

2018 Hawaii Access to Justice Conference

Addressing the Desperate Legal Needs of the Immigrant Poor

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It is a great honor to participate in this year's Access to Justice conference, a nationally prominent series, at a great law school, the William S. Richardson School of Law. I am profoundly grateful to Dean Aviam Soifer, a renowned leader in legal education, who lives the ideal of with justice for all, for inviting me, along with Robert LeClair and Carol Muranaka, who have been simply extraordinary guides and counselors. I am privileged to be here, with so many committed members of the legal profession in Hawaii, dedicated to equal justice for all. Chief Justice Recktenwald has been a national leader in the push to access to justice. Former Justice Simeon Acoba's Access to Justice Commission has been of critical importance; I have read your strategic plan with admiration. I see my friend of several decades, Lawrence Okinaga, a distinguished lawyer and citizen devoted to the public good, a former president of the American Judicature Society, under whom I served as a director, and whose kindness for some thirty years, long before I became a judge, I so deeply appreciate. I see also, my colleague on the federal bench, Judge Richard Clifton, whose work I very much admire. I want also to pay special thanks to Professor Calvin

G.C. Pang and John Egan for helping to educate me about Hawaii and access to justice for immigrants.

All of us here have a common concern: ensuring adequate legal representation of the immigrant poor. A courtroom has multiple players with different roles, but all would agree that adequate legal representation of the parties is essential to the fair and effective administration of justice. Deficient representation frustrates the work of courts and ill serves litigants. All too often, and throughout the country, courts that address immigration matters must contend with such a breakdown in legal representation, a crisis of massive proportions, with severe, tragic costs to immigrants and their families. For our nation's immigrants, the urgent need for competent counsel in deportation proceedings has never been more critical. This nation's immigrant representation problem is twofold: 1) there is a profound lack of representation, indicated by the fact that 40 percent of noncitizens in deportation proceedings do not have representation nationwide; and 2) in far too many deportation cases, the quality of counsel is substandard. Immigrants are easy prey for unscrupulous lawyers, who gouge their clients out of scarce resources and provide shoddy legal services. Nationwide, some 63% of immigrants do not have counsel, there being no right to appointed counsel in immigration court. For low income immigrants, having an attorney is the difference between being allowed to stay in this country and suffering catastrophic deportation. The statistics are staggering: asylum-seeking immigrants without a lawyer prevailed in only 13% of their

cases, while those with a lawyer prevailed in 74% of their cases; detained immigrants without lawyers prevailed in only 4% of their cases, while 48% prevailed with lawyers. In other words, unrepresented immigrants are being deported not because they didn't have a legal right to remain, but, as Professor Peter Markowitz reminds us, because they couldn't vindicate that right without a lawyer.

In the last several years, New York has made enormous strides with respect to the representation of detained immigrants, and the New York experience is an example of what can be done when there is the resolve and dedication to do something to meet the need. At the same time, substantial gaps in representation remain, especially for those who are not detained, and there must be a continuing, sustained effort to provide legal counsel for those individuals. What follows is a description of my efforts, working with the legal community within and without government and philanthropy, to help improve the administration of justice for non-citizens, to help address a grave problem of profound human consequence that has tested the federal courts' ability to render justice. I offer some background on the representation issue, and give a sense of the activities of two entities I had the privilege of creating -- the Study Group on Immigrant Representation, based in New York City, and the Immigrant Justice Corps, the nation's first and only national fellowship program for recruiting and training lawyers to provide immigrant representation for poor and low income individuals, a fellowship program that is transforming the quality of the immigration bar and which in four years has served more than 43,000 immigrants and their families.

My views are shaped by experience as a judge on the United States Court of Appeals for the Second Circuit where our workload nearly doubled as a consequence of an avalanche of immigration cases (ranging from thirty-two to forty-eight cases per week at the peak). My perspective is also informed by new research, described below, on immigrants and the impact of representation on case outcomes. I speak to you, I should emphasize, in an individual capacity, not as an official representative of my Court. In my work on immigrant representation, I have been guided by Canon 4 of the Code of Conduct for United States Judges, which, to the extent that a judge's time permits and impartiality is not compromised, encourages judges to contribute to the law, the legal system, and the administration of justice.

In the past dozen years, the number of immigration cases—that is, proceedings in which the federal government seeks to deport an individual residing in the United States—has increased dramatically. These cases begin when the Department of Homeland Security (“DHS”) charges a noncitizen as deportable. The case is then heard by an immigration judge in immigration court, based in the Department of Justice (“DOJ”). In adjudicating the matter, the immigration judge may conduct a trial-like hearing. The immigrant is entitled to defend him or herself but, because deportation charges are not criminal, the government does not provide the immigrant with a lawyer. Because many immigrants cannot afford to pay thousands or tens of thousands of dollars

to an attorney, a significant portion of them must go it alone, trying to navigate our complex immigration system without the aid of legal counsel.

