



New York Lawyers for the Public Interest  
151 West 30th Street, 11th Floor  
New York, NY 10001-4017

**Testimony of Arielle Wisbaum, Immigration Staff Attorney, New York Lawyers for the Public Interest Before the New York City Council’s Committees on Immigration and Governmental Operations**

**April 28, 2023, Oversight Hearing:  
Meeting the Needs of Asylum Seekers in New York City**

My name is Arielle Wisbaum, and I am an immigration staff attorney at New York Lawyers for the Public Interest (NYLPI). I work in NYLPI’s UndocuCare TGNCI+ program, a program striving to ensure that immigrant New Yorkers who are transgender, gender-nonconforming, intersex (TGNCI), or who are living with HIV can [obtain and sustain access to gender-affirming healthcare, HIV care](#), and housing through immigration legal advocacy.<sup>1</sup> At the outset, we want to thank the City Council for its leadership in defending the human rights of immigrants, including through funding the Immigrant Health Initiative. I also want to thank you for the opportunity to present testimony about some of the barriers that the community members we work with are experiencing, and how New York City can better respond to their needs. Our testimony today is informed by our clients’ experiences.

A significant number of the immigrant New Yorkers we work with are seeking asylum and have survived extraordinary violence and persecution in their lives merely for expressing their true gender or sexuality—for existing. Those in need of gender-affirming healthcare in their home countries often did not have the opportunity to seek this crucial care due to safety concerns, or it was simply unavailable to them; and those in need of HIV medication frequently encountered discriminatory denials of healthcare, exacerbating their medical conditions. The violence these asylum seekers have endured in their lives often leaves them with trauma related symptoms such as posttraumatic stress disorder (PTSD), Major Depressive Disorder (MDD), and severe Anxiety. For these reasons, immediate access to healthcare for asylum seekers, including mental healthcare, is a necessity. However, several barriers currently stand in the way of asylum seekers needing this care, including staffing and training issues at New York City’s Department of Social Services/Human Resources Administration (HRA), and lack of immigration legal representation.

NYLPI supports several of the bills on today’s agenda, including Int. 790, Documentation establishing proof of identity for an NYCID, Int. 909, Enhancing the IDNYC application process, and Resolution 556 in support of the Access to Representation Act. Today, I

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<sup>1</sup> The Center for Urban Pedagogy and New York Lawyers for the Public Interest, *Healthcare is For You!*, <https://www.nylpi.org/undocare-cup-resource-launch-healthcare-is-for-you/>.

am here to address why NYLPI stands in support of the aforementioned mentioned bills and Resolution, and to highlight the immediate need to strengthen New York City’s Department of Social Services/Human Resources Administration (HRA) to better meet the needs of asylum seekers.

**The City Must Invest More Resources In HRA, Which Currently Lacks Sufficient Capacity and Training to Meet The Needs Of Asylum Seekers**

New York City’s Local Department of Social Services/Human Resources Administration (HRA) helps more than three million New Yorkers annually through the administration of more than twelve major public assistance programs, including Medicaid for those living with a disability and New York City’s HIV/AIDS Services Administration (HASA). This is a significant task, and yet, time and time again, HRA has demonstrated itself ill-prepared to properly administer such programs for immigrant New Yorkers. **HRA’s staffing issues and diversion tactics, both of which create barriers to accessing vital services, can be addressed with enhanced training for HRA employees, and increased funding that ensures sufficient staffing.**

Immigrant New Yorkers who are “Permanently Residing Under Color of Law” (“PRUCOL”) may qualify for New York State-funded benefits such as state Medicaid and Safety Net Assistance.<sup>2</sup> However, between January 2022 and April 2023 alone, a significant number of asylum seekers that NYLPI represents or has conducted immigration screenings for have encountered wrongful denials of benefits that they already qualify for, including denials of New York State Medicaid,<sup>3</sup> and Public Assistance via HASA—a program which includes rental assistance for people living with HIV.

