

# IMMIGRANT ACCOMPANIMENT PROJECT

*Long Island*

## Best Practices for Accompanying Immigrants to Long Island Courts

## A Handbook for Advocates



## A Collaborative Project



## **Contents**

<b>Accompanying Project Background</b>	<b>3</b>
<b>What is Accompaniment?</b>	<b>3</b>
<b>Why Accompany</b>	<b>3</b>
<b>Best Practices for Witnesses</b>	<b>4</b>
<b>Witness record Sheet for Long Island Proceedings</b>	<b>6</b>
<b>Accompanying Undocumented Immigrants to Long Island Courts</b>	<b>7-12</b>
<b>Suffolk County Traffic Court</b>	
<ul style="list-style-type: none"><li>• Suffolk Traffic Court – History and Mission</li><li>• Suffolk Traffic Court – The Stakes for Undocumented Immigrants</li><li>• Accompanying Undocumented Immigrants to SC Traffic Court – Best Practices</li></ul>	
<b>Suffolk County Family Court</b>	
<ul style="list-style-type: none"><li>• Family Court, Guardianship and Deportation – A Case Study</li><li>• Family Court and Juvenile Protected Status</li><li>• Accompanying Undocumented Immigrants to Family Court – Best Practices</li></ul>	
<b>Long Island Criminal Court</b>	
<ul style="list-style-type: none"><li>• Undocumented Immigrants and the Biases in the U.S. Criminal Justice System</li><li>• The Trump executive Orders, “Chargeable” Criminal Offenses and Deportation</li><li>• Plea Bargaining and Deportation</li><li>• Accompanying Undocumented Immigrants to Criminal Court – Best Practices</li></ul>	

## ACCOMPANIMENT PROJECT BACKGROUND

Throughout 2016 *Long Island Jobs with Justice (LIJWJ)* sponsored a series of trainings and forums that prepared Long Islanders to help undocumented immigrants facing deportation. We hosted know-your-rights trainings for agencies that serve immigrants. In partnership with the *New Sanctuary Coalition of New York City*, *LIJWJ* offered five accompaniment trainings to prepare what became a group of 63 Long Island volunteers who agreed to serve as “Witnesses” accompanying undocumented immigrant “Friends” to their immigration court hearings at Federal Plaza in New York City. Since President Donald Trump’s executive orders of January 25<sup>th</sup> that allow for the deportation of undocumented immigrants charged (not necessarily convicted) with even minor offenses such as a traffic misdemeanor, this project has taken on special urgency.

Now *LIJWJ* is expanding the Accompaniment Project so that **Witnesses can accompany undocumented immigrant Friends to Long Island legal venues** such as family, traffic or criminal courts where Trump’s executive orders can escalate a charge for a minor infraction into a deportation. **The *New Sanctuary Coalition of New York* will coordinate the Federal Plaza immigration court accompaniments. *LIJWJ* will coordinate Long Island court accompaniments.**

## WHAT IS ACCOMPANIMENT?

**Accompaniment is first and foremost an act of love and solidarity.** It is a **strategy** through which individuals (Witnesses) provide physical and moral support to immigrant Friends appearing in court and fearing the possibility of deportation. Through accompaniment, Witnesses provide their presence not only to create a safer space for immigrant Friends, but also as a security measure to deter deportation. In the event that we are unable to prevent deportation, the witnessing and reporting done by companions serves to alert our Friends’ family and the community at large. As a Witness, your presence alone is making a statement to court judges and the Department of Homeland Security that you will hold them accountable for any injustice committed against an immigrant Friend.

## WHY ACCOMPANY?

Immigration courts as well as local courts where immigration status is a factor are sometimes stacked against undocumented immigrants. Very often, they cannot afford or obtain legal counsel. Through first hand experience, we know that when community accompanies immigrant Friends to court proceedings, they are treated better and the outcome of their case is more favorable. This is especially true when the Witnesses are clergy.

Through accompaniment, we are able to build long-term relationships with our immigrant Friends, serve as a faithful witness in spaces of injustice, and collectively grow as community leaders in the fight for immigrant rights.

