A Decade of Advancing Immigrant Representation

Tuesday, May 8, 2018
10 a.m. – 5 p.m.

CLE Course Materials

Fordham Law School
150 West 62nd Street
New York, New York 10023

Conference Organizers and Co-Sponsors:
Table of Contents

1. CLE Materials

**Plenary Panel Sessions**

**Plenary Panel 1: Public and Private Partnership**
**Funding for Immigration Services**

(view in document)

**Plenary Panel 2: Progress Thus Far**

(view in document)

**Plenary Panel 3: Replication and Expansion**

(view in document)
A Decade of Advancing Immigrant Representation

Fordham Law School
May 8, 2018

CLE Material

I. Plenary Panel – Public and Private Partnership Funding for Immigration Services

November 2017

Evaluation of the New York Immigrant Family Unity Project:
Assessing the Impact of Legal Representation on Family and Community Unity

Jennifer Stove, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siule, and Noelle Smart
Director’s Note

The mission of the Vera Institute of Justice (Vera) is to drive change, to urgently build and improve justice systems that ensure fairness, promote safety, and strengthen communities. To achieve that mission, Vera works with others who share our vision to tackle the most pressing injustices of our day—from the causes and consequences of mass incarceration, racial disparities, and the loss of public trust in law enforcement, to the unmet needs of the vulnerable, the marginalized, and those harmed by crime and violence. Since its inception in 2005, Vera’s Center on Immigration and Justice has particularly focused on increasing access to legal information and representation for non-citizens facing deportation, who are among our society’s most vulnerable and marginalized people. Among those facing deportation, those who are detained are especially vulnerable and marginalized. The New York Immigrant Family Unity Project (NYIFUP) and this evaluation are a culmination of many years of efforts by many former and current staff in the Center on Immigration and Justice.

While Vera has been an important player in the creation and success of NYIFUP, this project was the product of many organizations, officials, and individuals working tirelessly and selflessly over many years to realize the vision of providing due process, justice, and a fighting chance to detained non-citizens, first in New York and, eventually, based on the NYIFUP model, nationwide.

A committee—ultimately of 18 concerned lawyers and immigration judges—drawn from Judge Katzmann’s Study Group on Immigrant Representation, led to the drafting of the New York Immigrant Representation Study. The study quantified the scale and nature of the barrier to representation and created the blueprint for what became NYIFUP. The study made clear that many of those who were being ordered deported had valid bases to lawfully remain in the United States but, without representation, were being unjustly deported.

Armed with the findings and recommendations of the New York Immigrant Representation Study, the Immigration Justice Clinic of Cardozo School of Law, the Northern Manhattan Coalition for Immigrant Rights, the Center for Popular Democracy, Make the Road New York, and Vera joined together as the NYIFUP Coalition seeking to make the nation’s first public defender project for detained non-citizens a reality. After extensive efforts, the coalition in 2013 won the support of the New York City Council for a pilot at the Varick Street Immigration Court (Varick Street).

Understanding the importance of the effort and seeing from the pilot that NYIFUP worked, the council, led by Speaker Melissa Mark-Viverito and council members Carlos Menchaca, Julissa Ferreras-Copeland, and Daniel Dromm, in 2014 fully funded NYIFUP at Varick Street. From 2014 to the present, the council has unwaveringly supported NYIFUP and its provision of due process to immigrant New Yorkers. Speaker Mark-Viverito, without whom NYIFUP would not exist, provided the following reflections on the project:

For years many New Yorkers in immigration detention were unable to secure legal assessment and representation early enough in their deportation case to assert claims for relief. Four years ago the council funded a pilot program that provides every low income, detained immigrant in deportation proceedings access to high quality legal representation. That program, the New York
Immigrant Family Unity Project, now serves as a national model and has brought quality legal services to hundreds of immigrants and their families in New York City—often resulting in grants of relief that likely would not have been obtained without a lawyer. As we face the very real threat of mass deportations, NYIFUP, and programs like it, are vital if we are to uphold the rule of law and due process in our country. I am proud to say that we are committed to continuing NYIFUP in New York City and to sharing our experience implementing this successful model with cities and states that share our values and goals.

As this evaluation establishes, NYIFUP is achieving a 48 percent successful outcome rate. The 1,100 percent increase in successful outcomes, as compared to the success rate for unrepresented individuals at Varick Street pre-NYIFUP, is a credit to the skillful lawyering and dedication of the attorneys for the three NYIFUP providers at Varick Street: Brooklyn Defender Services, The Bronx Defenders, and the Legal Aid Society. For every 12 cases NYIFUP wins at Varick Street, 11 of those non-citizens would have been ripped from their families and communities prior to NYIFUP.

As this evaluation was completed in June 2017, based on the leadership of the Independent Democratic Conference of the New York State Senate and Governor Andrew Cuomo, NYIFUP is expanding to serve all detained non-citizens facing deportation in New York State outside of New York City. NYIFUP has also inspired more than a dozen jurisdictions around the country to create government-funded deportation defense projects. At least a dozen more localities are considering establishing projects to protect their immigrants from unjust deportation. We believe that this evaluation provides evidence to support the proposition that justice and fairness demand that every indigent non-citizen in the nation facing deportation receive a government-funded attorney.

Oren Root
Director
Center on Immigration and Justice
**Table of contents**

5 Executive Summary

7 Introduction
  7 Nature and scale of the lack of representation in immigration court
  10 Implementation of NYIFUP
  12 Evaluation of NYIFUP
  13 Data sources and analysis
  15 Analytical strategies employed
  15 Methodological limitations in the evaluation of NYIFUP

17 Chapter I: The impact of universal representation on individuals
  17 Population served by NYIFUP
  21 The effect of universal representation on individuals’ legal cases
  31 The effect of universal representation on individuals receiving due process

48 Chapter II: The impact of universal representation on family unity
  48 The effect of universal representation on reduced detention

54 Chapter III: The impact of universal representation on federal, state, and city tax revenue
  54 The impact of universal representation on New York’s workforce and economy

60 Conclusions

62 Endnotes
Executive Summary

This study evaluates the impact of the New York Immigrant Family Unity Project (NYIFUP). Since November 2013, NYIFUP has pioneered universal representation for detained indigent immigrants in deportation proceedings at the Varick Street Immigration Court (Varick Street) who were unrepresented at their initial hearing. Deportation cases are the only legal proceedings in the United States in which people are routinely detained by the federal government and are required to litigate for their liberty against trained government attorneys without the assistance of counsel. Nationally, only the detained non-citizens who are able to afford private attorneys are generally able to secure representation, while most low-income detained persons appear in immigration court unrepresented. Yet without an attorney, individuals are rarely able to effectively navigate the immigration legal system. Before NYIFUP, only 4 percent of unrepresented, detained cases at Varick Street resulted in successful outcomes that allowed non-citizens to remain in the United States. The New York City Council funded NYIFUP to level the playing field and bridge these gaps.

Employing quantitative analyses of administrative and program data, the Vera Institute of Justice (Vera) studied the impact of NYIFUP on case outcomes by comparing NYIFUP cases to other, similarly situated cases. Drawing also on extensive stakeholder and client interviews, Vera’s key evaluation findings include the following:

- **NYIFUP clients have strong ties to New York and the United States.** On average, NYIFUP clients had been living in the United States for 16 years by the time they entered deportation proceedings. NYIFUP clients were the parents to 1,859 children living in the United States, 86 percent with legal status, mainly citizenship. These strong ties demonstrate the community’s stake in these proceedings and impact immigration court outcomes. Forty-one percent of NYIFUP clients entered or resided in the United States legally, 30 percent as lawful permanent residents (LPRs).

- **NYIFUP has significantly improved the chances that low-income non-citizens will receive successful immigration
court outcomes permitting them to remain in the United States legally. Analyzing the cases already completed and using advanced statistical modeling that indicates the likely outcomes of pending cases, Vera has estimated that 48 percent of cases will end successfully for NYIFUP clients. This is a 1,100 percent increase from the observed 4 percent success rate for unrepresented cases at Varick Street before NYIFUP.

NYIFUP has met its goal of preserving family unity. In addition to helping more immigrants win favorable outcomes that allow them to remain in the United States, NYIFUP clients obtain bond and are released from detention at close to double the rate of similarly situated unrepresented individuals at comparable courts (49 percent for NYIFUP versus 25 percent for unrepresented individuals at similar courts). NYIFUP has reunified more than 750 individuals with their families.

Universal representation through the NYIFUP model improves fairness and the administration of justice. The high rates of successful outcomes and releases into the community resulted, at least in part, from high levels of activity by the NYIFUP legal teams in immigration court, on appeal, and in collateral proceedings. While it took, on average, longer for NYIFUP cases to achieve successful outcomes than was true for unrepresented cases, the Varick Street court ran more smoothly and efficiently with lawyers present for virtually all non-citizens facing deportation.

The success rate of NYIFUP cases has helped hundreds of New Yorkers gain or maintain legal work authorization, thus contributing to federal, state, and local tax revenue. NYIFUP is estimated to have helped more than 400 New Yorkers gain or maintain work authorization by winning their immigration cases. Overall, these successful outcomes are projected to produce tax revenue from this cohort of NYIFUP clients of $2.7 million each and every year, for years to come. The annual increase in tax revenue will be compounded significantly with the addition of each new cohort of NYIFUP clients.
Introduction

NYIFUP is the nation’s first public defender system for immigrants facing deportation, defined as those in removal proceedings before an immigration judge. The program is funded by the New York City Council and since July 2014 has provided a free attorney to almost all detained indigent immigrants facing deportation at Varick Street who are unrepresented at their first court appearances.¹ (In New York City, cases of detained immigrants are heard at the Varick Street location, while non-detained cases are heard at 26 Federal Plaza). Deportation proceedings are considered civil—not criminal—and thus the constitutional guarantee of the right to counsel under the Sixth Amendment has not been applied to immigrants facing deportation. As a result, removal proceedings are the only legal proceedings in the United States where people are detained by the federal government and required to litigate for their liberty against trained government attorneys without any assistance of counsel. NYIFUP is New York City’s response to this gap in representation. This evaluation offers quantitative and qualitative analysis about the impact of government-funded counsel in New York City deportation proceedings on clients, their families, and the local economy.

Thirty-five percent of detained immigrants nationwide have attorneys representing them in their deportation cases.² Robert Katzmann, chief judge of the U.S. Court of Appeals for the Second Circuit—among many others, including community advocates—has shone a light on the plight of the majority of detained immigrants, who are unrepresented. This focus has catalyzed a groundswell of study and innovation.³

Nature and scale of the lack of representation in immigration court

To understand the impact of counsel on deportation proceedings, it is first necessary to understand the nature of deportation proceedings, the scale of the unrepresented population in immigration court, and the legal framework related to access to counsel. The federal government uses deportation proceedings before the nation’s immigration courts as the
primary mechanism to effect the deportation of non-citizens living in the United States as well as for people arriving at its borders who establish a credible fear of persecution.4 A popular perception is that deportation is a consequence reserved for people who entered the United States unlawfully. In reality, any non-citizen, including long-term lawful permanent residents (LPRs, or green card holders), refugees, and people who entered legally on visas can be placed in deportation proceedings. Immigration officers in U.S. Immigration and Customs Enforcement (ICE) initiate the proceedings by filing a charging document, called a Notice to Appear (NTA).5 This document sets forth what are known as removal charges. The most common charges involve allegations that a person entered the country unlawfully, overstayed a visa or, in the case of green card holders, has been convicted of a crime. Crimes as minor as turnstile jumping, selling counterfeit t-shirts on the street, or non-criminal possession of small amounts of marijuana can trigger deportation, even if the crimes occurred decades ago.6

At the outset of deportation proceedings, immigration officers make an initial determination whether to detain individuals while their cases are pending. Because of a 1996 law, however, many immigrants are subject to “mandatory detention”—meaning no judge has the authority to release them, even if they pose no danger to the community and are not a flight risk.7 As a result, each year, hundreds of thousands of immigrants need to defend themselves from deportation while detained.8

In recent years, the number of new removal cases in immigration court has fluctuated between approximately 190,000 and 227,000 annually.9 Consistent with recent efforts by immigration advocates and federal, state, and local governments to expand access to counsel for immigrants, the U.S. Department of Justice, Executive Office for Immigration Review (EOIR, the immigration court agency) reports a steady increase in the percentage of these immigrants who were able to secure counsel in their deportation proceedings over the last several years—with 50 percent of detained and non-detained immigrants represented in fiscal year 2012, rising to 61 percent in fiscal year 2016.10 Notwithstanding this increase, the raw number of unrepresented immigrants facing deportation in recent years is at historic highs, with more immigrants deported between 2000 and 2015 than were deported in the entire 150 years prior.11 A consistent body of independent research, and the EOIR dataset used in this study, demonstrate that the lack of representation in deportation proceedings is felt most acutely by detained immigrants.12

The obstacles facing unrepresented immigrants, and detained immigrants in particular, are substantial. Immigration law is among the most complex areas of American law and has been described by federal
courts as “labyrinthine.” The threshold question of whether the removal charge should be sustained is sometimes relatively straightforward for people charged with entering unlawfully or overstaying a visa. It is more difficult to determine removability for LPRs. The interplay between state criminal law and federal immigration law is complex, and it is often very difficult to discern whether a green card holder is deportable at all. Moreover, because of complicated laws which grant citizenship automatically to certain individuals who are not born in the United States, it can sometimes be very difficult to even determine whether or not someone is a citizen. As a result, every year, United States citizens are detained without counsel—one report cited more than 20,000 such instances between 2003 and 2010. In some cases, U.S. citizens have even been deported.

Moreover, even if the initial removal charge is sustained, there are a host of defenses (known as “forms of relief”) that are available to non-citizens in certain situations and can spare them from deportation. Forms of relief vary widely—from asylum to special protections for juveniles, crime victims, victims of domestic violence, and long-term green card holders, among others. Identifying and establishing eligibility usually requires complex legal and factual analysis. The burden of showing eligibility for relief is on the non-citizen. In addition, even when an immigrant is eligible to remain in the United States, virtually all forms of relief require full trials (known in immigration court as “individual hearings”) for the court to determine whether, as a matter of discretion, the individual warrants protection against deportation. Accordingly, unrepresented detained indigent non-citizens struggle to defend themselves against the trained government immigration lawyers who prosecute these cases.

The unique constitutional protections applied in criminal proceedings, such as the Sixth Amendment’s right to counsel, are not generally extended to deportation proceedings, so the right to government-funded defense counsel does not apply. The Supreme Court has been clear regarding the gravity of the liberty interest at stake for immigrants facing removal, characterizing deportation as a “drastic measure.” In an op-ed published in 2014, Immigration Judge Dana Leigh Marks of San Francisco remarked that an immigration case “often involves life and death consequences [that] amount to death penalty cases heard in traffic court settings.” The Supreme Court has recognized that all immigrants are entitled to due process in removal proceedings. Nevertheless, the Court has yet to rule that due process requires the appointment of counsel. The immigration laws likewise recognize that, while immigrants are entitled to counsel of their choosing, the federal government is not obligated to
pay for such counsel. In recent years, courts have ruled that, in at least some circumstances, the law can require the appointment of counsel at government expense. For example, detainees with mental disabilities who are determined by an immigration judge to be incompetent to represent themselves in deportation proceedings are now entitled to appointed counsel. Nevertheless, for the vast majority of immigrants facing deportation, including children, federal law provides no clear path to a right to appointed counsel.

Implementation of NYIFUP

NYIFUP began as a pilot funded to handle 190 cases that were accepted for representation between November 2013 and April 2014. From July 2014 to June 2016 (the conclusion of the evaluation period), almost every otherwise-unrepresented detained immigrant whose deportation proceedings began at Varick Street and whose household income did not exceed 200 percent of the federal poverty guidelines has received a NYIFUP lawyer. The program has, thus far, been funded by the New York City Council, with $10 million in the current budget. From the program’s inception through June 30, 2016, NYIFUP attorneys have represented 1,772 individuals.

The concept for a publicly funded universal deportation defense system for detained immigrants grew out of the work of the Study Group on Immigrant Representation convened by then-judge and currently Chief Judge Robert Katzmann of the U. S. Court of Appeals for the Second Circuit. In 2011, the study group launched the New York Immigrant Representation Study, which documented the depth of the immigration representation crisis in New York and identified detained immigrants in particular as the group with the greatest need. The study demonstrated that two-thirds of detained immigrants in New York State were unrepresented and that unrepresented detained immigrants had only a 3 percent chance of succeeding in their removal proceedings. Focused on this problem, in the second year of the study a steering committee of experts from the immigration bench and the bar developed an evidence-based proposal for a government-funded universal deportation defense system for detained immigrants. This became the blueprint for NYIFUP.

After the study was published, five organizations—The Center for Popular Democracy, the Immigration Justice Clinic at Cardozo School of Law, Make the Road New York, the Northern Manhattan Coalition for Immigrant Rights, and Vera—came together to form the NYIFUP Coalition and advocate for the creation of NYIFUP. The NYIFUP pilot was launched with funding from the New York City Council in 2013.
Through a competitive bidding process, the Coalition selected at first two—and then three—service providers to deliver representation through NYIFUP: The Bronx Defenders, Brooklyn Defender Services, and the Legal Aid Society (collectively the “NYIFUP providers†). In addition, Vera was funded by the city to help establish and monitor the program in its first year. Vera and the NYIFUP providers worked with ICE’s Office of Chief Counsel, which prosecutes deportation cases; ICE’s Enforcement and Removal Operations, which detains immigrants; and EOIR to establish procedures and systems for the efficient and effective administration of NYIFUP.

Pursuant to those procedures and systems, the NYIFUP providers staff all days when detained immigrants first appear before an immigration judge (known as initial “master calendar” days) at Varick Street, much the same way public defenders staff arraignments in criminal court in New York City. In advance of the day’s initial master calendar hearings, NYIFUP attorneys provide a brief orientation presentation to all unrepresented individuals scheduled to appear that day and meet individually with each potential client to screen for financial eligibility. If an individual is eligible and wants representation from NYIFUP, the NYIFUP attorney then conducts an initial evaluation of the merits of the case and explains the options available to the individual. NYIFUP attorneys then formally assume representation before the court at the afternoon initial master calendar hearing.

NYIFUP attorneys continue representation through the completion of the deportation proceedings before the immigration courts and any appeals to the Board of Immigration Appeals (BIA). Although the individual must be detained for representation under NYIFUP to begin, the providers continue this representation if the client is released from custody. For individuals who have no viable defense to deportation, the case may conclude quickly at the first or second appearance if the client accepts an order of deportation or agrees to voluntary departure. For most other cases, attorneys must draft legal briefs and/or conduct significant factual investigations to make applications for relief.

NYIFUP attorneys also provide representation in bond proceedings, which seek the client’s release. In addition, NYIFUP attorneys routinely handle a host of collateral legal proceedings that impact the deportation case. Such proceedings can include family court proceedings for individuals pursuing special immigrant juvenile status, federal habeas corpus actions for individuals wrongfully detained, and post-conviction motions for individuals with defective criminal convictions. NYIFUP providers use a holistic approach to legal services, meaning that the staff is augmented by team members with different specialties, which may
include social workers, mental health professionals, investigators, and other support staff. Holistic legal services provide the client with trained professionals in dealing with trauma, for example, who are able to uncover more information about the clients’ lives and circumstances and aid the legal case, which may in fact be dependent on conveying that traumatic experience to the court.25

Evaluation of NYIFUP

In the last several years there has been a series of efforts to study the impact of counsel in deportation proceedings.26 Though the magnitude of the results vary, these studies have universally and not surprisingly shown that represented immigrants fare substantially better than unrepresented immigrants in a variety of ways, including experiencing higher rates of release from detention on bond and improved legal outcomes. This means, primarily, that immigrants with a legal right to remain in the United States are significantly more likely to vindicate that right with the aid of counsel. A previous study by NERA Economic Consulting also endeavored to quantify the collateral cost savings that an assigned counsel program would deliver.27

All prior studies of representation in deportation proceedings, however, have been limited by selection bias, despite various attempts to control for this. Selection bias occurs when the population being studied is not representative of the larger population. In studies of representation, the population being studied (immigrants in deportation proceedings with lawyers) is not representative of the larger population (all immigrants in deportation proceedings) because lawyers likely choose to accept cases based on the presumed strength of the case. This means that the cohort of represented cases is qualitatively different than the cohort of unrepresented cases. This bias makes it difficult to produce a sound estimate of the impact of representation on a case. NYIFUP, however, as a universal representation program, accepts all individuals without any evaluation of the strength of their legal claims, thus eliminating issues of selection bias. Accordingly, a study of NYIFUP can draw conclusions about the impact of counsel with far more confidence than any prior study.