If either the immigrant or DHS want to challenge the immigration judge's decision, the next step is to appeal to the Board of Immigration Appeals ("BIA"), which is an administrative adjudicatory body within DOJ that oversees the immigration courts. The party making that appeal must explain why the immigration judge's decision was legally or factually wrong; for immigrants who may lack education, language skills, and legal training, appealing without the help of counsel is a tall order.

These cases reach federal courts of appeals like mine if, after the BIA decides the case, either the immigrant or DHS appeals again. Again, whichever party makes the appeal must explain why the BIA's decision was legally or factually wrong. There are procedural hurdles associated with navigating this process, facts to marshal into evidence, and complexities of law that can make this process difficult for those without legal training.

Until the 2000s, immigration cases were a small percentage of the workload of my court, the Court of Appeals for the Second Circuit (which encompasses New York, Connecticut, and Vermont). In 1999, when I began working as an appellate judge, the immigration docket was a minuscule percentage of our workload. But within a few years, that changed dramatically. In the mid-2000s, between 2005-2008, the immigration docket approached 40% of the Second Circuit's workload. The massive meant that our Court had to develop procedures to manage such cases. The Second Circuit resolved some 24,350 immigration cases between October 1, 2002 and December 31, 2017.

By way of context, nationwide, in 2000, 255,420 cases were initiated in immigration courts and 28,104 cases were appealed to the BIA.ⁱ This has virtually doubled since then. This means that each immigration judge must review nearly 1,500 cases each year, which amounts to more than five cases each business day. Consequently, the burdens on all actors in the immigration system are now extraordinary and the challenges for any judge, however conscientious, to dispose of all these cases with due care are overwhelming. As Chief Judge John M. Walker, Jr. observed in 2006 in testimony before the Senate Judiciary Committee: “I fail to see how Immigration Judges can be expected to make thorough and competent findings of fact and conclusions of law under these circumstances.”ⁱⁱ

In order to reduce a backlog of some 56,000 cases that had accumulated nationally by 2002, the BIA began disposing of a significant number of the appeals through stripped-down procedures, such as allowing single Board members, rather than the usual three-member panels to adjudicate cases, and to permit single Board members to decide appeals through summary dismissals and affirmances without issuing an opinion explaining their reasoning. As BIA decisions greatly increased, the number of petitions for review in federal court grew exponentially and began to overwhelm our dockets. My colleague Judge Jon O. Newman put it this way: “It’s as if a dam had built up a massive amount of water over the years, and then suddenly the sluice gates were opened up and the water poured out.”ⁱⁱⁱ Indeed, by 2005, appellate courts were receiving about five times as many petitions for review as they were before 2002. As Judge Walker remarked: “What we thought was a one-time bubble has turned into a steady flow

of cases, in excess of 2,500 a year, and about a 50% increase in our total annual filings.”^{iv} Most of these cases were asylum matters, which involve claims that the individual will be persecuted if he or she returns to the home country and therefore require careful review of often lengthy records. .

The vast majority of these appeals are concentrated in two circuits—half are located in the Ninth Circuit, which covers Arizona, California, Hawaii, Montana, Nevada, Oregon, and Washington, and twenty percent are located in the comparatively smaller Second Circuit. The massive increase in the immigration docket of the Second Circuit, which approached forty percent of the caseload of an already busy court, meant that our Court had to develop procedures to manage such cases. This system, devised largely by Jon Newman^v under the chief judgeship of John Walker, continued under the chief judgeship of Dennis Jacobs, and continues today. In essence, the Second Circuit in October 2005 instituted a non-argument calendar (“NAC”) for immigration cases, running parallel to the regular argument calendar (“RAC”). Under that procedure, three-judge panels of our Court, adjudicated between thirty-two and forty-eight NAC cases per week in the first year, in addition to one or two immigration cases per sitting day on the RAC. This review was especially important with respect to decisions that are affirmed by the BIA without opinion—a practice that has since largely been curtailed. The Court of Appeals became effectively the first line of review (however limited, for reasons I explain below), in a system where the immigration judges and the BIA, are under extraordinary pressure to resolve cases. Pursuant to the NAC/RAC process, the Second

Circuit resolved more than 17,400 immigration cases between January 1, 2006, and July 30, 2013, and the immigration case backlog has been essentially eliminated.

