Representation of Immigrants through IOI

NYLAG has always respected the City's valuing full legal representation through the Immigrant Opportunities Initiative administered through OCJ. Despite the current influx of recently arrived migrants to New York City, the need for full representation for immigrants facing removal proceedings should continue to be prioritized through this contract. NYLAG, along with our colleagues in other legal service institutions, fear that *pro se* and brief services will be placed at the forefront of this project when it

is up for renewal this fiscal year, especially following the recent announcement that the City intends to separate contracts for brief legal services and full legal representation in the housing context.

Principally funding brief or *pro se* immigration legal services at the expense of full representation will not serve the City's interest in moving people out of shelter. While the filing of asylum applications and the subsequent application for employment authorizations may help many people start working, most unrepresented people in removal proceedings will ultimately be ordered deported.¹ Sometimes the proceedings will last several years, but many people in shelters have been placed on accelerated dockets and many will be ordered deported before or shortly after they receive work authorization. People with deportation orders, by and large, are not physically removed from the United States. Rather, they lose their work authorization and lose almost any chance of becoming documented in the future. Therefore, they will end up staying in—or returning to—shelter indefinitely. People who are granted asylum, however, gain access to federal refugee resettlement assistance—which includes federal rental assistance, public benefits, and other supportive services—that will help them leave shelter immediately and permanently.²

Filing asylum and work authorization applications is not sufficient to successfully address the crisis our City is currently facing. The City must simultaneously fund full and competent litigation of those asylum applications to reliably move recently arrived immigrants out of the shelter system and towards stability. The best and most enduring method for alleviating pressures on the New York City shelters is to provide dedicated full representation to vulnerable asylum seekers to help them achieve a grant of asylum and access to federal benefits.

¹ Access to Counsel | National Immigrant Justice Center (immigrants are five times more likely to prevail in immigration court with a lawyer; lawyers are even more critical for successful outcomes for vulnerable populations)

² orr_asylee_fact_sheet.pdf (hhs.gov) (asylees and their family members have access to federal benefits including cash assistance, medical assistance, employment preparation, job placement, English language training, and other services offered through the Office of Refugee Resettlement as well as state benefits, disability benefits, and other assistance.)

Reconceptualization of Proposed Funding for ActionNYC

The Action NYC project which has served New York City's immigrant communities through community-based organizations and city institutions such as libraries, schools, and hospitals, is being re-named the Legal Support Centers and a recent concept paper makes significant changes to the existing ActionNYC model, undermining the purpose and integrity of the program, and if implemented as currently conceived, will be a disservice to immigrants. NYLAG has both overall concerns with the model proposed and is extremely disappointed that this concept paper, as confirmed by MOIA at the November 28, 2023 information session, eliminates the ActionNYC in Institutions programs, including ActionNYC in Hospitals, Schools and Libraries.

The model proposed in the Legal Support Centers concept paper is wholly inadequate in responding to the needs of the NYC's immigrant community and impedes the goals of this funding and programming to develop the city's infrastructure to bring legal services and other supports closer to immigrant communities and maximize available city resources. At present, the ActionNYC program provides comprehensive legal assistance which includes preparing and filing affirmative applications with USCIS, representing clients in their USCIS interviews, responding to requests for evidence, and challenging erroneous denials. Under the proposed Legal Support Centers model, program requirements will increase while funding and resources remain level. Additionally, the proposed goals and deliverables over-emphasize brief legal services to the detriment of full representation matters. Finally, a number of new deliverables separate from legal work including conducting off-site legal screening clinics, conducting numerous presentations, and recruiting, training, and overseeing volunteers, will burden the one staff attorney on each contract and will detract from performing direct client services.

Since 2017, NYLAG's LegalHealth Unit has been proud to partner with MOIA through the ActionNYC in Hospitals program. LegalHealth is the nation's largest Medical-Legal Partnership (MLP), with 34 hospital and community health partners across NYC, Long Island, and Westchester, including New York City's public hospital system and other safety net hospitals. Over the past six years, we have grown our immigration services programs at NYC H+H Lincoln, Elmhurst, and Gouverneur Hospitals

and built a deeply knowledgeable and committed staff. MOIA, in collaboration with NYC H+H, selected these health care locations because of their geographic location in relation to high density of immigrant populations. Through ActionNYC in Hospitals, we have been a pivotal resource for hospital patients and community members seeking to access immigration legal services, and key resource for the advancement of health equity for immigrants in NYC. The need for this program is clear. Since 2017, ActionNYC in Hospitals clinics have served a total of 9,058 clients, broken down as follows: 3,600 at NYC H+H Elmhurst Hospital; 2,723 at NYC H+H Gotham Gouverneur Health; and 2,735 at NYC H+H Lincoln Hospital. Legal Services provided include a wide range of affirmative immigration filings, including medical deferred action, visa extensions for medical purposes, VAWA and U visa applications, SIJS and other immigration filings.