The following pages present the evidence gathered from the evaluation of NYIFUP. The scope of the study includes quantitative and qualitative assessments of the ways in which universal representation, through NYIFUP, affects individuals served by the program. The evaluation also includes analysis of the residual impacts of the program on families and communities. Specifically, this evaluation seeks to answer the following research questions:
Who is served by NYIFUP and what community ties do they have?
What type of activities do NYIFUP staff undertake as a part of their defense of their clients?
To what extent do legal case outcomes differ for NYIFUP clients compared to individuals with no representation?
Is there a difference in rates of release from detention facilities (through bond or a successful case outcome) for NYIFUP clients compared to individuals with no representation?
Is there a difference in the length of cases for NYIFUP clients compared to individuals with no representation?
To what extent does NYIFUP influence tax revenue generated to federal, state, and local government, specifically through gained work authorization for certain clients?

Data sources and analysis
To establish a comprehensive perspective on the impact of NYIFUP, Vera gathered data from a variety of sources. The use of multiple data sources allows for triangulation, or corroboration, of findings and generates a richer dataset than any one source could offer on its own. For this evaluation, Vera utilized the following data sources:

Program data:

- The NYIFUP Client Database (hereafter “program data”), which the providers used to track detailed information about each individual represented by the program and their legal case. The data collected through this database is more detailed than what is typically available through other administrative datasets, including information about individuals’ families and employment, along with specific information about case activity and collateral proceedings. The data was provided to Vera as part of an agreement between Vera and the providers. It includes all individuals represented by the program between November 1, 2013 and June 30, 2016.28

Administrative data:

- The U.S. Department of Justice, Executive Office for Immigration Review, Office of Planning, Analysis & Technology’s CASE database (hereafter “EOIR data”), which is used to track information about all cases in immigration court. The data includes information
relating to the court, such as hearing dates, applications filed, bond information, case outcomes, and more. This dataset includes all individuals with an initial master calendar hearing between July 1, 2010 and June 30, 2016 in all U.S. immigration courts.

Datasets compiled by other researchers:

› Additionally, Vera used publicly available data from Syracuse University’s Transactional Records Access Clearinghouse (TRAC) Immigration website on historical asylum rates for the statistical model in the study. This dataset is compiled by TRAC through a standing FOIA request.29

Finally, Vera’s research team conducted a series of interviews and focus groups between August 2016 and April 2017 to gather qualitative data that could further augment and contextualize the administrative data.30 This qualitative data included:

› Seventeen NYIFUP client or family member interviews, including 13 male and two female clients (a distribution similar to the general NYIFUP population), one client’s husband, and another client’s father. Interview participants were recruited, with their informed consent, by NYIFUP attorneys. Interviews were conducted independently by Vera in the clients’ preferred language (either Spanish or English). To account for a range of experiences and viewpoints in the sample, individuals with varying legal outcomes were asked to participate. At the time of the interviews, two of the 17 participants were in detention with pending cases (12 percent), seven had been released from detention on bond while awaiting outcomes of their cases (41 percent), four had already been granted the ability to remain in the United States (24 percent), two were ordered removed and were interviewed telephonically following removal (12 percent), and two were family members of clients who had been ordered removed (12 percent). These interviews focused on the challenges of being detained, experiences with the immigration court process and representation, and the impact of any outcomes by the time of the interviews. All clients referenced throughout the report have been given pseudonyms to protect their identities.

› Five focus groups, each with multiple NYIFUP managers, attorneys, paralegals, and staff for a total of over 40 participants. Vera held separate focus groups for program managers and staff attorneys to
increase comfort and encourage honesty during the discussions. The manager focus groups discussed universal representation programs generally, the kinds of cases NYIFUP attorneys were representing, and program implementation and operations. The attorney focus groups discussed working with NYIFUP, the impact of NYIFUP on the court, attorneys' perspectives on the program, and observations about the impact of NYIFUP on individuals, families, and communities.

- Six stakeholder interviews. These interviews were conducted with ICE's Deputy Chief Counsel at Varick Street, Khalilah Taylor; New York State Assembly Member Marcos Crespo; and three retired immigration judges, Robert Weisel, Sarah Burr, and Alan Page. Each of these stakeholders consented to be named in this report. Stakeholder interviews focused on the implications of a universal representation model, the effect of NYIFUP on court proceedings, and the strength of legal arguments by NYIFUP attorneys.

- In addition, Vera received commentary on the program from New York City Council Speaker Melissa Mark-Viverito, Chief Judge Robert Katzmann, and Steven Banks, Commissioner of the New York City Human Resources Administration.

Analytical strategies employed

The evaluation of NYIFUP incorporated several analytical strategies to fully explore the impact of the program. They include:

- descriptive statistics about deportation proceedings across different populations: NYIFUP, unrepresented cases at similarly situated courts, national cases, and unrepresented cases at Varick Street before NYIFUP;
- logistical regression to isolate the impact of NYIFUP on case outcomes while controlling for demographic, situational, and environmental factors that influence the outcome; and
- analysis of qualitative data to identify and understand themes and narratives present across different situations.

Methodological limitations in the evaluation of NYIFUP

The evaluation of NYIFUP presented several challenges that Vera's research team worked to address. All details of the methods used in this evaluation
are in the Methodological Appendix at www.vera.org/nyifup-evaluation-methodology. The key limitations to these methods are described below.

First, there are several limitations regarding the administrative data that were considered in designing the study. As with most datasets designed for program management rather than research purposes, a small degree of missing, inaccurate, or incomplete data entry is to be expected. To protect against these sorts of data inconsistencies to the extent possible, Vera conducted several quality checks of the data, including running comparisons between the statistics gleaned from immigration court data and similar figures as reported by the NYIFUP providers, including, but not limited to demographic statistics (such as country of birth, age at time of apprehension, and legal status) and case statistics (such as case outcome and number of days from first master calendar hearing to disposition). Ultimately, any identified data inconsistencies were not believed to substantially influence the research findings.

Further, as is discussed in the Methodological Appendix, while Vera was able to identify a large percentage of all NYIFUP cases in the EOIR data (88 percent), there were still 221 cases that could not be matched with certainty and thus are excluded from any analyses which rely on EOIR data. It does not appear there are any consistent patterns that would suggest a certain subset of cases could not be matched; rather, this is likely due to differences in information reported to or recorded by attorneys and federal agencies. Data from these 221 cases are nonetheless included in findings that rely entirely on program data, such as statistics about client demographics and their families.

Lastly, the majority of the immigration court statistics presented in this report—such as case outcomes, case completion times, and related measures—can only be reported for completed cases. Although Vera estimates the outcomes for the pending cases, the descriptive statistics only include the cases that have completed as of June 30, 2016. The notes underneath the tables throughout the report clearly label the situations in which this applies. Cases in immigration court can take several months to multiple years to complete, particularly once an individual is released from detention. For example, according to TRAC, the average case that completed in federal fiscal year 2016 took 233 days at Varick Street and 958 days at 26 Federal Plaza. Accordingly, large numbers of cases remain pending, including 45 percent of all NYIFUP cases. Findings that rely on completed cases are therefore skewed towards the types of cases that resolve more quickly, such as those resulting in deportation.
Chapter I: The impact of universal representation on individuals

This chapter describes the extent to which NYIFUP has alleviated difficulties associated with representing oneself in deportation proceedings. As detailed below, represented individuals achieve significantly better legal outcomes and receive greater due process compared to unrepresented individuals.

Population served by NYIFUP

From the launch of NYIFUP through June 30, 2016, the program has matched 1,772 indigent individuals with free legal representation, providing robust access to due process and the benefits or relief for which they may be statutorily eligible. By the end of New York City’s fiscal year 2015—the first full year of NYIFUP—more than 95 percent of non-citizens whose immigration court cases began on the Varick Street “detained” docket were represented, with the majority represented by NYIFUP attorneys. These numbers are evidence of both the need for the program and its success in meeting the goal of achieving universal representation in New York City. The high participation rate illustrates that many individuals in immigration removal proceedings live in low-income households whose combined income falls below 200 percent of the federal poverty rate, a mere $23,340 per year (or $1,945 a month) for a single-person household in 2014. Notably, the percentage of immigrants represented by private counsel remained relatively constant through the implementation of NYIFUP, actually increasing slightly after the program began. This indicates that the means testing used was successful and signifies that NYIFUP is in fact not displacing representation by the private bar of individuals who can afford an attorney.

Despite earning low wages, NYIFUP clients had high workforce participation rates, with 67 percent reporting a vocation and 64 percent employed at the time of intake, akin to the 63.5 percent workforce participation rate for New York State residents. Further, employment rates for NYIFUP clients may be higher than reported, as clients who
work seasonally may not have been employed at the time of intake and clients without work authorization may be hesitant to report under-the-table employment. As will be discussed in Chapter III, immigrants form a critical part of New York’s workforce and economy. Thus, legal representation that helps avert unnecessary detentions and deportations also helps keep workers employed and contributing to the economy and, of course, their own households. While popular perceptions of persons in deportation proceedings often portray them as recent arrivals crossing the border without authorization and lacking ties to the local community, 41 percent of NYIFUP clients entered or resided in the United States legally, 30 percent as LPRs, as shown in Figure 1.

Many have deep ties to the community, having lived in the United States for an average of 16 years at the time of their initial court hearings. Some arrived at such a young age that New York was really the only home they had ever known. One NYIFUP client, Christian, came to the United States with his mother as a toddler:

As I started getting older—I was a teenager . . . I started looking for a job. I asked my mother where my birth certificate [was], my social security card, and turns out she didn't have it . . . I know everything
about America. My mind is America. It’s the only country I’ve ever been to. I never went back [to my home country]. Basically all I know is New York City.

Several other NYIFUP clients recounted similar tales. There was Teresa, the grandmother of a U.S. citizen, and Diana, who had lived in the United States for more than 20 years after her father was murdered in her home country. Added Edgar, a married father of six, “I’ve been living here since I was 16 . . . . The majority of my family is here. I’m an immigrant but my family is all citizens.”

On average, NYIFUP clients had been living in the United States for 16 years by the time they entered deportation proceedings.

Despite having lived in the United States for an average of 16 years, many NYIFUP clients were still relatively young—evidence, perhaps, of the young age at which many migrated to the country. They were also mostly male (84 percent of all clients). Figure 2 below shows the ages of clients at the time of their initial master calendar hearing, where a combined 59 percent were between 25 and 44 years of age.

Figure 2

Age of client at first master calendar hearing

<table>
<thead>
<tr>
<th>Age range</th>
<th>Number of clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 and under</td>
<td>0</td>
</tr>
<tr>
<td>19-24</td>
<td>125</td>
</tr>
<tr>
<td>25-34</td>
<td>375</td>
</tr>
<tr>
<td>35-44</td>
<td>250</td>
</tr>
<tr>
<td>45-54</td>
<td>0</td>
</tr>
<tr>
<td>55-64</td>
<td>0</td>
</tr>
<tr>
<td>65 and over</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Program data. Twenty-five percent of clients (N=444) were missing information regarding date of birth or date of initial master calendar hearing.
Consistent with their age cohorts nationally, 47 percent of NYIFUP clients had children living with them in the United States.\(^7\) Table 1 below shows the number and the percentage of children who had legal status whose parents were represented by NYIFUP attorneys.

<table>
<thead>
<tr>
<th>Clients with children</th>
<th>Total number of children</th>
<th>Total children with legal status</th>
<th>Percent of children with status</th>
</tr>
</thead>
<tbody>
<tr>
<td>840</td>
<td>1,859</td>
<td>1,607</td>
<td>86%</td>
</tr>
</tbody>
</table>

Source: Program data.

Clients who were parents had an average of two children, just like other families in the United States.\(^8\) Eighty-six percent of their children had some form of legal status, primarily U.S. citizenship. Many clients were also married. Among the 37 percent of married NYIFUP participants, 61 percent had partners with legal status, also primarily citizenship. Thus, with the exception of their own legal status, NYIFUP clients resemble the typical American in many ways: they had the same workforce participation rates as New Yorkers statewide, had the same rates of parenthood, and matched the average number of children as the general U.S. population. For those clients who were parents, their children were almost always U.S. citizens. As Christian, the NYIFUP client introduced earlier, noted, “The only thing that separates me from an American citizen is what it says on my birth certificate.”

NYIFUP clients also reflect the diversity of New York City, representing nearly 100 nationalities and 36 languages. Consistent with the extended periods of time NYIFUP participants had resided in the United States, 31 percent listed English as their primary language, while another 60 percent spoke Spanish. Table 2 illustrates the nationalities of those individuals served by NYIFUP. A more comprehensive list of nationalities is available in the Appendix 1.2 of the Quantitative Methodological Appendix.

Although Mexicans comprise the largest foreign-born group in the United States and proportionally comprise the largest group in immigration proceedings nationally—as well as make up the plurality of NYIFUP clients—they are slightly underrepresented in New York immigration courts compared to national rates. Likewise, Dominicans constitute only 1 percent of those in deportation proceedings nationwide, but are overrepresented in New York City and in NYIFUP specifically (at 15 percent). For much of the past century, Dominicans have comprised the largest group of foreign-born Latinos in New York City, and have had
lower rates of naturalization than other eligible foreign-born persons. Immigrants from the three Central American Northern Triangle countries (El Salvador, Guatemala, and Honduras) register in the top five nationalities for individuals in immigration court both for NYIFUP and nationwide, consistent with high volumes of migration from that region over the past few decades.

Table 2

<table>
<thead>
<tr>
<th>Nationalities of NYIFUP clients</th>
<th>Total cases</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexico</td>
<td>306</td>
<td>17%</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>268</td>
<td>15%</td>
</tr>
<tr>
<td>Honduras</td>
<td>227</td>
<td>13%</td>
</tr>
<tr>
<td>Guatemala</td>
<td>175</td>
<td>10%</td>
</tr>
<tr>
<td>El Salvador</td>
<td>157</td>
<td>9%</td>
</tr>
<tr>
<td>Jamaica</td>
<td>130</td>
<td>7%</td>
</tr>
<tr>
<td>Ecuador</td>
<td>63</td>
<td>4%</td>
</tr>
<tr>
<td>Colombia</td>
<td>41</td>
<td>2%</td>
</tr>
<tr>
<td>Haiti</td>
<td>37</td>
<td>2%</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>32</td>
<td>2%</td>
</tr>
<tr>
<td>Other countries/no information</td>
<td>336</td>
<td>19%</td>
</tr>
<tr>
<td>Total</td>
<td>1,772</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Program data.

The effect of universal representation on individuals’ legal cases

Without an attorney, individuals are rarely able to effectively navigate the immigration legal system

As described previously, the U.S. immigration legal system is a complex system that does not guarantee the right to government-funded counsel. Unlike criminal proceedings, where upwards of 95 percent of cases resolve through guilty pleas, plea negotiations are not a significant feature of immigration practice. As a result, immigration cases in which an individual claims a right to remain in the United States almost universally require full litigation. In the absence of a universal representation program like NYIFUP, immigrants without the financial resources to hire an attorney would face the daunting task of
representing themselves against a trained lawyer arguing on behalf of the federal government. Many individuals in deportation proceedings have valid legal claims to remain in the United States, yet can rarely effectively litigate their cases pro se without the assistance of counsel. The lack of a legal representative therefore prevents those individuals from effectively exercising the rights afforded to them under the law.

NYIFUP was born out of a recognition of this issue. Martin, a NYIFUP client who moved to the United States when he was only two years old, explained the complexity of immigration law from his perspective: “The legal system is a different kind of comprehension. They use different kinds of words with legal definitions. So a regular word would not be a regular word when applied legally. So you don't stand a chance without a lawyer.” Martin went on to describe the challenges he would have faced in the absence of NYIFUP:

If I wasn't provided a lawyer, I couldn't stand a chance. I didn't know the law. Everybody in court needs a lawyer. To go in front of the court system without a lawyer, that's like suicide, because the government counsel, they know the law . . . . They know the cases ... they know the rules, they have the experience—I don't. They know how to fight it, so there's no way I could win the case.

Like Martin, the majority of individuals facing deportation—and indeed the public writ-large—lack the training, resources, or understanding to effectively identify and exercise their legal rights, particularly those which permit them to remain in the country. This is significant, given that the consequences of deportation can often be a matter of life or death.

Recounted Carlos, another NYIFUP client, “[I]f it weren't for my lawyer, then I wouldn't be here today. I wouldn't be alive in my country either.”

NYIFUP attorneys understand the importance of their work and the need to ensure fairness within the system. As one attorney explained while describing the purpose of the program:

We are making it fair for people—many of whom have grown up in this country, worked here, went to school here, have U.S. citizen kids, have paid their taxes. . . . They've been, for all practical purposes, like a citizen and it's just that they never naturalized and now they're getting a double punishment. . . . [We are] at least having some fairness where the laws are just so complicated that it would be impossible for people to adequately represent themselves.
As these individuals describe, the challenges of fighting deportation without an attorney are profound, yet are particularly acute for those in detention. As retired Immigration Judge Alan Page stated, “When you’re locked up, you’re in a much worse position than if you’re on the outside.” Detained individuals face an added layer of barriers by virtue of their custody status, and may experience substantial challenges completing the basic activities needed to develop a case. For example, individuals who have an asylum claim need to gather country conditions reports and other evidence from their home countries, such as police reports and family member affidavits, documents that cannot be easily gathered from the confines of a jail cell.

These difficulties are further compounded by the limited English proficiency of many people in deportation proceedings, including many of the NYIFUP clients. As retired Assistant Chief Immigration Judge Robert Weisel said:

> When we talk about an immigrant population, we talk about a population that’s very vulnerable. Then you complicate that vulnerability by not being represented, not speaking English, [and] being detained. It’s an overwhelming theoretical unfairness.

For these individuals, having an attorney to coordinate activities related to the case is a significant determining factor in ensuring that the details of their cases are heard in court. Alex, a NYIFUP client and married father of two school-aged children, shared his experience: “Most of the information that [the NYIFUP attorney] get[s], I wouldn't have the chance to get that information to provide to the judge.” He added, “So if I didn't have a lawyer, I wouldn't be here today. I would have been deported. I know I couldn't fight that case by myself and win it, no way.” Retired Assistant Chief Immigration Judge Sarah Burr's comments underscore this point: “It seems to me that in the United States of America, where people are locked up ... we as a country must be providing them with counsel. It's a very, very basic right.” It is for this reason that NYIFUP focused its resources on representing people on the detained Varick Street docket.

This evaluation provides quantitative evidence that an unrepresented individual has a higher chance of being deported when compared to a similarly situated individual with representation. Qualitative evidence highlights the problem that unrepresented individuals do not understand the rights afforded to them or are unable to exercise those rights. The addition of a legal representative allows the facts of the legal case and the applicable law—and not simply the individual's lack of a lawyer or custodial
status—to drive case outcomes. As shown in the following section, this results in significantly higher rates of success for represented individuals.

### Represented individuals experience significantly more successful legal outcomes than those without representation

The presence of a lawyer is crucial for increasing individuals’ abilities to exercise their rights, which in turn keeps families united when there is a valid legal claim to relief. As demonstrated in Table 3, an individual’s representation status is strongly associated with legal case outcomes. A “successful outcome,” here and throughout the evaluation, is defined as an immigration court outcome of legal relief,41 termination,42 or administrative closure.43 These outcomes are considered successful from the client’s point of view because the individual is permitted to remain in the United States. All other outcomes, such as an order of removal or voluntary departure, are considered “unsuccessful” because they require the individual to depart the United States.

<table>
<thead>
<tr>
<th></th>
<th>National unrepresented</th>
<th>National represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsuccessful outcome</td>
<td>68,367</td>
<td>20,650</td>
</tr>
<tr>
<td>Percent</td>
<td>94%</td>
<td>54%</td>
</tr>
<tr>
<td>Successful outcome</td>
<td>4,009</td>
<td>17,868</td>
</tr>
<tr>
<td>Percent</td>
<td>6%</td>
<td>46%</td>
</tr>
<tr>
<td>Total</td>
<td>72,376</td>
<td>39,119</td>
</tr>
<tr>
<td>Percent</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: EOIR data. The numbers include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The statistical significance of these findings was tested using a chi-squared test. The difference in success rate between “National unrepresented” and “National represented” is statistically significant (p<0.001).