The sheer volume of immigration cases gives a sense of the substantial impact on the work of an appellate court, but more needs to be said about the task of the judge in those cases and the effects of inadequate counsel on the decisional process. As an appellate judge, immigration cases tend to come before me in a legally circumscribed context. An appellate judge's role is to review the administrative record and decision; the Court is largely constrained to defer to the agency's ruling, absent legal error or lack of substantial evidence supporting the decision. What record is made by the immigrant, therefore, and what legal points are preserved for review in the record are critical to the outcome, especially where the immigrant has the burden of coming forward with evidence and the burden of proof of entitlement to status or relief. Even if an appellate judge would have ruled differently in the first instance, he or she has no authority to do so now. Thus, quality legal representation in gathering and presenting evidence to the immigration judge or BIA in a hearing context and the skill in advocacy as to any legal issues and their preservation for appeal can make all the difference between the right to remain here and to being deported. It also means that getting effective counseling *before*, not *after*, petitioning for relief or getting immersed in proceedings provides the best chance for fleshing out the merits of the case, avoiding false or prejudicial filings, and securing lawful status or appropriate relief.

Immigrants are largely a vulnerable population of human beings who come to this country in the hopes of a better life, often entering without knowledge of the English language or American culture, in economic deprivation and in fear. Too often, the lack of adequate counsel for immigrants all but eliminates their hopes to experience the American dream, to live with their families openly and with security, to contribute to their new country. This failure should be a concern for all of us: I think we can all imagine our own ancestors or the ancestors of friends and relate to the anxieties of today's newcomers. We are a nation of immigrants, whose contributions have been vital to whom we are and hope to be. As the son of an immigrant from Nazi Germany and the grandson of immigrants from Russia, I know from my own experience about family members who came to this country, dedicated themselves to this country, and made our great nation even stronger. I am sure that all of you here have similar stories.

Thinking back on the origins of the Study Group on Immigrant Representation, I was not in search of this problem of the woeful lack of immigrant representation. Rather, it found me. In all too many immigration cases, I could not help but notice a substantial obstacle to the fair and effective administration of justice: the frequently deficient counsel

of represented non-citizens. For instance, the briefs of the lawyers too often were boilerplate submissions, with little attention to the facts of the individual cases: sometimes the briefs were virtually identical, with only the name changed. At times, the name in the body of the brief did not even match the name of the immigrant because the lawyer had not bothered to change the name of the party. Far too frequently, the lawyers had failed to keep their client apprised of developments in the case, documents the client was required to file, and even hearing dates which their client was obligated to attend (but missed because of the lawyer's lapse).

For immigrants, the stakes could not be higher: these cases determine whether they can remain in the country or whether they will be separated from their loved ones—often including their children—and barred from returning for many years. I often had the feeling that if only the immigrant had competent counsel at the very beginning of immigration proceedings (where the record is made with lasting impact) long before the case reached the court of appeals (where review is limited) the result might have been different, and the non-citizen might have secured relief that would have allowed her to remain in the United States.

The importance of quality representation is especially acute for immigrants, not only because they stand to lose what Justice Brandeis described as “all that makes life worth living,” but also because there is a wide disparity in the success rate of those who have lawyers and those who proceed without counsel. For example, several studies have

shown that asylum seekers are much more likely to be granted asylum when they are represented in immigration proceedings. Immigrants can secure their own legal representation in immigration proceedings, but generally “at no expense to the Government.”

Hoping to raise awareness and to effect change, at the invitation of Peter Eikenberry, I took the occasion of the 2007 Marden Lecture of the New York City Bar to challenge the New York legal establishment and others interacting with that establishment (law firms, bar associations, nonprofits, corporate counsel, foundations, law schools, state and local government, the media, the immigration bar, senior lawyers and retirees, providers of continuing education and training, and think tanks) to increase efforts to help address the large—and largely unmet—legal needs in non-citizen communities. In the course of my research, I realized that the problem was even worse than I had experienced. I had been struck by the poor quality of lawyers who argued before me in the Court of Appeals. But even more troubling was the total absence of any legal representation for the vast number of immigrants who never get to appeal to my court. I stated there what I reiterate here: justice should not depend upon the income level of immigrants. A lawyer’s duty to serve those unable to pay is not an act of charity or benevolence, but rather one of professional responsibility, reinforced by the terms under which the state has granted to the legal profession effective control of the legal system.