By acting as a Witness, you are changing the narrative about immigration and the invaluable role immigrants play in our communities, churches and places of employment. As a Witness, you are making a public statement that everyone deserves to be treated with dignity and justice.

### BEST PRACTICES FOR WITNESSES

Here are some of the best practices for Witnesses when accompanying immigrant Friends<sup>1</sup>

1. Remember boundaries
  - Witness and Friend should be **respectful** to each other at all times and Witnesses should **respect the space between the Friend and his/her lawyer** (if there is a lawyer.)
  - Witnesses should **avoid making judgements** about their Friends.
  - All that is said between you, your Friend, lawyers and court officers must be **kept confidential**.
  - Witnesses should **avoid giving legal advice or counsel**.
  - Witnesses should avoid antagonizing or behaving confrontationally with court officers.
2. **Undocumented immigrants are anxious**, perhaps very nervous, in a court situation, especially since deportation can be the outcome. You are there to **provide friendship and reassurance**. Be sensitive to how much your Friend wants to talk or be quiet.
3. Keep detailed notes of the process since you will **provide a record as to the fairness of the proceedings**.
4. The immigrant Friend may speak very limited English. As a Witness you can **help him or her navigate the court system** such as where to check in and other steps in the court proceeding. Project coordinators will work to provide translators where possible. In some cases, several Witnesses will accompany an undocumented immigrant Friend.
5. Your presence is especially important when **you stand next to your Friend while he or she is speaking with a court officer**. As a show of solidarity, Witnesses should **stand in the courtroom when their Friend is called to testify**. JwJ will provide ribbons to the Witnesses so they can be identified as supporters of their immigrant Friend. Remember, *you are not there to provide legal representation or legal counsel to the immigrant*.
6. If there is tension between your Friend and a court officer, stand next to your Friend but **behave respectfully toward the court officer, avoid threats or aggressive verbal or body language**. *Again, Witnesses are not allowed to address the judge.*

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<sup>1</sup> New Sanctuary Coalition of NYC

7. If there is a confrontation, simply **ask the court officer if you can help to resolve any misunderstanding**. It is not your place to claim that an injustice has been done.
8. **What You Will Do During the Accompaniment:** You will receive email notices from LIJWJ when a Witness is needed at a Long Island court appearance and from New Sanctuary Coalition of New York when a Witness is needed at Federal Plaza.
  - If you have contact information, **call your Friend the night** before the appearance. Arrange to meet him or her at least 30 minutes before the court appearance.
  - **Request for your Friend's family's contact information** in case you need to call if your Friend is detained.
  - Bring your **photo ID**.
  - Bring your **cell phone** but turn it off during the court proceeding.
  - **Dress cleanly and neatly**.
  - Since court proceedings can be long and tedious, with extended waiting periods, prepare to **be patient**.
  - Have a **pad and pen or a laptop** for taking notes during the proceedings. **In your notes, be alert to the fairness of the proceedings**. Do not take photographs or make video recordings. See the Witness Record Sheet on page 4 for suggestions of what to watch for during the court proceeding.

## Witness Record Sheet for Long Island Court Proceedings

*This sheet serves as a recordkeeping tool for each Witness to report or comment on the fairness of the Friend's treatment during a Long Island court proceeding. Witnesses can mail their completed form to: Kimberly Saget, LI Jobs with Justice, 390 Rabro Drive, Hauppauge, New York 11788.*

Name of Witness:

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Name of Friend:

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Date of Court Appearance:

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Name of the Court:

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**Describe how the court officers (Judge, District Attorney, bailiff, etc.) behaved toward your Friend.**

- Was your Friend treated fairly throughout the proceeding?
- Were charges made clear? Was evidence presented?
- Were your Friend's points-of-view heard?
- Did your Friend have legal counsel?
- Was your Friend allowed to respond to the charges?
- Was your Friend treated politely?
- Were court instructions clear?
- Was there a court translator to help your Friend understand the proceedings?