As this table demonstrates, unrepresented individuals whose cases begin while they are detained rarely achieve successful outcomes, with only 6 percent winning their cases. This is in stark contrast to the rate for represented individuals, who win 46 percent of the time.

In the years preceding NYIFUP, this trend of increased success rates for represented individuals was equally apparent at Varick Street and is a significant part of the reason for the creation of the program. These success rates are displayed in Table 4.
Like the nationwide numbers presented previously, the success rates for individuals at Varick Street in the years leading up to NYIFUP were strongly related to representation status. Unrepresented individuals achieved positive outcomes 4 percent of the time, compared to 42 percent for represented persons.

It should be noted that representation at Varick Street operated differently prior to NYIFUP and its implementation of universal representation. Before NYIFUP, legal representatives at Varick Street selected which cases to represent. This is commonly referred to as the “triage” model. Attorneys were able to select cases they perceived as more “winnable”—those with a higher likelihood of relief—or cases involving clients who appeared especially sympathetic. Further, characteristics of cases for individuals with the financial resources to hire a paid attorney were likely to differ from those of indigent individuals in ways that may correlate with case outcomes. For example, wealthier individuals may be more likely to obtain travel documents and be legally admitted into the country on a tourism or work visa, and may therefore be eligible for more forms of relief than individuals who enter without inspection while crossing the border. Thus, represented cases at Varick Street prior to NYIFUP, as well as the represented cases nationally—those selected under the triage model—are qualitatively different from those represented under NYIFUP, where the only criterion for representation was household income.

Table 4

<table>
<thead>
<tr>
<th></th>
<th>Varick unrepresented</th>
<th>Varick represented</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsuccessful outcome</td>
<td>2,121</td>
<td>1,174</td>
</tr>
<tr>
<td>Successful outcome</td>
<td>81</td>
<td>862</td>
</tr>
<tr>
<td>Total</td>
<td>2,202</td>
<td>2,036</td>
</tr>
</tbody>
</table>

Source: EOIR data. The numbers include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The statistical significance of these findings was tested using a chi-squared test. The difference in success rate between “Varick unrepresented” and “Varick represented” is statistically significant (p<0.001).
Vera estimates that 48 percent of NYIFUP cases will complete successfully, a 1,100-percent increase from the observed success rate for unrepresented cases at Varick Street before NYIFUP.

By June 30, 2016, 839 NYIFUP cases had completed fully, 10 had initial dispositions but were awaiting a decision on appeal, and 681 remained pending. In order to assess the program’s success rate, it is critical to understand the qualitative difference between the completed and pending cases. Figure 3 displays the outcomes for the NYIFUP cases that have concluded in immigration court, including the 10 awaiting appeal, by the length of the case (defined as the number of days from initial master calendar hearing to a decision by the immigration judge), and demonstrates that cases that ended in a successful outcome took a longer time period to conclude, while those that ended unsuccessfully were considerably shorter in duration.\(^4\) The completed cases (being generally shorter in duration) therefore contain a disproportionate number of cases with unsuccessful outcomes. In contrast, the pending cases (being generally longer in duration) contain a disproportionate number of cases that will eventually resolve with successful outcomes.

---

**Figure 3**

**Legal case outcomes for NYIFUP cases, by length of case**

Source: EOIR data. The numbers include only completed cases, including those with pending appeal as of June 30, 2016. They do not include re-opened cases.
Indeed, only 3 percent of NYIFUP cases that ended within 30 days resulted in a successful outcome, compared to 50 percent of cases that concluded after 180 days or more. A similar trend has also been observed and tested with non-NYIFUP cases. This correlation between case duration and outcome is likely driven by two factors. First, in detained cases with no relief, it is in everyone’s interest to complete the proceedings as quickly as possible with the immigrant accepting a deportation or voluntary departure order. In contrast, when people have viable claims, it takes time for cases to proceed to trial or to brief and decide a motion to terminate. Second, individuals with a higher likelihood of success are generally better candidates for release on bond and, once a person is released, cases take much longer because the detained court proceedings are expedited to reduce detention time and associated costs to the government.

Given this significant correlation between the length of a case and its legal outcome, the outcomes for NYIFUP cases that have already completed are only part of the story, as they contain a disproportionate number of cases with unsuccessful outcomes. Accordingly, Vera estimated the outcomes for the 681 pending cases based on the known case qualities, using the statistical model described later in this chapter.\(^\text{15}\)

Incorporating these estimates, Table 5 shows that NYIFUP is estimated to have successful outcomes for 48 percent of the cases accepted for representation between November 2013 and June 2016. This includes successful outcomes for 24 percent of the closed cases and 77 percent of the pending cases.

<table>
<thead>
<tr>
<th>Outcomes of completed cases (Nov. 1, 2013 – June 30, 2016)</th>
<th>Outcomes of pending cases (projected)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsuccessful outcome</td>
<td>636 (76%)</td>
<td>160 (23%)</td>
</tr>
<tr>
<td>Successful outcome</td>
<td>203 (24%)</td>
<td>521 (77%)</td>
</tr>
<tr>
<td>Total</td>
<td>839</td>
<td>681</td>
</tr>
</tbody>
</table>

Source: EOIR data and TRAC data. The outcome of completed cases include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. Ten NYIFUP cases have a pending appeal and are excluded from these numbers. This information comes from EOIR data. The outcomes of pending cases (projected) is generated from the statistical model which is presented in full in the Quantitative Methodological Appendix. The model data is produced from EOIR data and TRAC data.

Compared to the observed success rate for unrepresented cases at Varick Street before NYIFUP (4 percent) and the observed success rate for nationally unrepresented cases (6 percent), NYIFUP’s 48 percent projected...
success rate signifies a 1,100 percent increase and 700 percent increase in successful outcomes, respectively.46

Significantly, 76 NYIFUP cases (9 percent of the 849 completed cases) resulted in termination, the immigration court equivalent to a case dismissal, meaning that the government’s charges, as stated, were insufficient to justify deportation. Without the help of their NYIFUP attorneys, these 76 individuals likely would not have known that their charges were insufficient and would thus not have achieved the same positive case outcome.

**Representation through NYIFUP increases individuals’ chances of a successful legal outcome**

Since representation is only one of many factors that could influence case outcomes, it is necessary to use a more sophisticated technique than simple comparisons to measure the independent impact of representation on legal outcomes. To do so, Vera developed a statistical model (using logistical regression) to compare the success rate for NYIFUP cases to similarly situated, unrepresented cases at Varick Street and three other comparison courts: the detained dockets at Arlington, Boston, and Newark. Together, the unrepresented cases at these three courts plus Varick Street during the time of NYIFUP will hereafter be referred to as “the comparison courts.” These comparison courts were selected because the respondent populations in these courts were most similar to the population in the Varick Street court.47 NYIFUP cases are compared to similarly-situated cases without representation, because no representation, not private representation, is the more frequent option facing the individuals served by NYIFUP. As detailed in the Introduction at page 7, all of the individuals served by NYIFUP are below income levels set by the program design, making a private attorney option unfeasible for most.

The statistical model empirically tests whether representation itself was truly a causal factor predicting successful case outcomes by controlling for the influence of additional factors that may also affect outcomes. These include factors related to the forms of relief likely to be available, such as an individual’s years in the United States since their most recent entry, the number and type of NTA charges, the individual’s legal status (e.g., LPR), whether the person received bond (which is itself a proxy for other underlying factors, such as ties to the community), and the length of stay in detention prior to final disposition. The model also accounts for additional environmental factors that influence the probability of obtaining legal relief, such as the leniency of the judge (defined by the percent of asylum applications granted historically), the experience of the judge (defined by
total number of decisions made), the U.S. asylum grant rate toward the individual’s country of birth, and the ICE field office that apprehended them. The statistical model holds each of these factors constant, isolating the unique impact of legal representation.

The logistic regression used to produce the predicted probability of successful outcomes passed a series of goodness of fit and reliability tests, providing confidence in the accuracy of the estimates. The results of the model are graphically displayed in Figure 4, which shows the predicted probability of obtaining a successful outcome for people without representation at the comparison courts and for those who have a NYIFUP attorney. The horizontal axis demonstrates the number of years the person has been in the United States to illustrate how the impact of representation can vary across different circumstances. The bands surrounding each line represent the confidence intervals, meaning that there is 99 percent certainty that the true probability of receiving a successful outcome falls within each band.

As illustrated by the gap between the lines for NYIFUP and unrepresented cases, the probability of a successful outcome is consistently higher with a NYIFUP attorney, and this difference is statistically significant. There is a direct, causal relationship between representation through NYIFUP and successful case outcomes. Notably, both groups—NYIFUP cases and those without representation—have a higher

Figure 4
Predicted probability of successful outcome, by length of time in United States

Source: EOIR data. The numbers include only and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016.
probability of relief the longer they have been in the United States. This is unsurprising, given that certain lengths of time in the country are required for certain forms of relief, such as LPR cancellation of removal (seven year requirement) and non-LPR cancellation of removal (10 year requirement). Length of time in the United States is also likely related to additional factors that influence judges’ discretion but are not measured in the EOIR data, such as the existence of U.S. citizen children, a history of paying taxes, and the ability to establish reasons why deportation would create extreme hardship for the individual’s family.49

Statistical evidence demonstrates that individuals have a substantially higher likelihood of a successful case outcome with a NYIFUP attorney compared to if they represent themselves.

The statistical model allows for a greater understanding of how the likelihood of success differs based on various individual and courtroom characteristics. The extent of the positive impact of NYIFUP representation varies according to case characteristics other than representation. Table 6 provides several examples of how the impact of representation differs across scenarios based on estimates produced in the model.

<table>
<thead>
<tr>
<th>Scenario</th>
<th>NYIFUP predicted probability of success</th>
<th>Unrepresented predicted probability of success</th>
<th>Percent difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>79%</td>
<td>20%</td>
<td>59%</td>
</tr>
<tr>
<td>Male, LPR</td>
<td>84%</td>
<td>27%</td>
<td>57%</td>
</tr>
<tr>
<td>Male, no aggravated felony charge</td>
<td>64%</td>
<td>11%</td>
<td>53%</td>
</tr>
<tr>
<td>Mexican male, under one year in United States, drug charge, in front of less lenient judge at Varick Street</td>
<td>19%</td>
<td>2%</td>
<td>17%</td>
</tr>
</tbody>
</table>

Source: EOIR data and TRAC data. The outcome of completed cases include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. All coefficients and significance of the variables included in the model are in the Quantitative Methodological Appendix. However, coefficients (log odds) from logistic regression are not easily interpreted. It is common practice to instead provide a series of predicted probabilities resulting from the model. In this table Vera presents the variables that were adjusted only. All others were held constant at their mean value or, when categorical, at their modal value.
As these predicted probabilities suggest, the characteristics and facts of the legal case itself and the context in which the case exists are also key determinants of legal outcomes, as one might expect. In other words, legal representation undoubtedly improves outcomes for individuals whose circumstances allow them to make valid legal claims to remain in the United States.

The effect of universal representation on individuals receiving due process

Representation improves fairness and the administration of justice in immigration court

The influence of a legal representative goes beyond success rates to ensuring that fundamental fairness is achieved in immigration proceedings. As discussed previously, the immigration legal system involves a complicated patchwork of laws, including laws that extend rights of due process to all individuals regardless of their claims to legal relief. For some, the law will permit them to legally remain with their families in the United States. Others may find that they have no legal recourse to remain in the country, yet are still legally entitled to due process under the U.S. Constitution. A just court system is one in which due process is afforded to all immigrants, where individuals can exercise the right to pursue their cases within the confines of the law. Without representation, non-citizens often lack the legal expertise to understand both their legal rights and the mechanisms used to exert those rights. As Immigration Judge Burr stated:

In order to have due process, you have to have representation of all of the parties before a judge. . . . The fact is that the Constitution guarantees all people due process and equal protection.

Judge Burr observed that in fact the most “significant part of [NYIFUP's impact] is that it provides due process.” She explained:

What you have now because of NYIFUP is a more traditional court setup. You have lawyers for anybody who [qualifies for the program]. You have the government attorney, who was always there. And you have the judge in the middle ... [T]hat basically embodies due process.
One NYIFUP attorney made a similar point, succinctly summarizing a sentiment repeated by many of the legal professionals Vera interviewed: “This is what a fundamentally fair hearing looks like—it has lawyers in it. The case law is that the government has to provide people with a fundamentally fair hearing.” Immigration Judge Page concurred, noting, “From the court’s point of view, I want to be able to say, regardless of the decision I reached, that both sides had a fair hearing.” As such, he continued, “NYIFUP is a crucial player in the delivery of justice.”

Representation is a key component in the safeguarding of due process throughout the legal case. Within the context of universal representation, the presence of NYIFUP attorneys helps to guarantee fairness and balance in the immigration court system—even if the case ultimately results in deportation.

NYIFUP attorneys achieve this due process in various ways, including through the use of motions and applications—the procedural mechanisms used by parties in immigration court to request that the immigration judge make a determination on legal and factual issues being raised before the court. According to EOIR data, NYIFUP attorneys recorded a high level of activity in their cases, including 587 motions (filing motions in 28 percent of cases) and 1,219 applications for relief (filing applications in 36 percent of cases) through June 30, 2016. Although further details about these motions are not specified in the EOIR data, they include both substantive and procedural motions. Substantive motions include motions to terminate (asserting that the person is not actually subject to deportation or, in extreme cases, is a wrongfully detained U.S. citizen), motions for a custody redetermination (seeking release from detention), and motions for safeguards for mentally ill individuals who cannot participate adequately in their proceedings, among others. Procedural motions include motions to continue (to ensure adequate time to prepare a case), motions for telephonic testimony, and motions to accept late filings, among many others.

These motions are an essential part of NYIFUP attorneys’ pursuit of due process for their clients. While some motions can be made orally even by an unrepresented individual—such as a motion to continue requesting additional time—many motions require substantive legal research and briefing that can only realistically be adequately prepared by an attorney.

For individuals with a potential claim for legal relief, the attorneys can file applications for relief to fight their clients’ cases. Applications for relief include asylum applications, applications for LPR cancellation (discretionary relief for long-term LPRs), and applications for non-LPR cancellation (a form of relief for long-term undocumented residents who have U.S. citizen or LPR family), among several others. If granted, these applications generally provide an individual permanent residence and
place the client on the path to U.S. citizenship. However, regardless of the outcome, the ability to pursue legal relief through applications stands as another testament to the ability of NYIFUP attorneys to safeguard due process.

Overall, 45 percent of NYIFUP cases involved applications for relief in the immigration courts, while an unknown number also involved applications for immigration status (citizenship or visas that create a pathway to legal residency) to U.S. Citizenship and Immigration Services (USCIS) that are not tracked in court data. Table 7 shows the number of immigration court applications filed for NYIFUP clients. I-589 applications for asylum, withholding, and protection under the Convention Against Torture (CAT) are the most frequent applications filed. Applications are not mutually exclusive, meaning the same person can file multiple applications. This is particularly common for those applying for asylum, withholding, and CAT, as these forms of relief are submitted with a single application.

<table>
<thead>
<tr>
<th>Application</th>
<th>Percent of total applications</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention Against Torture (CAT)</td>
<td>28%</td>
<td>385</td>
</tr>
<tr>
<td>Withholding</td>
<td>27%</td>
<td>369</td>
</tr>
<tr>
<td>Asylum</td>
<td>21%</td>
<td>282</td>
</tr>
<tr>
<td>Voluntary departure</td>
<td>10%</td>
<td>137</td>
</tr>
<tr>
<td>Cancellation of removal–non-LPR</td>
<td>8%</td>
<td>108</td>
</tr>
<tr>
<td>Cancellation of removal–LPR</td>
<td>4%</td>
<td>46</td>
</tr>
<tr>
<td>212(c)</td>
<td>1%</td>
<td>11</td>
</tr>
<tr>
<td>Adjustment of status</td>
<td>1%</td>
<td>9</td>
</tr>
<tr>
<td>Other waivers</td>
<td>0%</td>
<td>5</td>
</tr>
<tr>
<td>NACARA</td>
<td>0%</td>
<td>2</td>
</tr>
<tr>
<td>Unknown</td>
<td>0%</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>1,356</td>
</tr>
</tbody>
</table>

Source: EOIR data, includes all cases. The same individual can have multiple applications filed on his or her behalf. Applications for Withdrawal of Request for Admission (n=4) are omitted from this list.

Of the applications filed by NYIFUP attorneys, 532 (39 percent) have been filed in cases that have completed and do not have an appeal pending. These 532 applications were filed on behalf of 323 unique individuals, illustrative of the fact that the same person can submit many applications. Disregarding applications for voluntary departure, there are 208 unique individuals with applications filed. Of these non-voluntary departure applications already decided, 52 percent (N=109) had at least one application granted, indicating a successful legal outcome. These
applications represent the breakdown of the types, frequency, and outcome of applications filed by NYIFUP attorneys in pursuit of successful legal outcomes. Vera did not, however, empirically test the extent to which these applications contribute to explaining the increased likelihood of success for those individuals represented by a NYIFUP attorney. Additional research would be required to test whether these same individuals would have been able to prepare an application effectively on their own. The low success rates of unrepresented individuals provides preliminary evidence that this would not be the case.

**The presence of an attorney helps the proceedings themselves run more smoothly, to the benefit of all**

NYIFUP attorneys also serve a critical role in increasing the ease of proceedings for all involved. When individuals appear in court without representation, immigration judges are required to explain court processes and procedures to the non-citizen, often through an interpreter, before asking if they wish to proceed unrepresented or want to find an attorney. This process prolongs the hearing and burdens judges. Immigration Judge Burr explained that representation through NYIFUP alleviates these concerns:

> In the old days [before NYIFUP], if [someone] were unrepresented, the judge would have to ... step in and provide rights and remedies to the respondent. Now, what's wrong with that picture? The judge is also the person who's deciding your case.

Judge Burr continued, "It makes the judge a lot more comfortable to know that this person is represented by competent counsel. Because then the judge can just be a judge." Similar feelings of role strain were also identified by the other two judges interviewed, who felt that they needed to go beyond their traditional judicial duties to provide individuals with some semblance of due process. This slows down the hearing, introducing inefficiencies that could be easily handled by an attorney outside of court hours, and hinders the court from operating at its full potential.

The presence of an attorney during a hearing also ensures that individuals understand and engage with the dialogue and events that take place, further helping the process to run more smoothly. This desire for immigrants to understand the proceedings has been universally expressed. As explained by Khalilah Taylor, ICE’s Deputy Chief Counsel at Varick
Street, “Litigating cases where the respondent is represented is beneficial, as it allows for easier communication about issues that can be resolved with agreement.” Immigration Judge Weisel shared this sentiment, adding, “If an [ICE] trial attorney is sitting across from another attorney, then that might speed the process because their language is the same. They can resolve issues faster.” Immigration Judge Page noted that having lawyers prepare their clients also means the judge does not have to consume additional docket time explaining basic procedural issues, which is even more time consuming given that it often occurs through interpreters:

[Representation] is a major assistance to the court, because you have to explain all of these rights through an interpreter to somebody who really has no knowledge of the immigration system; whereas if you have a competent lawyer, it’d take you five minutes.

Proceedings in immigration court—including spoken language and written materials—occur entirely in English. Ninety-one percent of the individuals served by NYIFUP were born in non-English speaking countries, although the language barrier does often diminish with longer periods of residence in the United States. Although the court typically provides interpreters for non-English speaking individuals, the entirety of the court hearing is sometimes not interpreted directly to the immigrant, despite regulations requiring interpretation of the entire proceeding. Conversations between the judge and the attorneys, for example, may not be interpreted to the individual in proceedings.