When I gave the Marden Lecture, I wasn’t sure what the response would be, but the reaction was, and has continued to be, incredibly supportive. In 2008, I started a

working group, the Study Group on Immigrant Representation, with the counsel of several outstanding lawyers including Pete Eikenberry, Bob Juceam, Jojo Annobil, Michael Patrick, Peter Markowitz, Nancy Morawetz, Careen Shannon, Claudia Slovinsky, Lewis Liman, Judge Denny Chin, William Kuntz (joining before he became a federal judge), and Immigration Judge Noel Brennan. The Study Group is made up of some 70 lawyers from a range of firms; nonprofits; bar organizations; immigrant legal service providers; immigrant organizations; law schools; federal, state, and local governments; and judicial colleagues including Judge Chin and Judge Kuntz. It has been an honor to work with lawyers so devoted to helping those in need and it has been wonderful to see their eagerness in a city where over one-third of our community is foreign-born. Study Group work has focused on three areas: 1) increasing pro bono activity of firms, especially at the outset of immigration proceedings; 2) improving mechanisms of legal service delivery; and 3) rooting out inadequate counsel and improving the quality of representation available to non-citizens. Our diverse group gathers together in the early mornings at the courthouse in downtown New York City to share ideas, collaborate on initiatives, and help think through solutions to challenges to immigration representation. The industriousness, intelligence, follow-through, and accomplishment of group participants have been remarkable and exciting. I have been inspired by the range of the Study Group's activities and how its members -- some who might be adversaries in court -- come together around the core value we all share: safeguarding the integrity, fairness, and efficiency of our system of justice--which depends on adequate and effective counsel. In the course of the decade, in arranging

these meetings, I have been aided by the organizing talents of Rozaly Kozbelt, Sonia Lin, and for the last several years, Lindsay Nash.

Our Study Group method is to bring together key participants from the federal, state, and city governments, the private bar, bar associations, nonprofits, legal service providers, immigrant organizations, philanthropies, and law schools to foster the fair and effective administration of justice. This interdisciplinary approach has been fruitful and energizing; we have produced reports, pilot projects, colloquia, and training sessions. Justice Ginsburg and Justice Stevens have publicly praised our project, and Justice Breyer and Justice Sotomayor have also offered encouragement. Our Study Group concept is serving as a model for other jurisdictions, seeking to find ways to provide adequate counsel for immigrants.

Over the past decade, Study Group work has included numerous initiatives:

Data-Driven Study:

- The New York Immigrant Representation Study, a foundational Study Group initiative, began in 2010. We hoped to document the areas of the most urgent representational needs of indigent non-citizens facing removal in New York, with the eventual goal of advancing recommendations about necessary resources and strategies. Our findings about the scope of the need were published in 2011, and were followed by a report in 2012 that set forth a solution to address this need: the creation of a system of institutionally provided counsel for those facing deportation.

Increasing Representation:

- **New York Immigrant Family Unity Project (NYIFUP)** -- in just over five years since the New York Representation Study, the New York Immigrant Family Unity Project (NYIFUP) came into being. It is the nation's first public defender system for immigrants facing deportation. NYIUP, fueled through the efforts of the Vera Institute, has pioneered universal representation for detained indigent immigrants in deportation proceedings in New York. Vera has projected that 48 percent of cases will end successfully for NYIFUP clients, an 1,100 percent increase from 4 percent success rate for unrepresented cases before NYIFUP. The NYIFUP model, as we will hear today, is a model being replicated throughout the country through the SAFE cities program.
- **Immigrant Justice Corps (IJC)** provides legal representation to poor immigrants. Termed "groundbreaking" by the New York Times, IJC is the only national fellowship program wholly dedicated to recruiting and training young lawyers who make immigration law their careers. IJC's solution to the representation crisis is to populate the immigration bar with well-trained and high caliber attorneys, creating a generation of leaders with a life-long commitment to immigrant justice. Each year, IJC recruits and trains talented law graduates (Justice Fellows) and college graduates (Community Fellows) for a two-year fellowship and pairs them not-for-profit legal service providers and community based organizations. IJC also leverages the latest technologies and fosters a culture of innovative thinking that will produce

new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity. A national program, IJC operates in New York, Connecticut, New Jersey, and Texas, with additional expansion plans underway. In little more than three years, since September 2014, IJC has assisted some 42,000 immigrants and their family members, with a 93% success rate in cases completed. To date, there have been 141 Fellows -- At present, there are some 77 Fellows in the Field -- 57 Justice Fellows and 20 Community Fellows -- working with 39 host organizations; 96 percent of IJC fellows stay in the field. IJC is having a transformative effect, remaking the bar, providing skilled lawyers to populate non-profits/NYIFUP supported programs, and making all the difference for immigrants and their families facing deportation. In April, 2018 Justice Ginsburg met with the Fellows of the Immigrant Justice Corps, and Justice Sotomayor did so in the summer of 2017. That so many of the participants in today's program consist of Immigrant Justice Corps Fellows is testament to the program's extraordinary impact.

Other Study Group representation initiatives

- Partnered with bar organizations to recruit more pro bono lawyers
- Working with other organizations, devised training sessions for deferred law firm associates so that they could spend their deferral years representing immigrants.

Young lawyers would thus enter law firm practice with an understanding of immigration law and a commitment to immigration pro bono cases.