The elimination of ActionNYC in Hospitals will leave many vulnerable patients without access to time-sensitive legal services. ActionNYC in Hospitals serves especially vulnerable immigrant New Yorkers, including many who are in-patient or otherwise medically compromised and therefore unable to navigate the community legal centers model as proposed, including recently arrived migrants. At the same time, patients present with increasingly complex immigration matters. In addition to representing clients in medical deferred action, visa extensions for medical purposes, VAWA and U visa application, SIJS, and other immigration filings for hospital patients at our ActionNYC hospital clinics, our staff have also developed skills and knowledge in facilitating Medicaid enrollment for formerly undocumented clients in order to access the necessary lifesaving treatment.

Increase Cost of Legal Services Due to 30/60 Day Shelter Rule

Despite the fact that shelter in New York City is legally mandated to be provided to every person, regardless of immigration status, the City has been consistently failing to provide, or providing sub-standard, shelter to recent arrivals since that time, most recently introducing the 30/60 day rule. While cruel and dehumanizing, the 30/60 day rule will also impact the ability for new immigrants to obtain and maintain status, and squander money invested to put immigrants on the road to financial stability. Much of immigration law relies upon the receipt of physical mail, including the courts and USCIS, the part of the federal

government that processes benefits such as Temporary Protected Status (TPS) and employment authorization documents. Missing a piece of mail may mean that an individual fails to receive important notices concerning their appearances in court, fingerprints, or time sensitive responses to applications, resulting in deportation orders and denied applications. Holding mail at a location other than where the individual is located is not a viable solution, as individuals may have to travel long distances to check their mail and much of the mail from immigration is extremely time sensitive. Moreover, the processes of updating one's address with the immigration courts and USCIS are complicated and arcane, often taking weeks to take effect. The housing and address instability caused by the 30/60 day rule will result in, at best, unnecessary wasted efforts to constantly update addresses for those subject to the rule. At worst, the 30/60 rule will result in thousands of missed hearings and notices, squandering the vast resources the City has already invested in application assistance, and exposing newly arrived immigrants to deportation and further exploitation.

NYLAG has already seen a number of cases impacted by the 30/60 day rule. In one case, notwithstanding the fact that a *pro se* client had updated the immigration court with their new address, they failed to receive the notice of an upcoming hearing. Although NYLAG was able to help the client determine their next hearing date and attend, had it not been for our intervention, the client would have missed their hearing and been deprived of their work authorization and opportunity to have their asylum claim heard. NYLAG staff has also had to invest resources in helping clients change addresses with USCIS and immigration court when they are displaced, squandering already limited resources.

Restoration of Funding for Ukrainian Nationals

This past year, the Mayor's Office of Immigrant Affairs precipitously cut more than \$1 million and completely eliminated the Ukraine Response Initiative, a collaborative between NYLAG, Catholic Charities, New York Immigration Coalition, and community organizations providing a host of support services for recently arrived Ukrainians. As of July 3, 2023, more than two hundred thousand applications were filed by individuals sponsoring displaced Ukrainians through the Uniting for Ukraine program. Of the approved

Ukrainian parolees, 35,052 of those individuals are in New York – more than any other state and 68% of those (23,717) reside in New York City-primarily Brooklyn’s greater Coney Island area, which is the top resettlement destination for displaced Ukrainians seeking refuge in the U.S.

Since the start of the invasion, URI has screened New York’s Ukrainian population, provided legal consultations and assistance with application for Temporary Protection Status (TPS), Employment Authorization Documents (EADs), and Advance Parole (AP) documents so they could travel to see their relatives displaced throughout Europe. Through URI, NYLAG conducted 39 clinics, at least 20 trainings, and consulted or assisted 748 clients through our clinic program alone. Moreover, while MOIA announced that the URI program would be completed defunded at the start of fiscal year 2023 but NYLAG and its partners have an ethical and moral obligation to continue to serve the thousands of Ukrainians who are need assistance with renewing TPS, renewing EADs, extending parole, among other legal services. We have sought some private funding but have mostly continued this work without financial support.

I want to once again take the opportunity to thank Chair Aviles and the members of the Committee for their exceptional leadership and commitment to overseeing issues related to immigration in New York City, and for working to schedule this hearing today. I welcome the opportunity to discuss any of these matters with the Committee further.

Respectfully submitted,

Melissa Chua

New York Legal Assistance Group