Many native English speakers are often unable to fully comprehend complex legal jargon, let alone immigrants who do not speak English or speak English as a second language. New York Assembly Member Marcos Crespo visited a deportation proceeding and witnessed the challenges posed by language barriers for immigrants before a judge. In an interview with Vera staff, he noted how important it is to address language barriers to ensure due process. Language barriers hinder people’s ability to understand their rights and prevent them from effectively identifying appropriate avenues for relief and pursuing those claims to legally remain in the United States. NYIFUP attorneys help to address this gap by conducting client meetings and explaining legal processes in clients’ native languages. Most members of the provider legal teams are fluent in Spanish, and they also rely on telephonic and in-person interpreters as an aid to ensure they are able to meaningfully communicate with their clients.
NYIFUP attorneys more frequently win appeals to the Board of Immigration Appeals

When an immigration judge issues a decision, both the government (represented by ICE) and the non-citizen have the right to appeal that decision to the Board of Immigration Appeals. Table 8 shows the number of appeals filed for NYIFUP and unrepresented cases (combining ICE and non-citizen appeals), and the percent of completed appeals that ended in the non-citizen’s favor.

As the above table shows, NYIFUP clients’ cases experienced a higher rate of appeals than for unrepresented individuals at comparison courts and nationally. Ten percent of NYIFUP cases had an appeal filed compared to 3 percent of national unrepresented cases or 5 percent of unrepresented cases at the comparison courts. The higher rate of appeals accompanying cases that, in the absence of NYIFUP, would have otherwise gone unrepresented makes sense: as NYIFUP clients more frequently won successful outcomes and obtained bond at Varick Street, the government decided to contest more decisions. Alternately, as clients lost their cases or did not receive bond, NYIFUP attorneys were able to continue to represent their clients’ interests to the BIA, seeking to ensure due process throughout the duration of the case. Table 8 also shows that NYIFUP attorneys won appeal outcomes that were favorable to their clients in 14 percent of their BIA cases as compared to 1 percent of national unrepresented cases and 2 percent of unrepresented cases at comparison courts. Given that the goal of appeals is to prove to an administrative body that the immigration judge should have reached a different conclusion in the case, the same challenges

<table>
<thead>
<tr>
<th></th>
<th>Total cases</th>
<th>Cases with appeal filed</th>
<th>Percent of cases with appeal filed</th>
<th>Cases with completed appeals</th>
<th>Percent of completed appeals ending in respondent’s favor</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYIFUP</td>
<td>1,530</td>
<td>159</td>
<td>10%</td>
<td>72</td>
<td>14%</td>
</tr>
<tr>
<td>National unrepresented</td>
<td>121,632</td>
<td>4,229</td>
<td>3%</td>
<td>2,906</td>
<td>1%</td>
</tr>
<tr>
<td>Comparison courts unrepresented</td>
<td>3,743</td>
<td>178</td>
<td>5%</td>
<td>133</td>
<td>2%</td>
</tr>
</tbody>
</table>

Source: EOIR data, includes all cases. Includes both bond and case appeals. A statistical test to determine whether the NYIFUP proportion of appeals is significantly higher than the comparison group confirmed the difference of means. P-Value<0.01. The statistical significance of these findings was tested using a chi-squared test. The difference in the percentage of individuals with appeals filed is significant (p<0.001). However, too few cases won on appeal in each of the unrepresented groups to conclude significance in terms of appeal success.
that make it difficult for unrepresented persons to achieve successful case outcomes in front of an immigration judge also apply in this context. It is therefore unsurprising that unrepresented individuals would fare poorly on appeal. That NYIFUP attorneys won outcomes favorable to their clients in only 14 percent of their appeals is also not surprising given the overall low rate (5 percent) of non-citizen success on appeal nationally.

An explanation for the relative success of NYIFUP cases on appeal was offered by a NYIFUP attorney, who explained that good immigration lawyers seek to preserve as many issues as possible for appeal, should one become necessary, by comprehensively raising legal issues (a process known as “making a record”). The attorney’s point highlights both the complexity of immigration court defenses and the positive effects of maintaining representation from start to finish of a case: the same attorney has a thorough knowledge of the record on which to base arguments for appeal. Moreover, as NYIFUP attorneys pointed out, in a model that does not employ universal representation, clients who received poor quality representation at the immigration court level often seek counsel to pursue an appeal. In those instances, the record may not support all the possible issues that could be raised on appeal, requiring attorneys to attempt to interject new issues that with more skilled representation would have been raised at the immigration court level—an added efficiency NYIFUP achieves. However, because of strict legal rules requiring legal arguments to have been raised, in the first instance, to the immigration judge, lack of representation at the initial stages often forecloses later appellate review of newly raised issues. As discussed below, the ability of NYIFUP attorneys to raise and preserve evolving legal issues at the initial stages and through BIA appeals is therefore a critical factor in ensuring that issues can be properly addressed on appeal. This contributes not only to improved outcomes for individuals but also to the proper development of precedential case law from the BIA and ultimately from the federal courts.

Although NYIFUP cases that pursue relief take longer on average to complete than unrepresented cases, this may be indicative of effective representation

For those individuals who do not pursue relief, NYIFUP has proven successful at facilitating efficient court operations by quickly resolving
large numbers of cases with no viable relief early in the immigration court process. This is evidenced by the fact that none of the cases that ended within 30 days of the first master calendar hearing had relief applications filed. The vast majority of these cases end in deportation.

Table 9

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Comparison courts unrepresented</th>
<th>NYIFUP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relief</td>
<td>124</td>
<td>186</td>
</tr>
<tr>
<td>Termination</td>
<td>50</td>
<td>158</td>
</tr>
<tr>
<td>Admin closure</td>
<td>49</td>
<td>113</td>
</tr>
</tbody>
</table>

Source: EOIR and program data. The numbers include only completed cases and cases with appeals that completed on the detained docket. They do not include re-opened cases. Vera analyzed this data from the beginning of NYIFUP to the retirement of Judge Page—an immigration judge at Varick Street—on June 1, 2015, at which point the reduction in judge capacity led to substantial court backlogs unrelated to lawyer activity. For comparison courts unrepresented, n=96. For NYIFUP, n=62.

From an efficiency standpoint, resolving a substantial number of cases very quickly—and doing so after allowing for consultation with a trained attorney—enables the court to direct more resources towards those individuals with claims to legal relief.

Those cases that remain in the NYIFUP caseload beyond the first hearing take longer on average to complete compared to unrepresented cases at the comparison courts. These are the cases for which attorneys have identified possible defenses or forms of relief and undertake activities to pursue those remedies (see the discussion of applications and motions above at page 32). Table 9 depicts the average number of days from the initial master calendar hearing to the case’s disposition in immigration court, by legal outcome, for cases that concluded successfully on detained court dockets.

As is apparent from the table, unrepresented cases at comparison courts have significantly shorter case times compared to NYIFUP cases. In certain situations, variables that influence case time, like the scheduling of hearings or the lengths of continuances, are out of the attorney’s control. At other times, however, the longer case times for NYIFUP may be due to the activity of the attorney pursuing a wide range of relief for clients.

The steps required for an attorney to vigorously litigate a case take time—preparing a defense, obtaining documentation and other evidence,
traveling to detention centers to interview clients, making motions, filing applications for relief, or engaging in collateral proceedings—particularly when balancing caseloads of multiple clients. This was observed by Khalilah Taylor, ICE deputy chief counsel at Varick Street:

Since the introduction of NYIFUP, case completions have decreased ... 51 Anecdotally, since the introduction of NYIFUP, case completions are achieved with many more scheduled master and merits hearings. . . . Given the decrease in case completions statistically, all sides could benefit from a more strategic approach in litigating cases.

Immigration judges recognize that case duration may be negatively impacted by effective representation. However, judges interviewed by Vera opined that increased representation was valued enough to endure longer cases. As Judge Weisel shared, “Slowing the process down is really not the determinant. The determinant is whether someone gets due process.” Judge Burr made a similar observation:

Will some cases be a lot longer because they have diligent representation? Yes. But a lot of cases will be a lot shorter and, to my mind, it’s a judge’s dream to sit in court and to have a lawyer on each side who knows what they’re doing.

While unrepresented cases pre-NYIFUP concluded more quickly, the dramatic improvement in win rates achieved by the NYIFUP program suggest that, prior to NYIFUP, many individuals with a legal right to remain in the United States were instead deported. The pursuit of all forms of legal relief afforded under U.S. immigration law may increase case times, but it is this pursuit that drives the increased success rate and that also has residual effects on the legal precedent used to interpret those laws. As the next section will detail, representation through NYIFUP has impacted cases far beyond New York City through the advancement of immigration case law.
The increase in legal representation has also contributed to the development of case law, as NYIFUP has helped establish legal precedent that has impacted proceedings well beyond the project.

One of the most significant long-term impacts of NYIFUP will be its contribution to the development of the law. When Judge Katzmann originally sounded the alarm about the lack of adequate representation for immigrants, he highlighted the fact that the lack of lawyers in deportation proceedings meant that important legal issues were not appropriately preserved for review by appellate courts. As a result, prior to NYIFUP, the law was not always able to develop as it should through precedential appellate decisions because appellate courts can only rule on issues that are properly raised in the original deportation proceedings. NYIFUP has changed that, since almost all detainees in New York now have counsel and since there are institutional defenders with the vision and ability to identify and litigate important issues of law, something immigration judges routinely noted in interviews about NYIFUP.

Since appeals to the federal courts can take several years, NYIFUP cases are just now starting to percolate to the federal courts. One of the first NYIFUP cases to reach the U.S. Court of Appeals was *Lora v. Shanahan*, which was decided in 2015 by the Second Circuit. In *Lora*, the court ruled that it was unconstitutional to hold immigrants in detention for more than six months without providing them with a bond hearing, regardless of prior criminal convictions. Prior to *Lora*, ICE would hold many individuals in detention for the full duration of their case—which could last years—without any individualized assessment of whether they were a danger to the community or a risk of flight. The *Lora* decision has allowed scores of NYIFUP clients to win release and, beyond NYIFUP, has become the legal standard for all deportation cases in the Second Circuit (spanning Connecticut, New York, and Vermont).

Subsequent litigation by NYIFUP attorneys has expanded the impact of the *Lora* decision to asylum seekers originally detained at the border. NYIFUP attorneys also achieved a groundbreaking recent ruling from a federal district court, which ruled that, in setting bond amounts, immigration judges must consider an immigrant’s ability to pay because it cannot “be the case that people are being detained simply for being poor.” Examples of NYIFUP cases contributing to the development of the law are sure to proliferate as the direct appeals of NYIFUP cases are just now beginning to reach the federal courts.
Beyond immigration court, NYIFUP attorneys initiate collateral proceedings to advance their clients’ opportunities for a successful case outcome.

Success in immigration court often hinges on collateral proceedings in other legal venues, which may shape an individual’s criminal charge history, immigration status, bond eligibility, and broad access to relief. These collateral proceedings benefit from NYIFUP's holistic approach to legal cases and regularly occur in the following venues outside of immigration court:

- **Criminal Court**: Coordination with defense attorneys in pending criminal cases and post-conviction motions to vacate defective criminal convictions that trigger deportation;
- **U.S. Citizenship and Immigration Services (USCIS)**: Applications for legal immigration status outside the immigration court that can form the basis of defenses to removal cases and may lead to deportation proceedings being terminated;
- **Family Court**: Actions to obtain special family court orders, which are necessary to establish eligibility for special immigrant juvenile (SIJ) status certification from USCIS for abused, abandoned, and neglected children; and
- **Federal District Court**: Habeas corpus petitions challenging detention, most typically the refusal to hold a bond hearing.

While unrepresented persons may be able to pursue *pro se* relief applications in immigration court, it is almost impossible to succeed in collateral proceedings without the assistance of an attorney. Even for experienced immigration attorneys, success in collateral proceedings often requires consultation with experts in other subject areas of the law. Beyond the legal complexities involved, persons who are detained face basic challenges to accessing or filing applications or documents in collateral venues and to appearing for hearings.

NYIFUP providers described the many ways in which their clients benefited from collateral proceedings, and the importance of comprehensive legal screenings to identifying defenses to deportation outside of immigration court applications. In assessing clients’ defenses in immigration proceedings, attorneys review potential eligibility for benefits provided by USCIS, including citizenship, derivative citizenship, and special visa categories for persons who are victims of various forms of
abuse, crime or human trafficking; who cooperate in federal criminal cases; or who belong to other vulnerable groups protected by immigration law.

Several NYIFUP clients ultimately proved citizenship, or eligibility for citizenship, as an outcome of their immigration proceedings, some because they had derivative citizenship status at some earlier point and were not subject to deportation, and others because the outcomes of their cases meant they were now eligible to apply and be approved for citizenship. Others were potentially eligible for relief from deportation but were unable to access that relief without the help of attorneys making applications to USCIS.

Simon's case illustrates the complexities involved in defending deportation cases and the overlap of multiple collateral venues. Simon had lived in the United States for more than 25 years as an LPR after migrating here from the Dominican Republic. For several years, Simon managed a family-owned bodega, and most recently worked as a deliveryman for a large company. In 2014, Simon was placed in removal proceedings after ICE officers arrested him at his home based on a 1999 misdemeanor conviction for possession of a controlled substance, for which he received a one year conditional discharge and no jail time. Despite adverse BIA precedent, his NYIFUP attorneys argued that he was bond-eligible. While the judge expressed sympathy given the time that had passed since his single conviction, he ruled that Simon was not eligible for bond. His NYIFUP attorneys concurrently filed an application for cancellation of removal in immigration court and a petition for writ of habeas corpus in federal district court arguing for a bond hearing. While the habeas petition was still pending, the immigration court granted the application for cancellation of removal. Simon was released, returning to live with his LPR wife and sons. The outcome of his immigration case enabled him to successfully apply to USCIS with the help of his NYIFUP team to naturalize and become a citizen, and his underage son thereby automatically received derivative citizenship.

Federico's case similarly required NYIFUP attorneys to engage in multiple collateral proceedings simultaneous to the immigration case. Federico, who was barely an adult when the NYIFUP team met him, came to the United States when he was 10 to reunite with his family. After Federico arrived, his father became physically abusive and threatened to kill the family. A few months before Federico's 21st birthday, NYIFUP attorneys won a family court order finding that Federico had been abused and abandoned by his father and that it was in his best interest to stay in the United States with his mother. His legal team subsequently pursued Special Immigrant Juvenile Status (SIJS) from USCIS with the family court finding. Simultaneously, they referred Federico's case to a criminal
appellate attorney who filed a motion seeking to file a late notice of appeal to enable Federico to appeal his sole criminal conviction for petit larceny, a conviction that barred him from obtaining a green card. After the late notice of appeal was accepted and the SIJS petition was granted, ICE agreed to terminate Federico’s case. Federico was released from immigration detention and has been pursuing his criminal appeal and green card application with the direct support of his family.

NYIFUP providers occasionally even used collateral proceedings to aid in post-deportation relief to bring back persons who had already been physically removed from the United States, a remarkable feat far beyond the scope of most immigration practices. In 2013, Roberto was deported to Mexico. The NYIFUP attorneys had sought a U Visa, a special visa for victims of certain crimes, based on wage theft and witness tampering. This process involved certification with the Department of Labor and filing with USCIS. After the deportation, the NYIFUP team continued to seek the visa, responding to multiple USCIS requests for evidence. In 2017, nearly four years after NYIFUP had first taken on the case, the visa was approved by USCIS and Roberto was able to return to New York City with lawful status and with several years of lost wages waiting in an escrow account. The NYIFUP supervising attorney recounted, “It was a very emotional moment and a reminder of why we work so hard.”

As these examples highlight, the cumulative benefits of legal representation extend beyond having a lawyer in immigration court to having a lawyer who can handle collateral proceedings in order to expand defenses to deportation and chances of successful outcomes.

**NYIFUP attorneys’ use of holistic legal services and wide-ranging subject matter expertise enable legal strategies across varied scenarios**

NYIFUP attorneys are successful at initiating collateral proceedings in part because the organizations they work at represent indigent persons in a range of areas, including criminal defense, family defense, housing defense, and immigration defense. This allows NYIFUP attorneys to leverage in-house resources across areas of subject matter expertise to the benefit of their clients’ cases. NYIFUP staff repeatedly emphasized the importance of this team-based approach. One attorney explained:

> The outcomes we get for our clients aren't just because they're working with a good lawyer, but because there's a good *team* working with that client. [We have] social workers and criminal defense attorneys who
inform us about the [circumstances] that brought [the clients] into the immigration system in the first place. [There are] family court lawyers who can tell us details and provide the documents they had from a family court case 15 years ago.

Providers also fund in-house professionals in other areas, such as social workers, who work alongside attorneys on NYIFUP cases. “We have our social workers or [can retain] psychiatrists or physicians,” said one NYIFUP attorney. “Those kinds of experts identify what is actually going on with the client.” Remarked another attorney:

When I talk to other immigration attorneys who are not part of NYIFUP and don’t have social workers on staff, I don’t know how they do it . . . . I don’t know how to explain [mental health issues] to the judge. Whenever we need, we can get a report from our [mental health] staff and that goes a long way.

Clients receive assistance on an array of issues from these staff who support the immigration attorneys, which helps attorneys build their cases and provides long-term benefits to the clients and their families. This attorney added, “If your client gets out of detention, [social workers] can connect them to the services they need to thrive . . . . It can help change their lives.” Social workers are particularly needed to work with clients who have suffered trauma. They are trained in how to safely work with a client to elicit information about historical trauma while minimizing the re-traumatization that occurs with recounting this information. Often, the identification of the trauma determines whether someone qualifies for relief. Clients do not always divulge this level of detail in initial screenings with attorneys. This issue is acutely felt in a triage system, as noted by Immigration Judge Burr:

A triage model is difficult . . . . You have to make decisions quickly and you can miss things. It’s just that simple . . . . The level of detail you have to get into for certain forms of relief is just not amenable to triage.

NYIFUP attorneys who participated in focus groups repeatedly returned to the theme of how important their access to other subject-matter experts was for the success of their cases. As part of the holistic model they described, attorneys also mentioned the use of outside experts to enhance their legal arguments: “[W]e work with experts all the time and they’re great . . . subject matter experts, medical experts, forensic experts, all kinds of experts.”

In-house expertise in criminal law particularly benefited NYIFUP
cases. The intersection of criminal and immigration law is extraordinarily complex, and the result of many deportation cases depends on proceedings in both systems. For example, Congress has designated certain categories of crimes that can trigger deportation, but state criminal laws do not map easily onto the federal deportation categories. It can, therefore, be extremely difficult—even for attorneys, let alone unrepresented persons—to determine whether a conviction actually subjects an individual to deportation. This is a common issue for LPRs, who generally cannot be deported unless they have committed one of the categories of crimes designated by federal law. As another example of the complex and sometimes counterintuitive nature of the intersection between criminal and immigration law, "aggravated felonies" are the most serious category of federal deportation charges, yet an aggravated felony need not be either aggravated or a felony under state law. Similarly confusing is the fact that crimes as minor as turnstile jumping or shoplifting can trigger deportation for an LPR, but a gun possession conviction does not necessarily bar someone from obtaining a green card in the first place. Thus, the government's classification of someone as deportable, like its classification of people as subject to mandatory detention, may be rebutted with additional background materials or legal arguments provided by subject matter experts. Immigration judges noted that one substantial difference between NYIFUP attorneys and the private bar was that NYIFUP attorneys worked at organizations that had experience with criminal statutes and were able to successfully intervene in cases involving criminal convictions. Judge Weisel explained:

NYIFUP fills a tremendous gap ... and it raised the bar. . . . I was particularly impressed by the comments made by the judges that I supervised at Varick Street about the quality of the briefs [from] the NYIFUP attorneys. . . . I attribute it to this: the [providers] are steeped in criminal law. They do criminal defense, so they know the criminal statutes. They may know criminal statutes better than an immigration practitioner who is more of a generalist.

This suggests that one reason NYIFUP clients with criminal charges may have greater success than other represented cases is because of the particular familiarity NYIFUP organizations have with criminal cases and the inconsistencies and challenges plaguing the criminal justice system. Several NYIFUP attorneys provided examples of situations where clients' Notices to Appear (NTAs) incorrectly alleged criminal charges that the attorneys were able to correct. One NYIFUP attorney explained the frequency of errors in the legal documents, "We've found several times
that the certificates of disposition submitted by the government had errors in them. [When] we went back to check the record, they were actually not convictions for immigration purposes.” These sorts of errors not only impacted whether clients were deportable, but also whether they were subject to mandatory detention or the amounts of bond set in their cases. NYIFUP attorneys are able to navigate this terrain and greatly increase the chance of a legal success for people with criminal charges. As articulated by one NYIFUP attorney:

Had any other lawyer seen his case other than a NYIFUP lawyer, [the lawyer] would’ve said, ‘You have no case, no chance’. . . . The guy has been here [in the United States for] 35 years and he would have 100 percent been deported if it weren’t for NYIFUP. He’s just one case of hundreds. And now he’s out and he’s going to win ... And it’s because of the holistic public defender model.