- Created a pilot project to foster greater law firm pro bono activity. The idea was to challenge the private bar to take on more pro bono asylum cases, as well as increase firms' ability to do so by creating a greater capacity to screen potential clients, conduct intake interviews, place new pro bono cases with law firms, and mentor the attorneys in those cases. This pilot project served as a model for an expanded program and encourage action by other foundations and firms.

Facilitating Collaboration

- The Study Group promoted the creation of law school clinics, the leading example being the Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law. The Cardozo Law clinic has been so successful that it has recently received significant multi-year funding from our philanthropic partners for its work.
- Working with then Attorney General Eric Holder, Senator Charles Schumer, and others in addressing the immigrant representation problem; and in 2010, the Attorney General announced the creation of a Legal Orientation Program in New York, which gives not-for-profit providers greater opportunities to advise immigrants in groups and individually.
- Study Group members have joined with state, local, and federal government to examine how consumer law could be used to attack the problem of fraudulent legal services.

- In response to federal efforts to address immigration fraud, the Study Group, together with the American Immigration Lawyers Association and other organizations, sponsored two days of intensive training in immigration law for nonimmigration lawyers.
- Recognizing the substantial unmet needs in upstate New York, Study Group members have supported the work of Albany Law School and Prisoners' Legal Services of New York in their joint project to provide pro bono representation at the Ulster, New York Immigration Court.

Publications and Events:

- The Study Group organized two major conferences, one at Fordham Law School and one at Cardozo Law (the latter with retired Justice John Paul Stevens), which led to a series of studies and reports published in the *Fordham Law Review* and *Cardozo Law Review*. Reporting in *The New York Times*, *New York Daily News*, the *New York Law Journal*, and *El Diario* has brought our activities to the attention of a larger audience.

Although much more could be said about each of these initiatives, I will now focus on three in particular that have been particularly innovative, which I mentioned earlier: (1) the New York Immigrant Representation Study; (2) the New York Immigrant Family Unity Project; and (3) the Immigrant Justice Corps.

(1) The New York Immigrant Representation Study

The first of these is the New York Immigrant Representation Study (NYIRS). In the immigration law field, it was a common refrain that having an attorney makes a significant difference for people who risk being deported. But, as my great mentor Senator Daniel Patrick Moynihan said, “You’re entitled to your own opinion, but not to your own facts.” In that spirit, I believed that the Study Group needed to assemble comprehensive data so that the problem could be better defined and addressed. To that end, Study Group members undertook the NYIRS, which was chaired by Professor Peter Markowitz of Cardozo Law, Professor Stacy Caplow of Brooklyn Law School, and attorney Claudia Slovinsky. The study, conducted with the support of the Leon Levy Foundation and the Governance Institute, was a two-year project in collaboration with the Vera Institute of Justice. The two reports that were issued as a product of that study provide, for the first time ever, comprehensive data about the scope of the immigrant representation challenge in New York (published in the 2011 report) and a plan for addressing it (published in the 2012 report). I will review a few of the findings from the 2011 report that most strikingly show the depth of the problem:

- **A significant percentage of immigrants appearing before the New York immigration courts do not have representation.**
 - 60 percent of immigrants who were detained during the pendency of their deportation proceedings did not have counsel by the time their cases were completed.
 - 27 percent of immigrants who were *not* detained during the pendency of their deportation proceedings did not have counsel by the time their cases were completed.

- According to the providers surveyed, cases in which noncitizens are held in detention during the deportation proceedings were least served by existing immigration attorneys, particularly non-profit or pro bono resources.
- **The DHS's detention and transfer policies created significant obstacles for immigrants facing removal to obtain counsel.**
 - DHS transferred almost two-thirds (64 percent) of those detained in New York to far-off detention centers (most frequently in Louisiana, Pennsylvania, and Texas) where they faced the greatest obstacles to obtaining counsel, a practice which subsided when DHS changed its detainee transfer policy in 2012.
 - Individuals who were transferred elsewhere and who remain detained outside of New York were unrepresented 79 percent of the time.
- **The two most important variables affecting the ability to secure a successful outcome in a case (defined as relief or termination) are having representation and being free from detention.**
 - The absence of either factor in a case—being detained but represented or being unrepresented but not detained—decreases the success rate dramatically. When immigrants are detained and unrepresented, the rate of successful outcomes decreases even more substantially. The success rates are as follows:
 - Represented and released or never detained: 74 percent have successful outcomes.
 - Unrepresented but released or never detained: 13 percent have successful outcomes.
 - Represented but detained: 18 percent have successful outcomes.
 - Unrepresented and detained: 3 percent have successful outcomes.

