

August 21, 2023

Dear Governor Hochul:

We write to you as 29 New York-based and national legal and community-based organizations working with and addressing the needs of immigrant victims and survivors of crime, domestic violence, sexual assault, human trafficking, forced marriage, and child abuse (“immigrant survivors”). We represent the needs of green card holders, asylees, DACA beneficiaries, undocumented individuals, and applicants for immigration status and protections, including survivor-based immigration protections. Together, we call on you to swiftly sign the Fair Courts for Immigrant New Yorkers bill (A.3057 / S. 5826), which will strengthen the constitutional rights of immigrants, including immigrant survivors of gender based violence, to receive accurate legal advice in criminal court. Supporting expanded access to accurate information about immigration consequences of criminal pleas aligns with our central goal of eliminating oppressive structures that erect barriers to justice and cause further harm to survivors of violence.

Currently in New York, minimal protections only apply to felony cases, in which a criminal court judge is statutorily required to provide notification that a guilty plea could result in negative immigration consequences. This is insufficient protection for many immigrant survivors charged with lower-level offenses that carry serious immigration consequences. Moreover, in practice, New York advocates report that court notification varies greatly in clarity and effectiveness, often causing confusion to immigrants and undermining their own communication with counsel.

First, it is crucial that the court provide immigrant survivor defendants notification in misdemeanor and even violation cases, given the wide misperception that lower-level offenses will not cause immigration issues. Second, it is precisely this notification that ensures that noncitizen defendants will have clear and accurate information about the impact of a conviction on their immigration status. The Fair Courts for Immigrant New Yorkers bill ensures that the notification given to defendants is accurate, and would ensure the noncitizen defendant obtains the immigration advice to which they are constitutionally entitled from defense counsel regarding the immigration consequences of a potential plea.

For immigrant survivors of gender-based violence facing the criminal legal system, the due process benefit of this bill is especially meaningful. As part of the cycle of violence and abuse, survivors often experience arrest, prosecution, conviction, and incarceration. This happens for a multitude of reasons. As a tool of power and control, abusers may fabricate charges against survivors, and many are often more adept at manipulating the criminal legal system. As survivors experience social isolation, lack of access to resources, and threats of retaliation or harm, they are often unable to effectively defend themselves and the plea bargain system encourages the acceptance of convictions out of a sense of desperation. Survivors are often forced into unlawful conduct by abusers and traffickers, such as forced prostitution, drug sale, and theft. Survivors

often experience post-traumatic stress, depression, and anxiety, which can lead to negative police interactions and convictions. Immigrant survivors of gender based violence may have acted in self-defense against their abusers, but were treated as the primary aggressor.

Moreover, the racially disproportionate arrest, conviction, and sentencing patterns endemic in the United States also impact survivors who are Black, Latinx, Asian and Pacific Islander, from the Middle East, Indigenous, and people of color (including LGBTQ survivors of these groups), and makes the availability of accurate and timely advisals crucial for noncitizen survivors to thrive. Mandatory arrest laws disproportionately burden survivors of color and LGBTQ survivors of domestic violence incidents. Black survivors are less likely to be believed and supported than their white counterparts, leading to greater incarceration and disenfranchisement from services and mechanisms of stability, including immigration relief. Trafficking survivors as well are frequently arrested for drug possession and other offenses related to coping with traumatization. The lack of access to supportive services that is exacerbated by barriers to immigration relief further increases noncitizen survivors' vulnerability to criminalization. The continued negative impacts of convictions on survivors include barriers to employment, public assistance, safe housing, family unity and parental rights.

The Fair Courts for Immigrant New Yorkers bill takes the long overdue step of ensuring that judges use standardized language to ensure that immigrants have an opportunity to discuss immigration status concerns with their counsel, make informed pleas, and resolve cases in ways that minimize the likelihood of deportation and preserve the noncitizen defendant's eligibility for status or citizenship. The bill further ensures that a remedy is available if the law is violated, allowing for possible vacatur of a judgment if the court fails to give the required notification. While meaningful, this bill is not novel - New York would join *thirty* other jurisdictions that require immigration warnings from the court by statute, acknowledging the reality of harsh immigration consequences that may ensue.

The criminal legal system is overwhelming for many immigrants and especially stressful for survivors of violence who may be considering the potential of continued violence from their abuser, adding to the pressure to accept a plea to end the process. We are concerned that without a complete understanding of immigration consequences, survivors may unnecessarily accept pleas that are severe and life-changing. Certain convictions may even restrict survivors from obtaining immigration relief that was designed to benefit them. For these reasons, we believe that it is absolutely vital for immigrant survivors to receive proper notification of potential immigration consequences from the criminal court, and are prompted to seek accurate and clear advice from their counsel to make informed decisions.

Many of our organizations celebrated passage of this bill last year and celebrate it again this year. We urge the Governor to sign the bill swiftly.

## New York

ECLI-VIBES

Empire Justice Center

Garden of Hope

Her Justice, Inc.

Hope and Resilience Long Island, Inc.

John Jay Legal Services Immigration Justice Clinic , Haub School of Law at Pace University

Legal Aid Society

Long Island Social Justice Action Network-LISJAN

New Hour

New York State Coalition Against Domestic Violence

Safe Horizon

Sakhi for South Asian Women

Urban Justice Center

The Domestic Violence Project | Urban Justice Center

UnLocal

Violence Intervention Program

Voces Latinas

Womankind

Women & Justice Project

## National

Asian Pacific Institute on Gender-Based Violence

ASISTA Immigration Assistance

BWJP - Battered Women's Justice Project

Esperanza United (Formerly Casa de Esperanza National Latin@ Network)

Freedom Network USA

National Network to End Domestic Violence

Sunita Jain Anti-Trafficking Initiative, LLS

Tahirih Justice Center

Transgender Law Center

Ujima Inc., The National Center on Violence Against Women in the Black Community