Lisa’s case illustrates the complexity of overlapping jurisdictional and legal issues lawyers must grapple with in these cases, which benefit from the comprehensive and holistic approach NYIFUP employs. Lisa’s family came to the United States from Central America when she was in elementary school, and she has lived here as an LPR for more than 20 years. Lisa completed a few years of college, but she dropped out when she became involved in a relationship with a man who was physically and emotionally abusive. In the context of this relationship, she was arrested and charged with two counts of embezzlement, accused of taking money from two stores where she worked. After her arrest, her abusive boyfriend disappeared. Desperate and alone, she followed the advice of her public defender and accepted a plea deal to the two counts of embezzlement and a sentence of probation. Lisa successfully completed her probation and found work, supporting her aging mother, who suffers from several medical conditions.

Nearly 10 years later, Lisa was apprehended by ICE in her home and put into deportation proceedings. ICE charged that her convictions rendered her subject to mandatory detention. Lisa’s family scraped together money and hired an unscrupulous private attorney who pursued relief for which Lisa was ineligible and withdrew from representing her the day before her trial. At her next court date, Lisa was screened by a NYIFUP attorney who found her financially eligible for representation. Her NYIFUP attorney was able to secure pro bono counsel at a large law firm and co-counseled with the firm on a petition for habeas corpus in federal district court, arguing that Lisa’s detention without bond was illegal. In the meantime, her NYIFUP attorney filed an application in immigration court for withholding
of removal. The federal district court ultimately granted Lisa’s habeas corpus petition and ordered the immigration judge to hold a bond hearing in her case. At that hearing the judge set a low bond that Lisa’s family was able to pay. She was released on bond and has continued to pursue her application for withholding of removal outside of detention.
Chapter II: The impact of universal representation on family unity

Whereas the findings in Chapter I explore the impact of universal representation on case outcomes, Chapter II offers evidence of the more expansive impact of representation on reducing detention and the collateral benefits of reduced detention for families and communities. Beyond showing how representation helps keep families together, this chapter also illustrates the compounding benefits of representation for families of indigent defendants when members of their households are released from detention.

The effect of universal representation on reduced detention

NYIFUP clients repeatedly detailed the negative ripple effect of their detention and consequent lost income across their extended social networks. They often described the stakes of winning or losing bond or, ultimately, the immigration case, as extending far beyond their individual cases to the broader financial and emotional stability of their children and families. As such, clients explained that release from detention was as important as the final outcome of the case, because it allowed them to remain with their families, work in their communities while their deportation cases are pending, and prepare their affairs should the court order them to leave the country. Daniel, who was detained at the time he was interviewed and whose family almost lost their apartment as a result of his lost wages, expressed the frustration many NYIFUP clients felt over their detention, “I could have been working. I could have been doing something with my life.”

While immigration judges must apply the law in order to determine who is eligible for bond, there is often ambiguity about bond eligibility. NYIFUP not only led to the Lora decision described in the previous chapter, but program attorneys also regularly argued, with success, that their clients had been wrongly denied bond hearings, or had bond amounts set disproportionately high.
To be granted bond, those who are eligible must be able to effectively demonstrate to the judge that they are not a “flight risk”—that they have sufficient ties to the community that they will not abscond from future court appearances—and that they are not a danger to the community. Individuals served by NYIFUP have been living in the United States for an average of 16 years, 30 percent of NYIFUP clients were LPRs at the time of intake, and 64 percent were employed at the time of apprehension—all factors that illustrate strong community ties and a high likelihood of continued appearance in immigration court upon release. Indeed, those NYIFUP clients who were released from detention during their immigration proceedings continued to appear for immigration court hearings at rates that far surpass national averages for unrepresented immigrants.

**NYIFUP clients obtain bond and are released from detention at higher rates compared to unrepresented individuals at similar courts**

NYIFUP obtains significantly higher rates of release for clients compared to unrepresented individuals, and with lower bond amounts. More than 750 clients, as of the data cutoff of June 30, 2016, have been reunited with their families.

NYIFUP attorneys screen all clients to assess their eligibility for bond, request timely bond hearings, and sometimes challenge the government's initial assessment of their clients as ineligible for bond. NYIFUP attorneys then work with their clients and their families to obtain evidence such as recommendation letters from religious leaders, employers, and other members of the community to support character claims and to help the clients understand the importance their roles in their families can play in bond decisions. One NYIFUP attorney described the team effort that goes into preparing materials for a bond hearing, “You have a team that can put together a bond packet for you and contact people that you may not be able to contact otherwise to get letters and set up services. The ripple effect of that is really, really huge for so many people.”
The release rate of NYIFUP clients is 24 percentage points higher than unrepresented individuals at similar courts.

As shown in Table 10, 40 percent of the 1,530 NYIFUP clients identified in the EOIR data had been released on bond at the time of analysis and permitted to fight their deportation cases while in the community, a percentage that likely rose as additional clients received bond hearings following the June 30, 2016 cutoff of the EOIR dataset. In contrast, at similarly situated comparison courts, only 22 percent of unrepresented individuals whose hearings began in detention had been released on bond at the time of the analysis. The NYIFUP release rate is higher whether considering release on bond or release at disposition of the case by the immigration judge (IJ). When factoring in both types of release, 49 percent of NYIFUP cases are released and 25 percent of unrepresented cases at similar courts are released, a difference of 24 percentage points. In large part because of NYIFUP attorneys’ aggressive pursuit of habeas corpus and other collateral proceedings, as well as the Lora decision, NYIFUP was able to secure the release of 42 percent of clients charged with aggravated felonies, more than 10 times the 4 percent rate achieved in the comparison courts.

Table 10
Rates of release from detention during immigration legal case (November 1, 2013 to June 30, 2016)

<table>
<thead>
<tr>
<th></th>
<th>Total number of cases</th>
<th>Percent overall released</th>
<th>Number released on bond</th>
<th>Number released at IJ disposition</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYIFUP</td>
<td>1,530</td>
<td>49%</td>
<td>611 (40%)</td>
<td>146 (10%)</td>
</tr>
<tr>
<td>Aggravated felony</td>
<td>275</td>
<td>42%</td>
<td>80 (29%)</td>
<td>35 (13%)</td>
</tr>
<tr>
<td>No aggravated felony</td>
<td>1,255</td>
<td>51%</td>
<td>531 (42%)</td>
<td>111 (9%)</td>
</tr>
<tr>
<td>Comparison Courts</td>
<td>3,743</td>
<td>25%</td>
<td>834 (22%)</td>
<td>92 (2%)</td>
</tr>
<tr>
<td>Aggravated felony</td>
<td>537</td>
<td>4%</td>
<td>11 (2%)</td>
<td>13 (2%)</td>
</tr>
<tr>
<td>No aggravated felony</td>
<td>3,206</td>
<td>28%</td>
<td>823 (26%)</td>
<td>79 (2%)</td>
</tr>
</tbody>
</table>

Source: EOIR data, includes all cases. The statistical significance of these findings was tested using a chi-squared test. The difference in the percentage of individuals released is significant (p<0.001).
As some of the previous case examples have already illustrated, NYIFUP attorneys repeatedly intervened to help secure bond hearings for persons previously deemed ineligible. Annie is a 50-year-old woman married to a U.S. citizen and the mother of three U.S. citizens, including a teenage son suffering from severe mental and physical disabilities resulting from a recent traumatic brain injury and for whom Annie is the primary caretaker. Annie has lived legally in the United States for more than half her life. She was detained by ICE in a pre-dawn raid at her home because of an eight-year-old drug conviction for which she did not serve a day in jail. ICE argued that Annie was subject to mandatory detention, but the NYIFUP legal team filed a habeas corpus petition in federal court, which was granted, requiring the immigration court to conduct a bond hearing. The judge, after considering Annie’s individual facts in favor of bond (including the more than 20 letters from friends and family in support of her release), found that she was not a danger to the community or a flight risk and set low bond. Annie was released the next day and reunited with her son for the first time in nearly six months. Absent NYIFUP representation, Annie would not have been able to establish eligibility for bond through the collateral habeas proceedings, nor would she have been able to gather overwhelming evidence that she was neither a flight risk nor a danger to the community.

**Following the Lora decision, bond amounts were set at significantly lower amounts for NYIFUP clients, limiting the role of poverty as a barrier to release**

In addition to higher release rates, NYIFUP representation is also associated with lower bond amounts for those granted bond, as is shown in Table 11. In this analysis, Vera used the latest bond amount found in the EOIR data, regardless of whether that amount was the original bond set by ICE or a pre-determined amount set by the court. Vera found that while there was no statistically significant difference in bond amounts pre-Lora, the average bond amount for NYIFUP clients was statistically significantly lower than that of unrepresented individuals at Varick Street post-Lora.
The differences in bond amounts post-Lora demonstrate the ability of NYIFUP attorneys to obtain lower bonds for their clients, which is likely directly related to the higher NYIFUP release rate as compared to those who are unrepresented. For many people, having a bond set is only half the battle; for the bond to truly matter, it must be affordable for the individual and his or her family to pay. If the bond amount is too high to be paid, the individual will remain in detention for the duration of the case. Consequently, lack of financial resources acts as a barrier to release and, given the financial eligibility criteria for NYIFUP, this issue is particularly concerning for its clients. The lower bond amounts associated with NYIFUP therefore limit—but do not eliminate—the role of poverty in determining whether individuals are released from detention. One provider saw this clearly with the case of Perez, who had suffered depression and homelessness as a result of his HIV-positive status and abuse by former partners. Perez, who was seeking withholding, obtained a bond hearing through his attorney’s efforts at which his bond was lowered from $15,000 to $6,000. Perez still could not afford to pay the lower bond and was forced to remain in detention. The recent federal court decision referred to in Chapter I could change the situation faced by Perez and others, as it determined that a person’s ability to pay should be a factor in setting a bond amount.

One NYIFUP attorney explained the impact of the Lora decision on her ability to help clients secure bond:

We had clients who’d already been in [detention] for over a year who were the sole financial providers for their families. Their detention destroyed their families financially, emotionally. And getting them out on Lora not even necessarily winning their case, just getting them out of detention, saw a family be able to rebuild again. They had someone who could now bring in money for their family, who could now support them. You had children who were reunited with their parents again.

### Table 11

<table>
<thead>
<tr>
<th>Time period of initial MCH</th>
<th>Population</th>
<th>Total number of cases</th>
<th>Average bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Lora</td>
<td>NYIFUP</td>
<td>1,211</td>
<td>$8,100</td>
</tr>
<tr>
<td>(Nov. 1, 2013 to Oct. 27, 2015)</td>
<td>Unrepresented at Varick</td>
<td>316</td>
<td>$9,235</td>
</tr>
<tr>
<td>Post-Lora</td>
<td>NYIFUP</td>
<td>319</td>
<td>$6,519</td>
</tr>
<tr>
<td>(Oct. 28, 2015 to Jun. 30, 2016)</td>
<td>Unrepresented at Varick</td>
<td>38</td>
<td>$11,473</td>
</tr>
</tbody>
</table>

Source: EOIR data, includes all cases. The statistical significance of these findings was tested using an Analysis of Variance (ANOVA). The difference in average bond between “NYIFUP pre-Lora” and “Unrepresented at Varick” (both pre- and post-Lora) is not statistically significant. However, the difference in average bond between “NYIFUP post-Lora” and “Unrepresented at Varick” (both pre- and post-Lora) is statistically significant (\(p=0.042\) and \(p=0.011\), respectively).
Representation in the immigration case has collateral benefits for other legal issues

NYIFUP providers repeatedly provided descriptions of cases their teams had represented for individuals who not only won release on bond but subsequently also pursued or won victories in other legal proceedings that impacted their children and families. Owen, for example, is a national of Mexico who has resided without authorization in the United States for more than a decade. He was initially taken into immigration custody without bond. His NYIFUP attorney helped him both secure a bond hearing and present compelling evidence concerning his infant U.S. citizen son who is currently in the custody of New York State because of having tested positive for methadone through his biological mother (a U.S. citizen). Owen presented evidence to the immigration court showing that the social services agency has considered Owen as a potential custodian for the baby and, based on this evidence, the immigration judge set a $6,000 bond Owen was able to pay to secure release. Once out of custody, he was able to actively fight for his parental rights and reunification with his son.

David’s experience also illustrates the poignancy of NYIFUP’s impact on ancillary legal issues following release from detention. After almost a year in detention, David's family was experiencing financial instabilities that almost led them to lose their home. He explained, “We fell behind on our mortgage. The bank filed foreclosure on us. . . . [W]e had a certain amount saved up for the kids, for college ... [but] everything was being depleted.” David’s NYIFUP attorney was able to win relief for him so that he may now remain in the United States legally. Though his family was still struggling to recover economically, winning relief, and subsequently getting out of detention, enabled David to fight to keep his family’s home, appearing in person at foreclosure proceedings. Slowly, his family was beginning to regain economic footing. He expressed his relief, “We're still fighting it. Thank God this is a state that you fight through the court system ... the banks can't just foreclose on your house here ... here you have to go through the courts, arbitration, and all those procedures.”

Repeatedly, client narratives showed that individuals in custody were rarely able to successfully manage legal issues beyond their immigration cases from within detention. Thus, while bond helps clients to return to work and stabilize their household finances and family lives, release from custody also more broadly enables people to engage in other legal proceedings that will help their families maintain stability and unity. Reflecting on costs and benefits of NYIFUP, one of the attorneys underscored the importance of their work achieving family unity, observing, “We really do represent entire families. On almost every case, we represent an entire family.”
Chapter III: The impact of universal representation on federal, state, and city tax revenue

The impact of universal representation on New York’s workforce and economy

Immigrants, including NYIFUP clients, comprise a substantial portion of New York City and State’s workforce, contributing directly to the state’s economy.

In 2016, 4.4 million immigrants resided in New York State and accounted for approximately 22 percent of the state’s population of 19 million people. In New York City, where the largest proportion of the state’s immigrants reside, more than one-third of the population is foreign-born. This immigrant-to-native-born ratio is almost three times the national average and has shaped the economic and social fabric of the city. The 1,772 NYIFUP clients represented as of June 30, 2016, are part of this economic and social fabric. Consistent with the statewide labor force participation rate of 63.5 percent, 67 percent of NYIFUP clients reported having a career or vocation, though only 64 percent of clients were actively working at the time of their legal intake.

Although immigrants in New York State contribute to “every major industry sector,” 80 percent of NYIFUP clients employed at intake were concentrated in three job categories, classified by Vera as “services” (34 percent of working clients), “construction” (24 percent of working clients), and “repair, installation, and maintenance” (22 percent of working clients). Given the 200 percent poverty-level threshold requirements for NYIFUP participation, it is not surprising that such a high percentage of employed clients worked in relatively low-wage occupations.
Though NYIFUP clients were not earning high incomes, their economic contributions nonetheless comprise an important source of tax revenue for New York. The NYC Comptroller’s Office recently reported that immigrants account for 32 percent of total earnings in New York City, or nearly one-third of the city’s total gross product. The Institute of Taxation and Economic Policy further estimates that in 2012, undocumented immigrants—who make up about 5.7 percent of the state’s workforce—alone contributed $1.1 billion in state and local taxes, including $566.1 million in sales taxes, $185.7 million in personal income taxes, and $341.7 million in property taxes. If all undocumented immigrants in New York were to have lawful permanent residence and work authorization, they would pay an additional $200 million in state and local taxes.

The success rate of NYIFUP cases has resulted in receipt or retention of work authorization for many individuals, who can now contribute to state and local tax revenue for New York

By helping individuals obtain work authorization through successful legal outcomes, NYIFUP has contributed to the transition of individuals from the under-the-table economy to the licit, tax-paying economy. As detailed in Chapter I, an estimated 48 percent of NYIFUP cases will end in a successful legal outcome. Many of these clients lacked legal status and were thus without work authorization at the time they entered deportation proceedings. For individuals and their families, the impact of these successful outcomes can be life-changing, as detailed by qualitative evidence previously discussed in Chapters I and II. For government, the NYIFUP clients’ gain of status and subsequent work authorization is also beneficial because of the tax revenue that results from an individual’s transition to a tax-paying job. Vera estimates that a total of 136 NYIFUP clients based in New York City and 106 people based in New York State will gain work authorization as a result of their successful legal outcomes—individuals who previously did not have work authorization when they entered deportation proceedings. Table 12 shows the number of people expected to gain work authorization as a result of NYIFUP, by the borough within New York City where they live and presumably work.

Vera generated these estimates first by identifying the legal status of the NYIFUP clients at their initial intake. For clients whose cases have completed, Vera identified 53 New Yorkers (including 45 in New York City and eight outside the city in New York State) who lacked status at the time of intake, and whose cases resulted in legal relief or termination—
outcomes which are virtually always accompanied by work authorization. An additional 21 previously-undocumented New Yorkers received the successful outcome of administrative closure, which often includes work authorization but is not guaranteed. For this reason, these individuals are characterized in Table 12 as “work authorization likely.”

<table>
<thead>
<tr>
<th>Location</th>
<th>Obtained work authorization</th>
<th>Work authorization likely</th>
<th>Projected to obtain work authorization (pending cases)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYC total</td>
<td>45</td>
<td>15</td>
<td>76</td>
<td>136</td>
</tr>
<tr>
<td>Bronx</td>
<td>15</td>
<td>5</td>
<td>12</td>
<td>32</td>
</tr>
<tr>
<td>Brooklyn</td>
<td>15</td>
<td>5</td>
<td>28</td>
<td>48</td>
</tr>
<tr>
<td>Manhattan</td>
<td>3</td>
<td>0</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Queens</td>
<td>11</td>
<td>5</td>
<td>24</td>
<td>40</td>
</tr>
<tr>
<td>Staten Island</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>New York State</td>
<td>8</td>
<td>6</td>
<td>92</td>
<td>106</td>
</tr>
<tr>
<td>Total</td>
<td>53</td>
<td>21</td>
<td>168</td>
<td>242</td>
</tr>
</tbody>
</table>

Source: EOIR and program data. The first two columns, titled “obtained work authorization” and “work authorization likely,” include only completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016. The third column, titled “projected to obtain work authorization,” includes pending cases.

Vera applied the same approach to the large volume of pending cases, using the statistical model described in Chapter I to estimate the success rate—and, by extension, work authorization—for these pending cases. Based on this technique, an additional 168 NYIFUP clients in New York are projected to have a successful outcome. This produces an estimate of 242 people who may gain work authorization due to NYIFUP.75

In addition to those who gain legal status in part due to representation through NYIFUP, many others were LPRs who are able to maintain the legal status that they already had. A number of clients either established they were citizens as a defense to deportation or were subsequently naturalized following the successful outcome of their cases. Using the same procedure described above, Vera calculated the number of individuals who maintained legal status by achieving a successful outcome in their legal case.
As Table 13 details, Vera estimates that NYIFUP legal outcomes will enable 187 individuals from New York City and State to maintain the work authorization that they had at the time of intake into deportation proceedings. In this analysis, a legal outcome of “administrative closure” will almost certainly result in continued work authorization—unlike for out-of-status individuals—and therefore these cases are collapsed into the “maintained work authorization” category. A total of 128 individuals certainly maintained work authorization because of their NYIFUP representation. An additional 59 clients whose cases are pending are also likely to maintain their existing work authorization.76

Vera estimates that NYIFUP helped 242 previously out-of-status New Yorkers gain work authorization and 187 New Yorkers maintain their existing work authorization by winning their immigration cases.
Gaining work authorization has beneficial tax implications for New York City and State, as people who previously worked in under-the-table jobs are able to transition to tax-paying positions in the legal economy. This transition is beneficial for the individual and the local economy. For the individual, legal work has the benefit of government protections and oversight meant to protect laborers and ensure safe work environments.\textsuperscript{77} The absence of this regulation in under-the-table positions has resulted in more frequent human rights violations.\textsuperscript{78} For the local economy, legal work has the benefit of increasing the assimilation of people into the community, empowering individuals to participate in many facets of democratic life—unions, industry organizations, community groups—that are not often accessible to under-the-table laborers.\textsuperscript{79}

To measure the extent of this economic impact, Vera enlisted the pro bono assistance of Stout, a financial advisory firm, to estimate the tax revenue produced by these gains in work authorization. Vera estimated the applicable tax rate for NYIFUP clients who reside in New York City and State by incorporating tax rates for income tax, payroll tax, estate tax, excise tax, sales tax, and the federal deduction offset.\textsuperscript{80} The income level for each individual was determined by the type of job that individual worked at the time they entered deportation proceedings. Vera assumed each individual would return to similar job functions and calculated salary based on the median income of that job function in New York.\textsuperscript{81} Table 14 shows the impact of work authorization in the form of tax revenue across all government levels.