The laws around public benefits and immigration are highly complex and hard to reconcile, understandably making it difficult for immigrant New Yorkers to understand what benefits they are eligible for and how to obtain them. Exacerbating this issue is the fact that HRA employees reviewing benefits applications may engage in the process of "diversion," whereby a city employee illegally discourages or deters immigrant New Yorkers from applying, even in ways so subtle as to ask for a green card or social security number when such documents are not required.<sup>4</sup>

Since January 2023 alone, NYLPI has taken note of several diversion practices by HRA employees and has advocated for immigrant New Yorkers in these circumstances. Even for

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<sup>2</sup> 18 N.Y.C.R.R. § 360-3.2(j)(ii); § 370.2(c)(6)(vii).

<sup>3</sup> NYLPI appreciates the Council’s resolution in support of the Coverage For All bill, which would give all low-income New Yorkers access to basic health insurance regardless of immigration status and which would create substantial cost savings and economic benefits for New York City and State.

<sup>4</sup> See also New York Lawyers for the Public Interest. “FAQ: Health Insurance and Immigration Status,” NYLPI, <https://www.nylpi.org/wp-content/uploads/2022/12/FAQ-Health-Insurance-and-Immigration-Status-in-New-York.pdf>.

asylum seekers who can already demonstrate their PRUCOL eligibility, these diversion practices have included:

1. Requiring that asylum seekers be granted a change of the immigration court's venue prior to approval of benefits – not a determinant of PRUCOL eligibility;
2. Requesting a social security number – not a determinate of PRUCOL eligibility;
3. Requiring proof that an asylum application has been filed, even where an asylum seeker may already be PRUCOL-eligible via a different immigration status, such as humanitarian parole;
4. Requiring an evaluation and written “PRUCOL letter” from an immigration attorney that states whether the asylum seekers is PRUCOL-eligible, despite clear instructions that the adjudication of benefits must be based on documentation from a federal immigration agency.

Further, in the last two months alone, NYLPI has represented two asylum seekers who, although already able to establish PRUCOL eligibility, have been denied a HASA caseworker. They were told this denial was due to staffing issues.

Such staffing issues and diversion tactics are harmful, exacerbate the trauma asylum seekers face, and are contrary to local law. For transgender and gender-nonconforming asylum seekers who may qualify for HASA, wrongful denials of Medicaid and HASA assistance delay crucial gender-affirming care and unnecessarily prolong stays in the Department of Homeless Services' shelter system, which although committed to improving, at this time, continues to lack gender-affirming spaces and fails to protect transgender and gender-nonconforming people from hate crimes. It is also crucial to foresee how the same diversion tactics and staffing issues may apply to the implementation of Int. 790, regarding the administration of IDNYC. **The City must ensure that HRA is sufficiently staffed and its employees are properly trained so that asylum seekers do not continue to experience harmful barriers to accessing vital services.**

**NYLPI Applauds the Council's Support for the Access to Representation Act, And In Addition, Supports Increased Funding For Full Legal Representation For Asylum Seekers in New York City**

As the Council noted in Resolution 556 in Support of the Access to Representation Act (A.170/S.999), immigrants in New York immigration court without legal representation have a three percent success rate in defending their right to remain in the United States. The influx of asylum seekers in New York has exacerbated the demand for legal service providers amidst a growing backlog of immigration court cases.

While NYLPI supports and has participated in the development of pro se clinics serving asylum seekers so that they can preserve crucial deadlines in their cases, we acknowledge that pro se clinics are merely a *temporary* solution. Eventually, the asylum seekers who are now receiving pro se assistance will need full representation. **This need can only be met through the**

## **passage of the Access to Representation Act and increased funding for immigration legal services providers in New York City.**

The issue of access to representation is often particularly dire for transgender and gender nonconforming (TGNC) asylum seekers. Asylum officers and immigration judges may be particularly hostile towards or require more education about asylum claims for TGNC folks. Further, TGNC people are more vulnerable to trafficking, physical and emotional violence, and assaults by police forces. They may have experienced sexual assault and abuse from a young age that can result in PTSD, or general memory lapses due to trauma's effect on the brain.<sup>5</sup> One of our clients, Ms. J, had several seemingly inconsistent statements during her Credible Fear Interview (CFI) (an initial stage of the asylum process) that nearly led the asylum officer to deny her credibility. After Ms. J was released from detention on parole and retained NYLPI for legal services, we found that potential inconsistencies in her CFI were due to trauma-related memory lapse and the asylum officer's lack of cultural competency working with transgender asylum seekers. Moving forward, trauma science through expert testimony and psychological evaluations were crucial components of Ms. J's asylum case in immigration court. With limited access to counsel and expert testimony to diligently explain inconsistencies in the record, immigration judges and ICE counsel would likely use such inconsistencies as an opportunity to deny the asylum case. More recently, in the 2nd circuit, immigration judges have increasingly scrutinized the credibility of asylum seekers.<sup>6</sup> Full legal representation, expert testimony and psychological evaluations are often critical to ensure thorough and adequate legal advocacy for asylum seekers, especially for those affected by trauma-related memory lapse.