It was clear from the data that having a lawyer makes a substantial difference. But the report also found that deficient performance by lawyers providing deportation defense services create more problems for non-citizens facing deportation. In its survey, New

York immigration judges rated nearly half of all legal representatives as inadequate in terms of overall performance, meaning that the attorneys did not investigate the case, could not respond to questions about the facts or the law, did not meet deadlines to file documents, and sometimes even failed to appear in court.

The study also showed that the two greatest impediments to increasing the availability and quality of legal services for immigrants are a lack of funding and a lack of resources to build a qualified core of experienced attorneys who can provide deportation defense. These dramatic findings underscore the immensity of the task before us and help us understand where to focus resources most immediately.

The second part of the New York Immigrant Representation Study, released in November 2012, was devoted to developing concrete proposals to address the immigrant representation crisis in New York. The study's steering committee (a group of experts from diverse legal institutions) was tasked with using the data from NYIRS's first report and other available information to make realistic short- to medium-term proposals. The committee set forth a blueprint for a system whereby a small group of competitively selected providers would deliver public defender-type universal representation to indigent detainees facing deportation.

The project they proposed would ensure universal representation, with screening for income eligibility only; as well as providing basic support services such as translation and interpretation services, social work, and mental health services. It would also be implemented through existing institutional providers to minimize administrative complexities and would work in cooperation with other key institutional actors such as

DHS and the immigration court system. Finally, it would be overseen by an organization that could provide centralized oversight and project management, and would derive its funding primarily or significantly from a reliable public revenue stream.

(2) New York Immigrant Family Unity Project

The New York Immigrant Representation Study's recommendation for a program of government funded detained defense has become a reality in the five years since the Study's recommendation. New York State is today the first state in the nation to provide such support through the Vera Institute-administered New York Immigrant Family Unity Project (NYIFUP). Thanks to support from two successive New York City

Council Speakers, Christine Quinn and Melissa Mark-Viverito, in New York City, NYIFUP has been representing financially eligible, otherwise unrepresented detained immigrants since 2013 with funding from the City Council . During Speaker Mark Viverito's term, funding went from \$500,000 to \$4million.

New Yorkers in all upstate immigration courts will also now be eligible to receive legal counsel during deportation proceedings. The 2018 New York State budget included a grant of \$4 million to significantly expand the [New York Immigrant Family Unity Project](#) (NYIFUP),. NYIFUP is a collaborative of Vera, the Northern Manhattan Coalition for Immigrant Rights, The Center for Popular Democracy, Make the Road New York, and the Immigration Justice Clinic of Cardozo Law School. Representation is provided in New York City by Brooklyn Defender Services, The Bronx Defenders, and

the Legal Aid Society; at Batavia by the Volunteer Lawyers Project of the Erie County Bar Association; and at Ulster by Prisoners' Legal Services of New York.

New York, as Oren Root, the director of Vera's Center on Immigration and Justice and a great leader in the NYIFUP project, has observed, has become the first state to ensure that no immigrant will be detained and permanently separated from his or her family solely because of the inability to afford a lawyer. Several cities and states, he also notes, have recently begun efforts to design similar programs.

(3) Immigrant Justice Corps

If immigrants and the administration of justice are to be well-served, then there must be not just representation, but quality representation. The problem is both the lack of lawyers and the absence of quality representation. A 2011 survey of New York immigration judges, undertaken for the NY Immigration Representation Study, showed that the judges viewed a shocking 47% of lawyers to be inadequate. To meet that challenge, to provide a new generation of quality lawyers, I called for the creation of the Immigrant Justice Corps (IJC), which was launched in January 2014 with substantial planning support and initial funding from the Robin Hood Foundation, with special appreciation to Veyom Bahl and Eric Weingartner. The Immigrant Justice Corps, a national program, is the largest expansion of immigration legal services in New York City's history and the country's only fellowship program exclusively dedicated to

meeting the urgent need for high quality legal assistance for immigrants fighting deportation, and those seeking lawful status or a path to citizenship. IJC's Executive Director, is Jojo Annobil, a noted and inspiring immigration lawyer of twenty-five years experience,

In less than four years, IJC, termed "groundbreaking" by the New York Times, has been populating the immigration bar with well-trained and high caliber attorneys, creating a generation of leaders with a life-long commitment to immigrant justice, leveraging the latest technologies and fostering a culture of innovative thinking that will produce new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic justice. In little more than three and one half years, IJC has assisted more than 42,000 immigrants and their family members with a 93% success rate in its cases. Every year, IJC recruits and trains talented law graduates (Justice Fellows) and college graduates (Community Fellows) for a two year fellowship and pairs them with leading not-for-profit legal services providers and community based organizations. Justice Fellows provide representation in complex immigration matters. Community Fellows conduct , screen and provide assistance with completing immigration benefit applications for low income immigrants. Presently there are 77 Fellows (57 Justice Fellows and 20 Community Fellows) which have substantially increased the capacity of 39 not-for-profit organizations throughout New York, and in New Jersey, Connecticut, and Texas, with further national expansion underway in Baltimore, Maryland and Denver, Colorado, and several other states/cities. Hosts include the Legal Aid Society, Catholic Charities of the Archdiocese of New York, The Door,