<table>
<thead>
<tr>
<th></th>
<th>New York City residents</th>
<th>New York State residents (excluding New York City)</th>
<th>Combined New York City and State residents</th>
</tr>
</thead>
<tbody>
<tr>
<td>State and local tax revenue</td>
<td>$634,662</td>
<td>$275,490</td>
<td>$910,152</td>
</tr>
<tr>
<td>Federal tax revenue</td>
<td>$1,253,701</td>
<td>$552,332</td>
<td>$1,806,033</td>
</tr>
<tr>
<td>Total</td>
<td>$1,888,363</td>
<td>$827,882</td>
<td>$2,716,185</td>
</tr>
</tbody>
</table>

Source: EOIR and program data. These estimates only include completed cases and do not include re-opened cases or cases that had an appeal pending as of June 30, 2016.

As Table 14 shows, Vera estimates that the state and local tax revenue for the cohort of NYIFUP clients who reside in New York City with work authorization is at least $634,662 for the first year of employment. Applying this method to all New York State residents (including New York City), Vera estimated the state and local tax revenue to be $910,152. Overall,
including federal taxes, the revenue resulting from work authorization gained or maintained by this cohort of NYIFUP clients totals just over $2.7 million in the first year.

These estimated tax revenues of $2.7 million are for one year, so they will continue for this cohort of NYIFUP clients for many years to come. Later cohorts of NYIFUP clients will also have successful outcomes, and they too will gain or maintain work authorization, leading to tax revenues for the federal, state, and local government. Thus, not only will the annual tax revenues accrue year after year, but the number of former NYIFUP clients generating the revenues will also increase every year, compounding the benefits to the city and state of New York and the federal government.
Conclusions

Far beyond the measurable effects of NYIFUP on case outcomes, the program achieved its goal of offering universal access to justice by providing qualified attorneys to low-income immigrants detained in New York City. This model has brought fairness and due process to immigration proceedings, ensuring all persons facing deportation have equal access to the defenses and protections available under the law. Immigration Judge Weisel’s observations nicely summarize the program’s impact:

The most important message to get across is that [NYIFUP] has universally helped provide justice, assist[ed] in the delivery of justice by [providing attorneys to] individuals who might not have been able to obtain counsel. That’s fundamental.

As Judge Weisel’s statement suggests, some of what NYIFUP achieves cannot adequately be measured using data alone, though the results described in this report are clear: lawyers make a marked difference in helping clients achieve successful outcomes in deportation cases. They do this through the everyday work of lawyering that begins with thoroughly screening clients to assess viable defenses to deportation. For many clients, this means accepting the reality that there are no legal paths to remaining in the United States, while for many others, it means having a fair chance to access the relief and defenses available to them under the law. This is true for NYIFUP clients regardless of their immigration status or past, and it is true whether clients ultimately achieve successful outcomes or are required to depart the country. This is what a universal representation model powerfully achieves: everyone is entitled to the same opportunity to access the law. When there are possible defenses to pursue, NYIFUP attorneys engage in zealous representation, as all attorneys pledge to do. They file motions and applications and initiate collateral proceedings across a range of complex legal arenas in order to strengthen their clients’ defenses to deportation. And they do so with great success, helping a predicted 48 percent of NYIFUP clients overall to achieve outcomes that allow them to remain in the United States with their families. This success rate is 1,100 percent greater than what these indigent clients would have achieved without counsel and puts low-income New Yorkers on a level
playing field with other non-citizens who can afford private attorneys.

The evaluation also shows that immigration court efficiencies are not simply achieved by moving cases off the docket quickly. Rather, stakeholders repeatedly observed what the quantitative data show: lawyers help focus court resources where they are most needed, sometimes extending the case times of detained persons who would otherwise have proceeded unrepresented, but doing so by engaging in high levels of case activity. This moves more clients toward fair outcomes, allowing judges to adjudicate bond hearings and immigration cases without having to worry that non-citizens may not understand their options or what is occurring in the case and, frankly, forcing the government to sometimes slow down the enforcement juggernaut in the interest of fairness. There are many benefits to doing so. One NYIFUP provider reflected on this, observing:

If you divide [the program's cost] by every person we are actually helping it's not that expensive. You can't just look at the cost per respondent, it doesn't do the work justice.

Instead, as the title of the program suggests, NYIFUP is preserving family unity. The collateral benefits of one person's successful immigration court outcome extend far beyond that one individual. These collateral benefits accrue to individual clients and their families financially and emotionally when clients are able to be released from detention and return to their jobs, defend their cases from their communities, and re-stabilize their households financially. Out of detention, they are able to attend to matters they were unable to manage in custody, including parenting their children. With successful case outcomes, they are able to continue working with legal status and enhance their tax contributions to government, to the benefit of all.

During the first few years of NYIFUP, other jurisdictions have taken an interest in New York's cutting edge idea of providing representation to indigent defendants in deportation hearings. As NYIFUP continues to level the playing field for low-income non-citizens detained in New York, the findings in this evaluation may provide valuable insights to other cities as they draw on New York's model.
On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act, commonly referred to as IIRIRA. IIRIRA amended the INA, including by increasing the reasons for which non-citizens can be deported. Pub. L. No. 104-208 (Division C), 110 Stat. 3009-546.


Vera Institute of Justice
As of the time of report publication, more than 2,300 individuals have been represented by the program.


See, e.g., Andrew I. Schoenholtz and Hamutal Bernstein, “Improving Immigration Adjudications through Competent Counsel,” Georgetown Journal of Legal Ethics 21, no. 1 (2008), 55-60 (finding that asylum seekers represented by counsel were three times more likely to succeed in their claim than pro se applicants), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2916&context=facpub; Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, “Refugee Roulette: Disparities in Asylum Adjudication,” Stanford Law Review 60, no. 2 (2007), 295-411, 340 (finding that asylum seekers are almost three times more likely to win their proceedings if they are represented), http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2914&context=facpub; Donald Kerwin, “Revisiting the Need for Appointed Counsel,” Migration Policy Institute Insight, no. 4 (2005), 1-19 (finding that represented non-detained immigrants were nearly 50 percent more likely to succeed in applications for relief from removal than unrepresented non-detained immigrants, and represented detained immigrants were 60 percent more likely to succeed in applications for relief from removal than unrepresented detained immigrants). See also supra n.12.


Although NYIFUP officially launched on November 7, 2013, a handful of individuals were listed in the data with initial master calendar hearings during the first week of November 2013. To incorporate these cases into the evaluation, the start date for all analyses was pushed back to November 1.

For details about TRAC’s standing FOIA request, see “Transactional Records Access Clearinghouse,” https://perma.cc/YQCS-QEAN.

Interviews and focus groups were audio recorded, transcribed, and coded to draw out commonalities and other emerging themes. For a complete list of interview questions and the accompanying coding scheme, see the Qualitative Methodological Appendix, available at www.versa.org/nyifup-evaluation-methodology.

Immigration Judges Sarah Burr and Robert Weisel were successively the assistant chief immigration judge with supervisory responsibility over the New York and New Jersey immigration courts, including Varick Street. Judge Page sat at Varick Street for the first year-and-a-half that NYIFUP was in operation, EOIR declined to allow interviews with current immigration judges.

For example, 4 percent [N=64] of the 1,551 NYIFUP cases identified in the EOIR data lacked representation information, such as an E-28 (“notice of entry of appearance as attorney or representative before the immigration court”) date or attorney name. It is therefore likely that similar errors influence the comparison groups, with a small percentage of represented individuals being incorrectly categorized due to missing representation information.

In federal fiscal year 2016, cases ending in removal took less than half as long to complete as those that resulted in relief (353 vs. 880 days, respectively), according to national data from TRAC. For details about TRAC’s immigration court data, see “Transactional Records Access Clearinghouse,” https://perma.cc/YQCS-QEAN.

Sixty-four percent of represented people at Varick Street were represented by NYIFUP in FY15 and 50 percent of represented people at Varick Street were represented by NYIFUP in FY16.


The median of this group is 15 years residency in the United States, which suggests that the average is not skewed by a few individuals who resided in New York for a very long time.

As a point of comparison, Centers for Disease Control (CDC) statistics from the 2006 National Survey of Family Growth show that 47 percent of men age 15-44 had at least one biological or adopted

47 percent of men age 15-44 had at least one biological or adopted
child. While 58.4 percent of women in the same age cohort in the CDC statistics had at least one child, most NYIFUP participants were male. G.M. Martínez, A. Chandra, J.C. Abma, J. Jones, and W.D. Mosher, “Fertility, Contraception, and Fatherhood: Data on Men and Women from Cycle 6 [2002] of the National Survey of Family Growth” (Washington, DC: U.S. Department of Health and Human Services, National Center for Health Statistics, 2006), https://perma.cc/5FYC-BV64.

38 Nationally, families with children had an average of just under two (1.89) children in 2016 according to the U.S. Census Bureau’s Current Population Survey. See U.S. Census Bureau, “Historical Families Tables,” Table FM-3 [Average Number of Own Children Under 18 Per Family, By Type of Family: 1955 To Present], November 2016, https://perma.cc/N2GH-TPS9. The number of children for each NYIFUP client ranged from one to 11.


40 EOIR, FY 2016 Statistics Yearbook (Falls Church, VA: 2017).

41 Relief from removal may take several different forms that result in permission to remain in the United States legally—and sometimes pave the way for people to obtain permanent legal status or to pursue citizenship— and can include cancellation of removal, adjustment of status, asylum, withholding of removal, and protection under the Convention Against Torture, among many others. Ira J. Kurzban, Kurzban’s Immigration Law Sourcebook – 12th Edition 1075 (Washington, DC: American Immigration Lawyers Association, 2010).

42 Immigration judges may terminate removal proceedings on a number of grounds, including when there are defects in the charging document or if ICE has not met its burden of proof. Cases that are terminated are considered completed, although, in some circumstances, the government may initiate a new case in the future. While termination is a method for avoiding deportation, it does not result in a change to the non-citizen’s immigration status. See 8 C.F.R. §1239.2(f).

43 Administrative closure is a procedural tool used to indefinitely pause [sometimes forever] removal proceedings by taking a case off the court’s docket. Cases that are administratively closed can be reopened at a later date. Matter of W-Y-U- , 27 I&N Dec. 17, 17 (BIA 2017), https://perma.cc/FYH7-7MBV.

44 The statistical significance of these findings was tested using a t-test. The difference in case duration between successful and unsuccessful cases is statistically significant (p<0.001).

45 See the Quantitative Methodological Appendix, available at www. vera.org/nyifup-evaluation-methodology, for a detailed explanation of how the outcomes for pending cases were estimated.

46 Although the estimates regarding pending cases are useful towards understanding the success rate expected of NYIFUP, statistics that rely on completed cases throughout the remainder of the evaluation are based solely on the 849 cases that have actually received an outcome in immigration court.

47 See the Quantitative Methodological Appendix for detailed information about how these comparison courts were selected and for a description of how they differ from the national population.

48 These test results are included in the Quantitative Methodological Appendix.

49 Length of residency is also explicitly itself a discretionary factor that immigration judges are required to consider in many cases. Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006).


51 Of the 159 appeals filed, 72 percent (114) were filed by NYIFUP attorneys on behalf of their clients. In five additional cases, both the ICE and the NYIFUP attorney filed an appeal, bringing the total percentage of cases with the non-citizen filing the appeal to 75 percent (119).

52 Attorneys handling immigration court cases that involve collateral proceedings often have no control over the duration of proceedings in those venues.

53 Deputy Chief Counsel Taylor cites the EOIR Statistical Yearbook, which shows case completions for the last few years as FY 2013–1,043, FY 2014–995, FY 2015–714, FY 2016–676. EOIR’s Statistical Yearbooks are available at https://perma.cc/3FQT-JFRM. The same Statistical Yearbooks show that the number of new NTAs at Varick Street were 1,402 in 2013, 1,341 in 2014, 1,057 in 2015, and 1,183 in 2016, thus decreasing markedly from 2013 to 2015, before trending somewhat up for 2016. While there had been three immigration judges regularly assigned to Varick Street from November 2013 until June 1, 2015, when Judge Page retired, thereafter there were only two judges regularly assigned to the court, which affected the number of cases that could be processed.


55 The issue has now been taken up by the Supreme Court in a similar case from California, Rodriguez v. Robbins, 804 F.3d 1060 [9th Cir. 2015], cert. granted sub nom., Jennings v. Rodriguez, 136 S. Ct. 2489 (2016), on which a nationwide ruling is expected sometime before July 2018.

56 See, e.g., Saleem v. Shanahan, No. 16-CV-808 [RA], 2016 WL 4436246 (S.D.N.Y. Aug. 22, 2016) (finding that DHS violated Saleem’s right to due process by continuing to detain him after 17 months without a bail review hearing after being designated an “arriving alien”).

Under New York law, these special orders may be sought for individuals who have not yet reached their 21st birthday.

See, e.g., Anderson v. INS, 121 Fed. Appx. 412 [2d Cir. 2005] (treating a misdemeanor marijuana sale as an aggravated felony); Garcia v. INS, 239 F.3d 409, 111-12 [1st Cir. 2001] (misdemeanor attempted theft of tire rims treated as an aggravated felony under the INA).

Mojica v. Reno, 970 F. Supp. 130, 137 [E.D.N.Y. 1997] (classifying turnstile jumping in the New York City subway system leading to a “theft of services” misdemeanor conviction as a “crime of moral turpitude,” subjecting the individual to deportation [internal quotation marks omitted]).

Compare INA §237(a)(2)(C) [subjecting individuals to deportation for firearms offenses] with INA §212(a)(2) [establishing the criminal bars to obtaining a green card and omitting firearms offenses from such bars].

Withholding of removal is an order issued by an immigration judge to a person who demonstrates a likelihood of persecution in the home country on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §241(b)(3).


At the time of the analysis, only 10 of 61 NYIFUP clients released on bond had received orders of removal in absentia for failing to appear for a subsequent court date.


The difference between the number of people who reported a job and the number of those employed at the time of intake may in part be because some clients had been incarcerated prior to their immigration detention, and thus had already been out of the workforce. Others may work seasonally or as day laborers and thus may have been temporarily not working.


The jobs listed in the program data do not always contain sufficient detail to be grouped into the more commonly-cited job categories created by the U.S. Census or Department of Labor.


DiNapoli and Bleiwas, The Role of Immigrants in the New York City Economy, 2015.

Jeffrey S. Passel and D’Vera Cohn, Unauthorized Immigrant Totals Rise in 7 States, Fall in 14: Decline in Those From Mexico Fuels Most State Decreases (Washington, DC: Pew Research Center’s Hispanic Trends Project, 2014), 16 and Figure 1.4, https://perma.cc/8T7D-4ESN.


Vera was only able to conduct the analysis on one-third of the pending cases due to an inability to match employment information for two-thirds of the pending cases. This means the estimate is very likely an underestimate of the number of people impacted. It should also be noted that the model for projecting outcomes does not distinguish between the types of successful outcome.

Vera was only able to conduct the analysis on one-third of the pending cases due to an inability to match employment information for two-thirds of the pending cases. This means the estimate is very likely an underestimate of the number of people impacted.

The U.S. Department of Labor is responsible for “the administration and enforcement of the laws enacted to protect the safety and health of workers in America.” See U.S. Department of Labor, “Workforce Safety & Health,” https://perma.cc/W6UG-EG3X.


Property taxes were not included due to the uncertainty over home ownership. Federal tax rules allow taxpayers to claim itemized deductions for any state and local personal income, property sales, and general sales taxes. Since these taxes can be itemized on annual federal tax returns, Vera adjusted the total state and local taxes to exclude the deduction as a percentage of total taxable income.
Students were assumed to be unemployed. Additional information about these salary estimates are in Appendix 1.1 of the Quantitative Methodological Appendix.
Acknowledgements

The authors would like to thank the New York City Council for their leadership and partnership, in particular Speaker Melissa Mark-Viverito, Finance Committee Chair Julissa Ferreras-Copeland, and Immigration Committee Chair Carlos Menchaca. Without the council’s commitment to its constituents, the immigrant representation provided through NYIFUP and the evaluation of its impact would not have been possible. We are also grateful for the generous pro bono contributions of the hard-working team at Stout, especially Candice Quinn, Nick Vasdekas, Lindsey Phillips, and Steve Holzen, who developed the economic analysis in the evaluation with the utmost poise and determination. In addition, we would also like to acknowledge the consistent support and subject matter expertise provided by Marina Caeiro in developing the evaluation, and provide a special thank you to the 2016 Summer CUNY Fellow, Pamela Ruiz, for providing countless hours of interviewing support. Thanks to Zerlina Chiu for general support in compiling the final report, Cindy Reed for expertly editing the report and Gloria Mendoza for designing the report.

This report was made possible in part by funds granted by the Charles H. Revson Foundation. The statements made and views expressed, however, are solely the responsibility of the author. This project was also supported by a grant administered by the New York State Division of Criminal Justice Services. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Division of Criminal Justice Services.

About Citations

As researchers and readers alike rely more and more on public knowledge made available through the Internet, “link rot” has become a widely-acknowledged problem with creating useful and sustainable citations. To address this issue, the Vera Institute of Justice is experimenting with the use of Perma.cc (https://perma.cc/), a service that helps scholars, journals, and courts create permanent links to the online sources cited in their work.
# A Decade of Advancing Immigrant Representation

**Fordham Law School**  
**May 8, 2018**

**Compilation of CLE Materials**

## II. Plenary Panel – Progress Thus Far

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
BENCH, BAR, AND IMMIGRANT REPRESENTATION: MEETING AN URGENT NEED

The Honorable Robert A. Katzmann*

It is a high honor to be with you this evening. When I think of those who came before me, I am deeply humbled; indeed, overwhelmed. I thank Federal Bar Council President Frank Wohl, a most distinguished member of the bar, a renowned and greatly esteemed lawyer, for his graciousness, for his thoughtfulness, for, amidst his many responsibilities, his stunningly meticulously researched introduction, and for his all too generous remarks. I am grateful beyond measure to Chief Justice Roberts, Justice Ginsburg, and Justice Sotomayor for their moving words, for taking the time in this busy season of the Supreme Court to offer their congratulations. I thank as well this evening’s dinner chair, Solicitor General Barbara Underwood, whose singularly exceptional career in public service at the federal, state and local levels fills me with admiration, appreciation, and awe.

The Hand Medal is particularly special to me because of the deep respect I have for the Federal Bar Council. For those of us involved in the administration of justice, the Federal Bar Council occupies a unique niche, which deserves our thanks, playing an invaluable role in support of the federal judiciary through its many committees, programs, recommendations, and public engagement. I express my appreciation to the very accomplished staff of the Federal Bar Council, led by the remarkable Jeanette Redmond. It has been great to work with Council events manager, Emily Lettieri.

There are many to whom I feel a profound sense of personal gratitude, and when I conclude these remarks, I will offer some words of thanks to them—to those who cared about me and helped me—and with whom I share this occasion.