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**Briefing Notes from the Jobs with Justice Seminar**  
***Immigrant Deportations and Due Process on Long Island***  
**February 8, 2017**

## **Accompanying Undocumented Immigrants to Long Island Courts**

### **Suffolk County Traffic Court**

**Presenter: Irma Solis – New York Civil Liberties Union – Suffolk Chapter**

#### **Suffolk Traffic Court – History and Mission**

The New York State Legislature permitted Suffolk to create a traffic court in 2012. Prior to that, traffic tickets were processed by the Suffolk County Department of Motor Vehicles. The Court's core mission is to advance traffic safety by processing violations in a fair and impartial adjudication. Critics have charged that the real purpose for creating the traffic court was to increase County revenues. In fact, the Traffic Court generated \$11 million in its first year – 2013 – and \$48 million each in the subsequent two years. Suffolk County Traffic Court has jurisdiction in the five west Suffolk towns: Brookhaven, Islip, Smithtown, Babylon and Huntington. The eastern towns (Riverhead, Southold, Shelter Island, Southampton and Easthampton) each has its own police department.

#### **Suffolk Traffic Court: The Stakes for Undocumented Immigrants**

Since its first year of operation in 2013, appearances before Suffolk County Traffic Court have resulted in 39 jailings, which suggest a strong bias against immigrants: 22 Hispanics (one of whom was turned over to ICE), 5 African Americans, 1 Asian, 1 white

The Suffolk County Police Department (SCPD) was investigated for discriminatory practices against Hispanics and other minorities, which was resolved with an agreement that the Justice Department announced in December 2013 calling for "the SCPD to implement new and enhanced policies and procedures to ensure nondiscrimination in the provision of police services to Latino communities in Suffolk County."<sup>2</sup>

The most common infractions that result in the Suffolk County Police Department issuing a ticket are:

- Obstruction of view such as something hanging from a rear-view mirror
- Broken tail lights
- Not stopping for a red light or stop sign
- Driving without a license

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<sup>2</sup> US Department of Justice press release, December 3, 2013

Immigrants frequently complain that being stopped for one violation, such as a not stopping at a red light, often leads to multiple tickets such as a ticket for a broken tail light, an obstructed view or driving without a license. Not paying a ticket on time could lead to a conviction and even an arrest.

In a legal opinion by immigration attorney Isaac Wheeler, circulated on January 28, 2017 by Cheryl Keshner of the Empire Justice Center, under the new Trump executive order on deportations, *undocumented immigrants could face deportation for minor offenses such as a traffic misdemeanor such as speeding*:

“Anyone who has been convicted of *any* “criminal offense” (even one that does not fall under a criminal deportation ground of the INA, such as a traffic misdemeanor). This language appears to apply to past convictions with no statute of limitations, and it is not clear yet whether it applies to dispositions that a state or locality would define as non-criminal (such as N.Y. state violations).”<sup>3</sup>

Thus, under the new Trump executive orders, a seemingly routine Traffic Court appearance has the potential to escalate into a deportable offense, making the stakes quite high for undocumented immigrants answering a summons for something as innocuous as not coming to a full stop at a stop sign.

### **Accompanying Undocumented Immigrants to SC Traffic Court: Best Practices**

Suffolk County Traffic Court is located in the H. Lee Dennison Building, Ground Floor, North Entrance, 100 Veterans Memorial Highway, Hauppauge, NY 11788. Cases are heard Monday-Friday, 9:00-10:30AM and 2:00-3:00PM. If you are a Witness accompanying an immigrant Friend, know that:

- You cannot enter the courtroom after 10:30 AM or 3:00 PM.
- Your Friend must bring his/her ticket number to the court.
- You and your Friend will spend time in a waiting room before being called and also awaiting the judge’s final order.
- Your Friend has a right to an interpreter. Requesting an interpreter may prolong the appearance since it takes time for the interpreter to arrive. In addition, after the interpreter arrives, all Spanish-speaking people are processed before the judge as a group. The judge however adjudicates each person’s case separately.
- The Traffic Court Clerk actually acts as the prosecutor who will negotiate the fines if your Friend is found guilty. These negotiations can be quite arbitrary and sometimes the fines can be very heavy, as high as \$3,000 in rare cases.
- As a Witness, you cannot approach the bench or speak to the judge but you can stand up when your Friend is called and move with your Friend as he or she approaches the bench.