Brooklyn Defender Services and non-traditional partners like the New York Public Library, the Brooklyn Public Library. With its rapid response team, IJC Fellows have also travelled to Karnes, Texas, to provide assistance to more than 1000 detained Central American mothers and children (referred to as Adults with Children (ACWs)). IJC is developing plans to replicate its model in other parts of the country. IJC is currently staffed with a core team of five fulltime employees.

I cannot adequately convey how extraordinary the Immigrant Justice Corps Fellows are. They are selected after a highly competitive selective process, include many first generation immigrants and bilingual graduates from the country's top law schools and universities. The Fellows bring their unique experiences and skills to the critical legal services they provide. Gloria Chacon, for example, born in Honduras to a single mother, fled her country and her family's political persecution, came to the United States where an unscrupulous immigration attorney took financial advantage of her mother; Gloria battled cancer, went to law school, and is now realizing her dream to represent immigrant children and their families because of the opportunity that the Immigrant Justice Corps gave her. "I remember every child and every family I have helped, I carry all of their stories with me." She was named New Yorker of the Week by a New York television station . Luis Mancheno, an Immigrant Justice Corps Fellow, born in Ecuador, similarly was featured in the New York Times, for his work as an immigration attorney. "My job is to give voice to all the Luises out there, who are completely alone, completely resourceless, and who are fighting a gigantic system." Sam Dillon, a two time Pulitzer prize winning reporter for the New York Times, decided to change careers and enroll in

law school after reading the Study Group reports, and, he, too, is serving as an Immigrant Justice Corps lawyer. Victor Cueva, originally from Lima Peru, grew up as an undocumented immigrant in Hudson Valley, overcame great obstacles, including crooked lawyers who cheated his family, and graduated summa cum laude from college, returning recently to deliver a stirring commencement speech: “Never give up,” he said, “never forget where you come from.” Equally inspiring are IJC Community Fellows, recent college graduates of such schools as Princeton, Yale, Harvard, Berkeley, Brown, John Jay and Hunter, many whom themselves are immigrants, eager to give back to their communities, situating themselves as Fellows in non-profits, in community based sites like public libraries which immigrants frequent. To know all these Fellows, Justice Fellows and Community Fellows, is to be encouraged about our country’s future.

IJC has gone from an idea to a fully-formed nonprofit – championed across the country as a new model for serving immigrant families – in no small part to extensive financial and in-kind support from the Robin Hood Foundation, JPB, Bloomberg, Leon Levy, Grove Family Foundation, Oak, Spitzer Foundation and other private philanthropy. In sum, IJC accomplishments to date include:

- IJC has trained some 141 Fellows – (Justice Fellows) lawyers and Community Fellows (college graduates) since its inception in 2014.
- IJC fourth class of Justice Fellows and Community Fellows arrived in September 2017, with there now being 57 Justice Fellows and 20 Community Fellows in the field.
- More than 42,000 immigrants and their families have been served.
- Fellows win 93% of the cases they take on that have been completed, avoiding deportation and keeping families together.

- 96% of the Fellows stay in the immigration field.
 - IJC Community Fellows have filed more than 4,000 benefit application with a success rate of 95%. The Community Fellows have also saved low-income clients nearly \$2 million dollars by requesting application fee waivers.
 - IJC has increased capacity of some 39 host organizations
 - IJC has expanded to 4 states and several cities therein: NY (New York City, Albany, Buffalo, Kingston, Lower Hudson Valley- New York), New Jersey (Newark), Connecticut (New Haven), Texas (San Antonio), and in September 2018 will expand to three additional states, Florida, Maryland and Virginia.
 - IJC has lawyers permanently working at the Karnes Family Detention Center assisting mothers with children from Central America to make their credible fears claims and connect them to IJC Fellows upon release to apply for asylum.
 - IJC is considering requests to expand or replicate its model to cities where there is an acute need for representation including Atlanta, Georgia; Berks, Pennsylvania; Denver, Colorado; Ann Arbor, Michigan; Las Vegas, Nevada and Houston, Texas. I might add, it would be great if IJC could have a fellow in Hawaii; it would be wonderful if that could work out.
 - IJC staff members have trained lawyers in law firms to undertake *pro bono* representation.
 - IJC has raised \$15 million from national and local foundations including the Robin Hood Foundation, JPB Foundation, Bloomberg Philanthropies, Leon Levy Foundation, Grove Family Foundation, New York Community Trust, Anne and Bernard Spitzer Foundation, Pinkerton Foundation, J.M. Kaplan Fund, Oak Foundation, the Carnegie Corporation, Open Society Foundation and Draper Richards Kaplan Foundation.
- Several individual donors also invested in IJC in its first years.
- IJC Board includes William Zabel (chair), founding partner of Schulte Roth& Zabel; Robert Morgenthau, former District Attorney of New York County; Professor Alina Das of NYU School of Law; former immigration judge Sarah Burr; Steven Kuhn, formerly of Pine River Capital; Judge Robert Katzmann; and Stephanie Khurana, managing director of Draper Richards Kaplan.
 - IJC has been featured in major news outlets (e.g., New York Times, NY Daily News, NPR, LA Times)