---

* Circuit Judge, United States Court of Appeals for the Second Circuit. These remarks were delivered by Judge Katzmann upon receiving the Learned Hand Medal from the Federal Bar Council on May 1, 2012 in New York City.
This evening I speak to you about what we, together, bench and bar, can do to help meet an urgent, pressing need—the need for adequate representation for a vulnerable population of human beings—immigrants. Immigrants often come to this country in fear, fleeing from persecution, escaping from poverty, not knowing the language, not knowing to whom to turn for competent legal advice, all the while working to make a better life. In all too many cases, the dearth of adequate counsel for immigrants all but dooms the immigrant’s chances to realize the American dream. And, what would the American dream have been, what would the United States be, without the dreams, the sweat, the reality, the culture, food, music, the dynamism of millions of immigrants who have enriched and do enrich this nation? All of us here can easily answer that question with reference to our own experiences, or those of our immigrant friends, relatives, or colleagues. Some of you may know of my concern about the representation of non-citizens. Tonight, I seek your interest, your continued help in addressing this dire problem of grave human consequence. In my remarks, I will try to place the representation issue in context, reporting on the work to date of the Study Group on Immigrant Representation, and conclude with some words about the road ahead.

**Context**

The plight of immigrants is not a new judicial concern. Consider these words of frustration of a long-serving judge of the last century, anguished about what he viewed as the harsh system of immigration adjudication: “‘I feel very earnestly about this case because the result seems to me cruel and inhuman. I must say I am shocked and disgusted down to my boots.’”¹ In another matter, the judge lamented to his panel colleagues about “‘a particularly mean and heartless case.’: ‘These aliens are to be sent back to Greece because of a lot of damned red tape. . . . Doesn’t it make you both ashamed?’”² And, in another, the judge wrote: “‘I am a little sensitive in these Chinese cases: the


². Id. at 303–04 (quoting Pre-conference Memorandum in United States ex rel. Sapunachis v. Day from Learned Hand, Circuit Judge, U.S. Court of Appeals for the Second Circuit, to Augustus Hand and Martin Manton, Circuit Judges, U.S. Court of Appeals for the Second Circuit (Oct. 22, 1927) (on file in the Learned Hand Papers at Harvard Law School Library, Box 184, file 8)).
jury goes into the box committed against them and the lawyers take their money and “submit on our briefs.”” 3 And, distressed about deportation of those who had been in this country since early childhood, he would exclaim: “‘It is a cruel law to exile a person who has been here since infancy.’” 4 Similarly, in another matter he commented: “‘She must go to a country as alien to her as it would be to us. . . . [T]he penalty seems to me monstrous for the offense.’” 5 In each of these cases and others, 6 the judge was none other than Learned Hand. Hand’s biographer, Gerald Gunther, writes that his subject felt helpless, bound as he was to follow laws he deemed imprudent and a bureaucracy he deemed insensitive. 7 As Hand wrote sarcastically in a pre-conference memorandum: “‘Once more I wish to pay my respects to the sanctimonious, hypocritical, illiterate animaleulae who infest and infect the Naturalization Bureau.’” 8 Going beyond his opinions to express his concerns about the law, Hand, Gunther reports, “engaged in lengthy, eloquent correspondence with the commissioner of immigration and with members of Congress whom he pressed for legisla-

3. Id. at 304 (quoting Pre-conference Memorandum in Chin Wah v. United States from Learned Hand, Circuit Judge, U.S. Court of Appeals for the Second Circuit, to Charles Hough and Martin Manton, Circuit Judges, U.S. Court of Appeals for the Second Circuit (June 3, 1926) (on file in the Learned Hand Papers at Harvard Law School Library, Box 179, file 20)).


6. For instance, in another case, confronted with an appeal from the denial of a naturalization petition because the petitioner, a native of China and a translator for the State Department who had been a permanent American resident for thirteen years had been arrested for failing to answer parking tickets, the judge concluded: “Like any other statute, this one is to be read with its purposes in mind, which are to admit as citizens only those who are in general accord with the basic principles of the community. Disregard of parking regulations, even when repeated as often as this was, is not inimical to its ‘good order,’ so construed.” Yin-Shing Woo v. United States, 288 F. 2d 434, 434–35 (2d Cir. 1961).

7. GUNTHER, supra note 1, at 303.

8. Id. at 635 (quoting Pre-conference Memorandum in United States v. Francioso from Learned Hand, Circuit Judge, U.S. Court of Appeals for the Second Circuit, to Harrie Chase and Thomas Swan, Circuit Judges, U.S. Court of Appeals for the Second Circuit (Oct. 17, 1947) (on file in the Learned Hand Papers at Harvard Law School Library, Box 210, file 16)).
tion to ameliorate these injustices, and indeed suggested draft language toward these ends.”

The caseload volume in Hand’s time paled in comparison to the large docket of the present day. But, until recently, immigration cases were a very small part of the work of the Second Circuit. In 1999, when I started as a court of appeals judge, the immigration docket was a minuscule percentage of our workload. But within a few years, the immigration docket of the Second Circuit approached forty percent of the case load—and, as a result, our court developed procedures to manage such cases, devised largely by Jon Newman under the chief judgeship of John Walker, a system that continues today under the chief judgeship of Dennis Jacobs. Since 2006, the Second Circuit has adjudicated more than sixteen thousand immigration cases. In all too many cases, I could not but notice a substantial impediment to the fair and effective administration of justice: the too-often deficient counsel of represented noncitizens. For immigrants, the stakes could not be greater—whether they can stay in the United States, whether they will be separated from their loved ones, often their children. In all too many cases, I had the sense that if only the immigrant had competent counsel at the very outset of immigration proceedings where the record is made with lasting effect—long before the case reached the court of appeals where review is limited—the outcome might have been different, the noncitizen might have prevailed. But, until data were collected—more on that later—I only had my own observations to go on.

Wanting to do something, I took the opportunity of the Marden Lecture of the New York City Bar in 2007, 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 step up activity to help

9. Id. at 304; see also Letter from Learned Hand to Samuel Dickstein (May 10, 1934), in REASON AND IMAGINATION: THE SELECTED CORRESPONDENCE OF LEARNED HAND (Constance Jordan ed.) (forthcoming Jan. 2013) (manuscript at 189–90) (on file with the New York University Journal of Legislation and Public Policy) (arguing that deportation of aliens admitted prior to their tenth birthday was an “excessively harsh punishment” and “dishonorable to the American people”).

address the large—and largely unmet—need in noncitizen communities. Justice, I said, should not depend upon the income level of immigrants.11

Study Group on Immigrant Representation

I did not know what the reaction would be, but the response was, and has been, very gratifying. With the guidance of several outstanding lawyers, beginning with Peter Eikenberry and Robert Juceam, I started a working group in 2008, the Study Group on Immigrant Representation, consisting of some fifty lawyers from a range of firms; non-profits; bar organizations—the Federal Bar Council, the New York City Bar, the New York State Bar Association, the New York Lawyers County Association, the American Immigration Lawyers Association; immigrant legal service providers; immigrant organizations; law schools; federal, state, and local governments; as well as my excellent colleague, Judge Denny Chin. For me, it has been deeply inspiring to work with such dedicated attorneys, whose only motive is to assist those in need. We have been served by a superb steering committee—Jojo Annobil of Legal Aid, Immigration Judge Noel Brennan, Judge Chin, Peter Cobb, Peter Eikenberry, Philip Graham, Robert Juceam, William Kuntz (then in private practice and now on the district court), Lewis Liman, Peter Markowitz, Lindsay Nash, Michael Patrick, Careen Shannon, and Claudia Slovinsky. Study Group activities have concentrated on three areas: (1) increasing pro bono activity of firms; (2) improving mechanisms of legal service delivery; and (3) extirpating inadequate counsel and improving the quality of representation available to noncitizens.

Our method is to bring together key participants from the federal, state, and city governments, the private bar, bar associations, non-profits, legal service providers, immigrant organizations, philanthropies, and law schools, as part of a collaborative effort to promote the fair and effective administration of justice. This interdisciplinary initiative has been productive as it has been galvanizing. Our means of expression include reports, pilot projects, colloquia and training sessions, and smaller meetings. Justice Ginsburg and Justice Stevens have publicly spoken about our project, and Justices Breyer and Sotomayor have also been supportive.

Over the past four years, Study Group activities have included these ten initiatives:

(1) We have undertaken two major conferences, one at Fordham Law School and Cardozo Law School, the latter with retired Justice John Paul Stevens participating, out of which we have produced a series of studies and reports published in the Fordham12 and Cardozo13 law reviews. Coverage in The New York Times,14 the New York Law Journal,15 and El Diario, has brought our work to the attention of the broader public.

(2) In 2010, the Study Group launched an assessment of the representational needs of indigent noncitizens facing removal in New York, with the objective of formulating recommendations as to resources and strategies to meet the need, in a study, the New York Immigrant Representation Survey about which more later.

(3) We met with Attorney General Holder, Senator Schumer and others, after which, in 2010—with great appreciation to Senator Schumer and the Attorney General—the Attorney General announced the creation of a Legal Orientation Program in New York, enabling non-profit providers to counsel immigrants in group settings and individually.

(4) We devised a pilot project to stimulate greater increased law firm pro bono activity, about which more in a moment.

(5) We have advanced the creation and implementation of an Immigrant Representation Fellows program, an immigrant representation corps, consisting of young lawyers and senior lawyers, who would serve for one or two years, mentored by experienced immigration lawyers. In this project, I express my appreciation to Mayor Bloomberg, who

with his team, convened a meeting of foundations urging their support for this initiative.\footnote{In its October 2009 report, \textit{Immigrants: The Lifeblood of New York City}, the Bloomberg Administration committed to support the training of lawyers who would represent immigrants. See \textsc{Michael Bloomberg}, \textit{Immigrants: The Lifeblood of New York City} 3 (2009), available at \url{http://www.mikebloomberg.com/immigration.pdf} (“The City will commit $2 million to the effort to cover a team of supervising attorneys and on-going training of associates and technical assistance in the area of immigration law.”). In a speech delivered on October 8, 2009, the Mayor stated: We’ll create a $2 million fund to deploy these lawyers to community organizations in areas with high concentrations of immigrants—and we’ll give them the support they need to help more families get a fair shake from the justice system . . . and stay here in our City. 

The stakes are too high for immigrants to go without legal representation. The outcome can determine whether a family will be split apart . . . or be able to stay together.

We’re going to do everything we can to ensure that immigrants who are going through the process to stay here legally can do so, and can keep their families together.

I want to thank Judge Robert Katzmann and Chung-Wha Hong, director of the New York Immigration Coalition, for bringing me this idea. It’s an example of how we can turn the national economic downturn to our advantage—if we think innovatively and act boldly.

Michael Bloomberg, Mayor of N.Y.C., Speech at City University of New York Graduate Center (Oct. 8, 2009).}

In November 2011, Mayor Bloomberg, Deputy Mayor for Legal Affairs Carol Robles-Roman, Chief Policy Adviser John Feinblatt, Commissioner of the Mayor’s Office to Combat Domestic Violence Yolanda Jimenez and Commissioner of the Mayor’s Office of Immigrant Affairs Fatima Shama announced a new program whereby thirteen additional full time attorneys would work with the City’s ten indigent criminal defense providers and provide counseling to immigrant domestic violence victims. Press Release, Michael Bloomberg, Mayor Bloomberg Announces Expansion of Legal Services for Immigrants (Nov. 21, 2011), available at \url{http://www.mikebloomberg.com/index.cfm?objectid=C7C4788B-C29C-7CA2-FAF79F528F9EE9E}.}
with a knowledge of immigration law, and, hopefully, a commitment to pro bono work.

(8) We have spurred the creation of law school clinics—the prime exemplar being the Kathryn O. Greenberg Immigration Justice Clinic at Cardozo Law, under the leadership of two wholly dedicated, vigorous deans, David Rudenstine and Matthew Diller.

(9) Study Group members have worked with state, local, and federal governments to explore ways that consumer law could be used to root out fraudulent legal service providers.

(10) Responding to federal initiatives to combat immigration fraud, the Study Group, in concert with the American Immigration Lawyers Association and other organizations, in 2011 sponsored two days of intensive training in immigration law for non-immigration lawyers.

A lot more could be said about each of these initiatives. With your indulgence, I’d like to say more about two of them.

New York Immigrant Representation Study

Senator Daniel Patrick Moynihan often said that you’re entitled to your own opinion, but not to your own facts. I couldn’t agree more. Thus, I thought it important that the Study Group move from anecdote to comprehensive data, so that the problem could be better defined and addressed. To that end, Study Group members are undertaking the New York Immigrant Representation Study, chaired by Professor Peter Markowitz of Cardozo Law School, Professor Stacy Caplow of Brooklyn Law School, and Claudia Slovinsky. That study, with the support of the Leon Levy Foundation and the Governance Institute, is a two-year project in collaboration with the Vera Institute of Justice.

The study provides, for the first time ever, comprehensive data about the scope of the immigrant representation challenge in New York (part one, year one) and is working to provide a plan for addressing it (part two, year two, to be issued by the end of 2012). The findings of part one of the study were published in December 2011 in the Cardozo Law Review.

I present to you now a few of those striking findings because they powerfully show the depth of the problem:

18. Id.
First. “A striking percentage of detained and non-detained immigrants appearing before the New York Immigration Courts do not have representation.”19

In New York City:
• “Sixty percent of detained immigrants do not have counsel by the time their cases are completed.”20
• “Twenty-seven percent of non-detained immigrants do not have counsel by the time their cases are completed.”21

Second. The study found that the Department of Homeland Security’s detention and transfer policies create significant obstacles for immigrants facing removal to obtain counsel.
• Until recently, Immigration and Customs Enforcement transferred “almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas) where they face the greatest obstacles to obtaining counsel.”22
• “Individuals who are transferred elsewhere and who remain detained outside of New York are unrepresented 79% of the time.”23

Third. “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—drops the success rate dramatically. When neither factor is present the rate of successful outcomes drops even more substantially.”24
• “Represented and released or never detained: 74% have successful outcomes.”25
• “Unrepresented but released or never detained: 13% have successful outcomes.”26
• “Represented but detained: 18% have successful outcomes.”27

19. Id. at 363.
20. Id.
21. Id.
22. Id.
23. Id.
24. Id.
25. Id.
26. Id. at 364.
27. Id.
I think we can all agree that having a lawyer, preferably a good one, makes a substantial difference.

Fourth. “Grave problems persist in regard to deficient performance by lawyers providing removal-defense services.”

• “New York immigration judges rated nearly half of all legal representatives as less than adequate in terms of overall performance . . . .”

Fifth. “According to the providers surveyed, detained cases are least served by existing removal-defense providers.”

Sixth. “[T]he two greatest impediments to increasing the capacity of existing providers are a lack of funding and a lack of resources to build a qualified core of experienced removal-defense providers.”

These dramatic findings give us a sense of the immensity of the task before us.

A Study Group, Federal Bar Council, Human Rights First Initiative

I am deeply grateful to the Federal Bar Council (FBC) for its support for the work of the Study Group, beginning with three FBC presidents, Mark Zauderer, Robert Giuffra, and Frank Wohl. Federal Bar Council Quarterly has devoted space to our activities. The Public Service Committee (PSC) has been magnificent, under the leadership of Peter Vigeland and Jamie Levitt, both of whom are Study Group members. The Public Service Committee with the support of the Study Group, undertook a series of highly successful training sessions in immigration law, showing to any doubters that immigration law can be learned just like any other area of law. Indicative also of the Federal Bar Council’s Public Service Committee contribution is a creative pilot project to increase the pool of pro bono lawyers in asylum cases. A grant from the Leon Levy Foundation provides funding for a non-profit, Human Rights First (Lori Adams and Gina DelChiaro) to use its expertise to work with pro bono lawyers from

28. Id.
29. Id.
30. Id.
31. Id.
32. Id. at 364–65.
firms on immigration cases.\textsuperscript{34} The hope, through this two-year fellowship program, is to challenge the private bar to take on more pro bono asylum cases and 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 pro bono attorneys in that representation. In this pilot effort, the PSC, with appreciation to Jamie Levitt and Alida Lasker, has secured the commitment of Cleary Gottlieb, Sullivan & Cromwell, Fried Frank, Morrison & Foerster, and WilmerHale to assist with the screening of potential asylum clients at the New York Immigration Court, and to have those law firms take asylum cases pro bono. This pilot project could serve as a model for an expanded program, and encourage action by other foundations and firms.

\textit{What You Can Do}

You might be wondering what can you do? I see so much talent in this room. I encourage and welcome the involvement of all of you here: firm leaders who set the tone, partners who serve as mentors for young lawyers, senior lawyers and associates alike. Any lawyer who has successfully represented a noncitizen can tell you of the deep satisfaction of helping a person in need, of helping to keep a family intact, of frankly becoming a hero to that immigrant and immigrant family, with the not insubstantial additional benefit to the attorney and firm of honing legal skills through that representation. Such honing of skills can enhance lawyering in other areas of practice. If you’re not convinced by my words tonight, just talk to these lawyers: Jennifer Korman, Carmine Bocuzzi, Alex Bean, Alida Lasker, Ayana Free, Cathleen Gordley, and Andrew Ungberg of Cleary Gottlieb, who are participating in the PSC-Human Rights First pilot project; or Conray Tseng or Natalie Blazer of Weil Gotshal; or Anne-Laure Allehaut, Kelly Russotti, Laurent Weisel, and Nizan Geslevich of Skadden; or Barbara Camacho, a Fragomen fellow at the City Bar; or Jorge Castillo, Jennifer Colyer, Maribel Hernandez-Rivera, Peter Cobb, Robert Juceam, and Jonathan Forman of Fried Frank; or Jeannie Chung of Simpson Thacher; or Melanie Baptiste of Paul, Weiss; or Morgan Clark, Kristin McNamara Pauley, Nicole Naples, and Mei Lin Kwan-Gett of Willkie Farr; Aileen McGill and Stephanie Teplin of Patterson Belknap; or Noah Gitterman of Proskauer. They can tell you of the

profound impact of their experiences. I follow the work of pro bono attorneys representing immigrants with much, much respect for their contributions.

If you are not already, please become involved. You can find out more about our activities by Googling “Study Group on Immigrant Representation,” by downloading our Fordham and Cardozo symposia and reports, by contacting the Study Group at studygroupimmigrantrep@gmail.com, the FBC’s Public Service Committee, or by contacting the other organizations noted in our materials, all doing great work.

It has indeed been an extraordinary honor to speak with you tonight. I very much stand on the shoulders of many who have made such a difference in my life, without whom I would not be here this evening. Before leaving the stage, I want to offer some words of appreciation, however inadequate they are, to convey my gratitude. I begin by paying tribute to my parents, who are here, John and Sylvia Katzmann. I know how lucky I am to have them as my parents. With their profound intelligence, their high standards and moral values, their unwavering loyalty, their generosity, their kindness, and their fortitude, my parents gave my siblings and me a blueprint for life. From them, we always had the sense that everything in life was possible, and that whatever we do should be done with integrity, with modesty, and concern for others. My parents have devoted their lives to their children, my sister Susan and brothers Gary and Martin. Our parents have put us ahead of their own comforts so that each of us could strive to realize our hopes. I am blessed, too, to have a wonderful, caring, and amazingly talented spouse, Jennifer, who has given me so much happiness. I am grateful that so many friends, family, my clerk family, my superb judicial assistant, Dominique Welch, and my extraordinary judicial colleagues are here. I think also of those who have passed away, but who are always with me, whose faith in me and efforts on my behalf were so essential to the course my life has taken.

Tonight, I especially acknowledge a few people who made my judgeship possible. First, I’d like to say a few words about Senator Daniel Patrick Moynihan, that inimitable statesman-scholar-teacher, and Elizabeth Moynihan, a path-breaking archaeological historian, author, and notable political strategist. I met the Moynihans when I was twenty-one-years-old, preparing for my Ph.D. orals in government at Harvard. From Professor and later Senator Moynihan, I learned truths large and small, about our institutions, about social science and social policy, and about the need for humility about what we know so that we can better craft what we can achieve. And always present, over the
decades, was Liz and Daniel P. Moynihan’s concern about my well-being. They gave me the sense that they believed in me and they were always there for me, supporting me, indeed, promoting me. I am so glad that my dear friend Liz Moynihan is here to share this evening. Seeing tonight my good friend Judge Richard Eaton, a former chair of the Moynihan Judicial Advisory Selection Committee, I am reminded that many in this room also owe much to Senator Moynihan. And, as I recall the path to a federal judgeship, I gratefully acknowledge Gene Sperling, a brilliant public servant, a friend of thirty years, whose dedicated efforts, wise counsel and constant friendship have meant so much. I will always appreciate Patricia Hynes and her recommendation to the American Bar Association that I could do the job as judge. And I remember, as well, a couple of great judges, now deceased, with whom, in my pre-judgeship days, I worked closely and learned a lot, Hugh Bownes and Frank Coffin, both of the First Circuit.