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<sup>3</sup> Email from Cheryl Keshner citing legal opinion of Isaac Wheeler, January 28, 2017



- Remember, you are not an attorney, you are not providing legal counsel, you are there as a Witness, ensuring that your Friend is treated fairly and with justice.

All of the other best practices for Witnesses outlined above apply to Traffic Court appearances.

## **Suffolk County Family Court**

**Presenter:** Christopher Worth, Esq. Immigration Attorney

### **Family Court, Guardianship and Deportation – A Case Study**

Like Traffic Court, Family Court can become a high-stakes venue for undocumented immigrants. Consider this case: In the Spring of 2016, Rural & Migrant Ministry requested the support of Long Island Jobs with Justice, along with many other Long Island organizations and individuals, in an effort to call for the release of Uriel Martinez, a 19-year-old brother of a Long Island farmworker leader, Boris Martinez, and a refugee from El Salvador, who was being held at the infamous Stewart Detention Center in Georgia for attempting to flee violence in El Salvador.

Uriel faced threats in El Salvador to join a gang. Other members of his family who refused to join gangs were murdered. The gangs were especially interested in Uriel because he is very good in karate. He has won various international competitions including the Caribbean and Central American games.

While in detention, Uriel become ill and was not provided proper medical attention. Uriel's brother, Boris, sought legal counsel and community supports in his fight to get his brother released and gain guardianship of him. Rural & Migrant Ministry was there with him every step of the way. Long Island Jobs with Justice supported by accompanying Boris to family court hearings and sat as Witnesses to his and Uriel's case. Christopher Worth, the brothers' attorney, was initially not optimistic about how the judge would rule in this case. But, with the courtroom filled to capacity with Witnesses – lay people and clergy – all supporting Boris' petition to secure guardianship of his brother Uriel, the judge ruled in favor of the brothers. After multiple court hearings justice was served and Uriel was released and reunited with Boris!

### **Family Court and Juvenile Protected Status**

The Suffolk County Family Court judge granted Boris Martinez Juvenile Protected Status of his brother Uriel, thereby allowing Uriel to avoid deportation and remain in the United States. To secure this status, the petitioner:

- Must be under 21 years of age;
- Must have been abandoned by at least one parent;
- Cannot be returned to his or her country of origin due to a demonstrable physical threat.

The first court hearing is procedural, with the petitioner's papers submitted to the court and with the judge deciding if fingerprinting is needed. The second hearing can be difficult for the petitioner because it is in an open court where he or she must publically testify about the abandonment that has led to his or her request for Juvenile Protected Status or guardianship. The best outcome in this kind of situation is the Family Court judge granting guardianship to the petitioner, which can lead to a Green Card and legal status.

Guardians do not have to be related to the petitioner and do not have to reside with the minor. The Guardian certifies that he or she accepts responsibility for the minor up to age 21 in situations such as medical emergencies or criminal charges. Guardians also agree to occasional home visits to make sure that the minor is living in safe physical conditions.

### **Accompanying Undocumented Immigrants to Family Court – Best Practices**

Attorney Chris Worth stated that the presence of Witnesses is very important at this stage in the proceedings to show community support for the petitioners. He noted that for Witnesses, "the important thing is that you be there and that you are watching." He further pointed out that Witnesses could coach the petitioners about American culture norms. For example, he stated, it is important to "look the judge in the eye" when speaking, even if the norm in the country of origin considers it disrespectful for a young person to look directly at an older person or an authority figure when speaking to that person. All of the other best practices for Witnesses outlined above apply to Family Court appearances.