The IJC program has many benefits. Primarily, of course, it makes a fundamental difference in the lives of immigrants and their families. Legal status is the gateway for immigrants seeking to be lifted from poverty and to enter the mainstream of economic and social life. The Corps' very existence raises awareness of the crisis of representation and encourages efforts to meet that crisis. It facilitates the resolution of cases and promotes the fair and effective administration of justice, thereby aiding already busy courts. For law schools, the Corps provides new ways of thinking about how to provide legal services while at the same time enhancing job prospects for graduates at a time when the law market is tightening.

By populating the field of immigration law with a cadre of dedicated lawyers, the Corps will change the immigrant representation arena in much-needed ways. It is creating leadership for the next generation to help meet the legal and policy challenges in the years ahead. It summons lawyers to serve the noblest purposes of the law: to assist those in dire straits and in this way address a national problem. For young lawyers, the experience has a lasting impact on their careers as they experience how human beings benefit from their counsel and how families in danger of being torn apart can stay together. Some Immigrant Justice Corps lawyers will stay in the nonprofit world, while others who decide to enter private practice or work in government may become advocates for their firms' increasing pro bono involvement. They will also be leaders of individual philanthropic giving as their careers progress. They will contribute to public policy discussions with sophistication in the years ahead; and their own experience will add to a body of knowledge that will enrich future research and analysis.

What can law firms do? To address the critical need for representation, IJC hopes to sustain and expand operations through a mix of philanthropic, government, and law firm support. The Federal Bar Council has sponsored an IJC fellow as has the law firm of Fragomen Del Rey (with appreciation to Austin Fragomen, Michael Patrick and Careen Shannon), contributing greatly to IJC's program. IJC is working towards adding to the number of firms, supporting fellows. Executive Director Jojo Annobil is also in discussion with firms interested in employing IJC Fellows, post-fellowship, who might join the firm as associates and provide direct representation as well as supervise the firm's pro bono immigration representation effort. Several distinguished members of the bar have worked to with IJC to promote IJC activities, including former ABA president James Silkenat; William Zabel, Robert Morgenthau, Alina Das, Robie Spector, Sarah Burr, Stephanie Khurana, and Robert Juceam.

Today we gather to discuss a whole range of issues having to do with the administration of justice and the realization of equal justice under the law. I look forward to listening and learning.

I thank you for your attention and your great courtesy.

ⁱ *Statistical Yearbook 2001*, prepared by the Office of Analysis and Planning for the Executive Office for Immigration Review, Department of Justice (“EOIR”) (Falls Church, VA, 2002) , A-1, E-1.

ⁱⁱ *Immigration Litigation Reduction?: Hearings Before the S. Comm. on the Judiciary*, 109th Cong. 6 (2006) (statement of the Honorable John M. Walker, Jr., United States Court of Appeals for the Second Circuit). Although very substantial challenges remain within the immigration adjudication system, there have been improvements in recent years. There has been some increase in resources, though the need is still vast. There are far more precedential opinions by the BIA, which aid the federal courts in their deliberations. Largely gone are single BIA decisions, and, as I indicated above, the BIA no longer issues summary affirmances.

ⁱⁱⁱ “Appeals Courts Flooded with Immigration Cases,” All Things Considered, *NPR*, Nov. 19, 2004, <http://www.npr.org/templates/story/story.php?storyId=4179087>.

^{iv} *Immigration Litigation Reduction Hearings Before the S. Comm. on the Judiciary*, 109th Cong. 5 (2006) (statement of the Honorable John M. Walker, Jr., United States Court of Appeals for the Second Circuit).

^v Judge Jon O. Newman, “The Second Circuit’s Expedited Adjudication of Asylum Cases: A Case Study of a Judicial Response to an Unprecedented Problem of Caseload Management,” *Brooklyn Law Review* 74 (2008): 429.