### **NYLPI Supports Int. Nos. 790 and 909, Bills Which Will Facilitate Access To Gender-Affirming Identification Documents For TGNCI Asylum Seekers**

Informed by our clients' experiences, NYLPI supports legislation that will reduce barriers to accessing the New York City Identification Card (IDNYC). Unfortunately, many asylum seekers have their identification documents, such as passports and national ID cards, confiscated by Immigration and Customs Enforcement (ICE) upon entry to the United States. This leaves asylum seekers without any form of identification, serving as a barrier to necessary life activities, such as accessing benefits, housing, opening bank accounts, and receiving prescriptions. The IDNYC could serve as a solution; however, current requirements to obtain an IDNYC ask for some of the very documents that ICE has confiscated. Asylum seekers are then left in a Catch-22 through which they need an ID to get an ID. Int. 790, which allows asylum seekers to use additional documents to establish identity, such as those issued by immigration authorities, will help resolve this issue.

For transgender and gender-nonconforming asylum seekers, the IDNYC may be the first gender-affirming identification document that they receive. Thankfully, New York is a self-attestation state, meaning that one may choose their correct gender marker on identification

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<sup>5</sup> See Belinda Graham et al., *Overgeneral memories in asylum seekers and refugees*, 45 J. Behav. Ther. & Exp. Psychiat. 375-380 (2014).

<sup>6</sup> See, e.g., *Liang v Garland*, 10 F.4th 106 (2d. Cir. 2021) (holding that a small omission can lead to an adverse credibility finding).

documents issued by state or local governments without additional barriers such as doctors' evaluations. Additionally, because IDNYC offers the non-binary gender marker "X", it is often the first gender-affirming ID that gender-nonconforming and non-binary asylum seekers may acquire.

Reducing barriers to obtaining an IDNYC through systemic improvements proposed to enhance the application process, developing additional trainings, creating more opportunities for appointments, and allowing for additional valid proofs of identity for folks to qualify are crucial for asylum seekers arriving to New York City. Such improvements will facilitate access to vital benefits, gender-affirming healthcare and other services for TGNCI immigrant New Yorkers. **Here, we reiterate that adequate staffing and thorough training of HRA employees will be crucial to the implementation of Int. Nos. 790 and 909 so that asylum seekers do not face additional barriers to obtaining the IDNYC.**

### **Conclusion**

Once again, we thank the Committees on Immigration and Governmental Operations for convening this critical oversight hearing. We appreciate the opportunity to present testimony today on behalf of our clients who are seeking asylum and deserve access to vital services like healthcare and housing.

We hope the issues we have identified above will help inform the committees' advocacy in the coming months, and we welcome the opportunity to discuss the barriers we have identified and the recommendations we have included in this testimony. We look forward to continuing our work to improve immigrant New Yorkers' access to healthcare for new arrivals and long-time New Yorkers alike. **Health is a human right.**

**Arielle Wisbaum, Esq.**  
**Staff Attorney, Health Justice**  
**New York Lawyers for the Public Interest**  
**151 West 30th Street, 11th floor**  
**New York, NY 10001**  
**awisbaum@nylpi.org**

*NYLPI has fought for more than 40 years to protect civil rights and achieve lived equality for communities in need. Led by community priorities, we pursue health, immigrant, disability, and environmental justice. NYLPI combines the power of law, organizing, and the private bar to make lasting change where it's needed most.*

*NYLPI's Health Justice Program brings a racial equity and immigrant justice focus to health care advocacy, including ongoing work addressing the human rights crisis in immigration detention and advocating for healthcare for all New Yorkers.*