## **Long Island Criminal Court**

**Presenter:** Michelle Caldera-Kopf, Esq. Legal Aid Society of Suffolk County

### **Undocumented Immigrants and the Biases in the U.S. Criminal Justice System**

Much has been written about how America's criminal justice system is stacked against poor people and people of color. The United States has the highest prison population in the world, 724 prisoners per 100,000 people. American prison population is disproportionately composed of poor people and people of color. U.S. drug laws enacted in the 1980s and 1990s carried stiff sentences for even minor drug violations, which weighed heavily on people and communities of color but much less so on white communities and more affluent people. Today, there is a growing bipartisan consensus to enact prison reforms that would lift some of these burdens. In addition, policing practices have come under fire around the country for discriminating against poor people and people of color. As noted above, the Suffolk County Police Department was subject to a federal investigation on charges of racial bias.

The racial and class biases of the U.S. criminal justice system create special problems for undocumented immigrants, especially those of Hispanic, Haitian and other Caribbean heritages. In addition to the existing systemic prejudices against their color and nationalities, undocumented immigrants can find minor offenses quickly escalating into serious crimes that warrant deportation. For example, crossing the U.S. border illegally is considered a civil offense,

carrying the same penalties as a traffic violation. Crossing a second time after deportation is a chargeable felony.

Another example of the dangers undocumented immigrants face in criminal courts is traffic violations. Undocumented immigrants are typically not permitted to obtain a driver's license. Driving without a license in New York State is a misdemeanor subject to fines and a 15-day jail term. Immigrants fearing that ICE agents may be present at a court – which is their practice – often fail to appear to answer their charge of driving without a license, thereby possibly increasing the penalties and even the charges.

### **The Trump Executive Orders, “Chargeable” Criminal Offenses and Deportation**

The immigration executive orders issued by President Trump earlier in January have significantly added to the burdens undocumented immigrants face in U.S. criminal courts. For example, filing a fake Social Security number to secure employment, which many undocumented immigrants do, could now lead to a deportation under the January Trump executive orders since people are now considered a priority for deportation if they engage in:

“fraud or willful misrepresentation in connection with any official matter or application before a government agency.”<sup>4</sup>

The Obama Administration considered convicted felons to be priorities for deportation. The Trump Administration has gone beyond this with its executive orders, prioritizing for deportation of “anyone who has ‘committed acts that constitute a chargeable criminal offense,’ meaning anyone the authorities believe has broken any type of law – regardless of whether that person has been charged with a crime.”<sup>5</sup> Thus, a criminal justice system already riven with biases against people of color and poor people has now become an even more perilous venue for undocumented immigrants.

### **Plea Bargaining and Deportation**

An undocumented immigrant facing criminal charges is entitled to an attorney. Very often, attorneys will counsel their clients to plea bargain, admitting guilt in return for accepting a lesser penalty. When a defendant accepts a guilty plea, he or she waives certain basic due process rights such as the right to remain silent and not incriminate oneself. For undocumented immigrants, bargaining that results in a guilty plea can also result in deportation since certain guilty pleas can lead to the revocation of immigration status such as a Green Card or Temporary Protected Status. Adding to the peril is the fact that the Obama Administration did not permit ICE agents to be present at criminal hearings while the Trump Administration may allow their presence.

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<sup>4</sup> Medina, Jennifer. “Order Expands Authority to Deport,” *New York Times*, January 28, 2017.

<sup>5</sup> Ibid.

## **Accompanying Undocumented Immigrants to Criminal Court – Best Practices**

It has been standard ICE practice to arrest undocumented immigrants as they travel to or from court. The presence of a Witness travelling to and from court with an undocumented Friend can be a deterrent to an ICE arrest. The presence of a Witness can also be critical during arraignment when, before a judge decides on releasing a defendant on his or her own recognizance, the judge asks if there is anyone present in the court who will support this defendant. One or more Witnesses willing to provide support can influence the judge's decision. Witnesses can also encourage their Friend to be open and honest with the attorney. Simple tips such as making sure the Friend has his or her attorney's name and telephone number are essential. Witnesses must, however, respect the fact that any conversation between the attorney and Friend is privileged and therefore confidential. Witnesses should not participate in these conversations. All of the other best practices for Witnesses outlined above apply to Criminal Court appearances.