We are all shaped by our personal histories. As I reflect on my subject tonight, immigrant representation, my own family’s past no doubt plays a part. My father is a refugee from Nazi persecution, my mother the child of Russian immigrants. I can still hear the accents and voices of my own relatives, who escaped persecution, who wanted to become part of this great country, and who, through their toil and belief in the American dream, made this great nation even greater. When we work to secure adequate representation for immigrants, not only are we faithful to our own professional responsibilities, not only do we further the fair and effective administration of justice, but we also honor this nation’s immigrant experience.

The challenges are formidable. I often think of the Breton Fisherman’s prayer, that the sea is so great, and our boats are so small. But, row we must. On this journey, I look forward to continuing to work together with the Federal Bar Council.

I thank you for your great courtesy, for this truly great honor, and for this memorable evening.
# ACCESSING JUSTICE:
THE AVAILABILITY AND ADEQUACY OF COUNSEL IN REMOVAL PROCEEDINGS

*New York Immigrant Representation Study Report: Part 1*

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>358</td>
</tr>
<tr>
<td>I. METHODOLOGY</td>
<td>362</td>
</tr>
<tr>
<td>II. TOP-LINE FINDINGS</td>
<td>363</td>
</tr>
<tr>
<td>III. LACK OF REPRESENTATION OF NEW YORKERS IN REMOVAL PROCEEDINGS</td>
<td>365</td>
</tr>
<tr>
<td>A. Individuals Needing Representation in Immigration Court</td>
<td>365</td>
</tr>
<tr>
<td>B. Assessing the Impact of Detention and Transfer out of New York</td>
<td>367</td>
</tr>
<tr>
<td>1. Impact of Detention on Access to Counsel in New York Immigration Courts</td>
<td>367</td>
</tr>
<tr>
<td>2. Impact of ICE Transfer Policies on Access to Counsel for New Yorkers</td>
<td>369</td>
</tr>
<tr>
<td>3. Impact of ICE Bond Policies on Access to Counsel</td>
<td>373</td>
</tr>
<tr>
<td>4. Representation Rates on Appeal</td>
<td>377</td>
</tr>
<tr>
<td>C. Assessing Representation Rates by Case Types</td>
<td>378</td>
</tr>
<tr>
<td>D. Assessing the Providers</td>
<td>380</td>
</tr>
<tr>
<td>E. Assessing the Impact of Representation on Outcomes</td>
<td>383</td>
</tr>
</tbody>
</table>

* This Report was authored by the Steering Committee of the New York Immigrant Representation Study Report, composed of Peter L. Markowitz, Benjamin N. Cardozo School of Law (chair); Jojo Annobil, Legal Aid Society of New York; Stacy Caplow, Brooklyn Law School; Peter v.Z. Cobb, retired partner at Fried Frank Shriver & Jacobson LLP; Nancy Morawetz, New York University School of Law; Oren Root, Vera Institute of Justice; Claudia Slovinsky, Law Offices of Claudia Slovinsky, together with Zhifen Cheng, Vera Institute of Justice; and Lindsay C. Nash, Liman Fellow at Benjamin N. Cardozo School of Law. The authors wish to thank Assistant Chief Immigration Judge Sarah M. Burr, Immigration Judge Noel A. Brennan, Audrey Carr, Melissa Chua, Francis Miriam Kreimer, Joshua Occhiogrosso-Schwarz, the Study Group on Immigrant Representation, and the Executive Office for Immigration Review for their invaluable assistance and contributions. In addition, the authors wish to thank Judge Robert A. Katzmann for his inspirational leadership in the effort to increase immigrants’ access to counsel. Finally, the New York Immigrant Representation Study gratefully acknowledges the support of the Leon Levy Foundation, The Governance Institute, and the Floersheimer Center for Constitutional Democracy.
INTRODUCTION

The immigrant representation crisis is a crisis of both quality and quantity. It is the acute shortage of competent attorneys willing and able to competently represent individuals in immigration removal proceedings. Removal proceedings are the primary mechanism by which the federal government can seek to effect the removal, or deportation, of a noncitizen. The individuals who face removal proceedings might be: the long-term lawful permanent resident (green card holder) who entered the country lawfully as a child and has lived in the United States for decades; or the refugee who has come to the United States fleeing per-
secution; or the undocumented immigrant caught trying to illegally cross the border. By every measure, the number of deportations and removal proceedings has skyrocketed over the last decade. Between 2000 and 2010, the number of removal proceedings initiated per year in our nation’s immigration courts increased nearly fifty percent, totaling over 300,000 last year.¹ During that period, the representation rate of respondents in removal proceedings has remained relatively constant and abysmally low.² Correspondingly, the actual number of unrepresented individuals has virtually doubled.

The lack of any right to appointed counsel in removal proceedings might come as a surprise to those uninformed into the field of immigration law. A noncitizen arrested on the streets of New York City for jumping a subway turnstile of course has a constitutional right to have counsel appointed to her in the criminal proceedings she will face, notwithstanding the fact that it is unlikely she will spend more than a day in jail. If, however, the resulting conviction triggers removal proceedings, where that same noncitizen can face months of detention and permanent exile from her family, her home, and her livelihood, she is all too often forced to navigate the labyrinthine world of immigration law on her own, without the aid of counsel.³ This is the current state of the law and has been for over a century.⁴

Compounding the lack of legal entitlement to appointed counsel are the distinctive characteristics of the population facing removal: a

---


² FY 2010 Year Book, supra note 1, at G1 (reporting that respondents were represented in only 43% of completed proceedings in 2010 and noting EOIR’s “great concern” about “the large number of individuals appearing pro se”); FY 2000 Year Book, supra note 1, at J1 (reporting that respondents were represented in only 44% of completed proceedings).

³ Drax v. Reno, 338 F.3d 98, 99 (2d Cir. 2003) (describing immigration law as “a maze of hyper-technical statutes and regulations”); see also Baltazar-Alcazar v. INS, 386 F.3d 940 (9th Cir. 2004) (“[I]mmigration laws have been termed second only to the Internal Revenue Code in complexity. A lawyer is often the only person who could thread the labyrinth.” (quoting Castro-O’Ryan v. U.S. Dep’t of Immigration & Naturalization, 847 F.2d 1307, 1312 (9th Cir. 1987) (internal quotation marks omitted)).

⁴ In 1893, the Supreme Court considered the constitutional protections due to three Chinese residents facing deportation and, relying on an extra-constitutional inherent powers theory, held that criminal constitutional protections have no application to civil deportation proceedings. Fong Yue Ting v. United States, 149 U.S. 698 (1893). Since then, deportation proceedings have been labeled as purely civil and so, despite the severity of the consequences, the Sixth Amendment right to counsel has been considered inapplicable. But cf. Turner v. Rogers, 131 S. Ct. 2507 (2011) (discussing the due process right to appointed counsel in civil proceedings where physical liberty is at stake, litigants face opposing counsel, and where the risk of erroneous deprivation without counsel is high).
relative lack of familiarity with the legal system; lack of financial resources; language barriers; and general susceptibility to unscrupulous lawyers.\textsuperscript{5} In addition, immigrant representation, to date, has not been considered to be within the mandate of the various governmental and institutional actors that would otherwise be responsible for providing indigent civil legal services. As such, we now find ourselves in a place where no sizeable entity—government or otherwise—views providing or funding removal-defense services as its primary responsibility.

In 2010 the Study Group on Immigrant Representation, convened by Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit, together with the Vera Institute of Justice,\textsuperscript{6} and with the support of The Governance Institute and the Leon Levy Foundation, began a two-year Study of the immigrant representation crisis in New York:\textsuperscript{7} the New York Immigrant Representation Study (NYIRS). People working in immigration law in New York for some time have had an intuitive sense of the grand scale of this crisis. In order to develop thoughtful responses, however, detailed information is needed on the nuances of its nature and scope. Accordingly, in Year One of the NYIRS (the results of which are contained herein), we sought out all available data sources that bore on the scope and nature of the crisis. In Year Two, we will embark on a self-consciously ambitious project to apply what we learned in Year One to developing a model integrated removal-defense system, drawing on the network of existing providers, to fully meet the removal-defense needs (in terms of both quality and quantity) of indigent New Yorkers.

No study is necessary to establish the plainly apparent fact that the current demand for indigent removal-defense services in New York exceeds the supply of such services. Nor is any empirical evidence ne-

\textsuperscript{5} Human Rights Watch, Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States 41 (2009), available at http://www.hrw.org/reports/2009/12/02/locked-far-away-0 (discussing the importance of legal counsel for a population disadvantaged by linguistic and cultural differences, and the trauma that arises from arrest and detention); Peter L. Markowitz, Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study, 78 Fordham L. Rev. 541, 548 (2009) (examining U.S. Census Bureau data and concluding that “[t]here is every reason to believe that the subset of foreign-born individuals who land in deportation proceedings are, as a group, even less economically secure than the [on average, more impoverished] general foreign-born population”); id. at 542 (explaining that the population facing removal is “at substantial risk of encountering the all-too-prevalent elements of the immigration bar that are either incompetent or unscrupulous”).

\textsuperscript{6} The Vera Institute performed all the data analyses for this Study. Thus, none of the analyses of Executive Office for Immigration Review (EOIR) and U.S. Immigration and Customs Enforcement (ICE) data in this report constitute official EOIR or ICE statistics.

\textsuperscript{7} For the purposes of the New York Immigrant Representation Study (NYIRS) project, the term “New York” refers to the jurisdiction of the ICE New York Field Office: the five boroughs of New York City, the two counties on Long Island, and the seven counties north of New York City. The New York Field Office’s jurisdiction includes five immigration court locations—two in New York City and three upstate in-state prisons.
cessary to understand that detention creates barriers to accessing legal counsel or that the presence of counsel has an impact on the outcome of removal proceedings. And anyone who has spent time in the New York Immigration Courts or reviewed the proceedings conducted therein will not need a study to identify the serious problem of inadequate counsel that exists in those courts.

If we are to think seriously about systemic solutions to the representation crisis, however, we need to know much more than these plainly observable generalities. We certainly need to understand, with specificity, the scale of the gap between the demand for and the supply of legal services. But we need to know much more than that. We also need to understand which immigrants are facing the most significant barriers to counsel and which types of removal cases are well-serviced and which are not. We need to understand how the locus of proceedings at, and the detention policies of, the U.S. Department of Homeland Security (DHS) affect access to counsel. We need to know how important a factor counsel is in determining the outcome of a case. Moreover, we need to understand, in some detail, the capacity, expertise, and limits of the entities that currently provide counsel to indigent New Yorkers in removal proceedings and the barriers to, and opportunities for, increasing the capacity of those service providers. Finally, we need to understand, in some detail, the breadth and depth of the quality problems plaguing the immigration courts, and perhaps more accurately, plaguing the respondents in removal proceedings. This Study provides the first publicly available data on many of these and other issues related to the immigrant representation crisis.

---

8 This Report uses the term “New York Immigration Courts” to refer to five court locations: 26 Federal Plaza, New York; Varick Street, New York; Bedford Hills Correctional Facility; Downstate Correctional Facility (Fishkill); and Ulster Correctional Facility.

9 See, e.g., IMMIGRATION COURT OBSERVATION PROJECT, NAT’L LAWYERS GUILD, FUNDAMENTAL FAIRNESS: A REPORT ON THE DUE PROCESS CRISIS IN NEW YORK CITY IMMIGRATION COURTS 14–18 (2011), available at http://nycicop.files.wordpress.com/2011/05/icop-report-5-10-2011.pdf (reporting observation of attorneys who failed to appear as well as observations of “dozens of cases where the respondent’s representative was not prepared, had poor knowledge of the facts of the case, and was unaware of the relevant legal issues of the case”); FELINDA MOTTINO, VERA INST. OF JUSTICE, MOVING FORWARD: THE ROLE OF LEGAL COUNSEL IN NEW YORK CITY IMMIGRATION COURTS 22–25 (2000), available at http://www.vera.org/content/moving-forward-role-legal-counsel-new-york-city-immigration-courts (noting the poor quality of private representation in contrast to representation by nonprofit agencies); Noel Brennan, A View from the Immigration Bench, 78 FORDHAM L. REV. 623, 626 (2009) (“I’ve grown concerned that many attorneys are just not very interested in their work and therefore bring little professional vigor or focus to it.”); Robert A. Katzmann, The Legal Profession and the Unmet Needs of the Immigrant Poor, 21 GEO. J. LEGAL ETHICS 3, 9 (2008) (“Often times, the reviewing appellate judge, who is constrained at the time the case comes before her, is left with the feeling that if only the immigrant had secured adequate representation at the outset, the outcome might have been different.”).
I. METHODOLOGY

We evaluated four primary data sources for this Study:

Executive Office for Immigration Review (EOIR) Dataset—Data provided by EOIR from its case-tracking database for the 71,767 cases with initial Immigration Court appearances occurring between October 1, 2005, and July 13, 2010, that involved appearances in the New York Immigration Courts. Data included individuals arrested in New York and transferred to other Immigration Court locations.

Immigration and Customs Enforcement (ICE) Dataset—Data provided by ICE on 9112 cases involving apprehensions in New York between October 1, 2005, and December 24, 2010, of individuals who were detained and placed in removal proceedings in other parts of the country. The ICE data that identified these individuals permitted us to match the ICE data with records made available by EOIR.10

Immigration Judge Survey Dataset—In July 2011, with the cooperation of EOIR, we surveyed the immigration judges who sit on the New York Immigration Court to gather their assessment of the quality of the legal representatives who appeared in their courts over the past year.11

Nonprofit Removal-Defense Provider Survey Dataset—Data drawn from a survey of twenty-five nonprofit organizations that provide removal defense to individuals in the New York area.12

---

10 See infra Appendix A (explaining, in detail, the methodology for obtaining and analyzing the EOIR and ICE data discussed infra Part II).
11 See infra Part IV.A (describing, in detail, the methodology underlying this survey on the quality of representation in New York Immigration Courts).
12 See infra Part V.A (explaining the methodology underlying the survey of existing nonprofit removal defense providers). An analysis of the scope of immigrant legal services provided to noncitizens that are not yet in removal proceedings, but are at risk of removal, is beyond the scope of this Study. Providing legal services to this population exhausts some additional immigrant representation resources and, presumably, the greater availability of effective counsel for this group could reduce the number of people who are put into proceedings in the first place. This is certainly true for providing immigration-related legal counsel to noncitizens facing criminal charges or to those contemplating affirmative applications for immigration benefits; for them, such legal advice could be determinative as to whether they will find themselves in removal proceedings. Although we know that this phenomenon exists in the broader field of immigrant representation, this Report does not analyze its scope or impact.
II. TOP-LINE FINDINGS

A striking percentage of detained and nondetained immigrants appearing before the New York Immigration Courts do not have representation. The greatest area of need for indigent removal defense is, however, for detained individuals.

In New York City:

- Sixty percent of detained immigrants do not have counsel by the time their cases are completed.
- Twenty-seven percent of nondetained immigrants do not have counsel by the time their cases are completed.

**DHS’s detention and transfer policies create significant obstacles for immigrants facing removal to obtain counsel.**

- ICE transfers almost two-thirds (64%) of those detained in New York to far-off detention centers (most frequently to Louisiana, Pennsylvania, and Texas), where they face the greatest obstacles to obtaining counsel.
- Individuals who are transferred elsewhere and who remain detained outside of New York are unrepresented 79% of the time.

The two most important variables affecting the ability to secure a successful outcome in a case (defined as relief or termination)\(^{13}\) 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—drops the success rate dramatically. When neither factor is present, the rate of successful outcomes drops even more substantially.

- Represented and released or never detained: 74% have successful outcomes.

---

\(^{13}\) A person who is granted relief from removal has established a ground that entitles that person to remain in the United States, usually with legal status. Notwithstanding common definitions, for purposes of this Study, we did not include “voluntary departure” as a form of relief or a successful outcome, since it requires the individual to leave the country. Termination occurs when DHS is unable to prove that a person should be removed and so the case is dismissed.
Represented but detained: 18% have successful outcomes.

Unrepresented but released or never detained: 13% have successful outcomes.

Unrepresented and detained: 3% have successful outcomes.

Significant increases in representation could be effected for detained immigrants by keeping their proceedings in the New York City Immigration Courts.

Not surprisingly, immigrants detained and transferred to far off jurisdictions had lower representation rates than immigrants detained for proceedings in New York City. However, less intuitively, the drop-off in representation rates was also dramatic for cases venued in Newark, New Jersey, a mere fifteen miles outside of New York City.

- Detained representation rate in New York City: 40%.
- Detained representation rate in Newark, New Jersey: 22%.
- Detained representation rate for New Yorkers in all locations outside of New York: 19%.

ICE detention practices and disproportionately high bond amounts in New York inhibit access to counsel.

A significant majority of detained respondents—at least 60%, but likely significantly more—are not subject to mandatory detention and thus could be released on their own recognizance or subject to noncustodial supervision, significantly increasing their access to counsel.

Grave problems persist in regard to deficient performance by lawyers providing removal-defense services.

New York immigration judges rated nearly half of all legal representatives as less than adequate in terms of overall performance; 33% were rated as inadequate and an additional 14% were rated as grossly inadequate. The epicenter of the quality problem is in the private bar, which accounts for 91% of all representation and, according to the immigration judges surveyed, is of significantly lower quality than pro bono, nonprofit, and law school–clinic providers.

According to the providers surveyed, detained cases are least served by existing removal-defense providers.

According to the providers surveyed, the two greatest impediments to increasing the capacity of existing providers are a lack of funding
and a lack of resources to build a qualified core of experienced removal-defense providers.

III. LACK OF REPRESENTATION OF NEW YORKERS IN REMOVAL PROCEEDINGS

Determining what else needs to be done to move toward universal competent representation for New Yorkers requires an understanding of the nature and scope of the need for representation and of the factors that bear on a successful outcome. To that end, we first looked at the individuals who require representation in New York courts to determine which populations currently receive representation and which populations are most in need of counsel. We then analyzed our data based on factors like geographic location and custody status in an effort to understand the impact of ICE detention and transfer policies on New Yorkers’ access to counsel. To complement this picture of the need for representation, we next examined the breakdown among the various types of legal providers (private, pro bono, nonprofit removal-defense providers, and law school clinics) currently providing removal-defense services to New Yorkers. Finally, and most important, we examined outcomes in cases to determine the impact of representation, as well as ICE’s detention and transfer policies, which bear on representation.

A. Individuals Needing Representation in Immigration Court

The critical starting point in determining what needs to be done to move toward universal competent representation for New Yorkers was to ascertain how many New Yorkers are unrepresented in removal proceedings, and to understand the impact of this lack of representation. As such, we gathered data regarding the following three groups of people facing removal proceedings:

1) Detained in New York: Detained individuals who faced removal in immigration courts in New York City and the upstate counties covered by the ICE New York Field Office. Those court locations are Varick Street in Lower Manhattan, where the Immigration Court hears the cases of individuals apprehended and detained by ICE, but are not transferred out of the New York area; and three New York State prisons, where removal pro-

---

14 “Custody status” means whether or not the person is detained.
15 Most of those whose cases are heard at Varick Street are held in county jails in New Jersey and Orange County, New York.
ceedings are conducted for sentenced state prisoners pursuant to
the Institutional Removal Program (IRP): Bedford Hills Correctional Facility (Bedford Hills), Downstate Correctional Facility (Fishkill), and Ulster Correctional Facility (Ulster).

(2) Detained Outside of New York: Detained individuals who were almost immediately transferred to locations outside of New York, and who never returned to court in New York. Sixty-seven percent of people in this group were sent to ICE detention centers in Texas and Louisiana, while another 13% were sent to county jails in Pennsylvania. New Yorkers in this group were forced to defend themselves in removal proceedings before immigration courts in the out-of-state locales to which they had been transferred.

(3) Nondetained in New York: Nondetained individuals who were either not detained at the start of their case or were released—most commonly on bond—after initially being detained. Most nondetained cases in New York are heard at 26 Federal Plaza in Lower Manhattan.

Collectively, the five court locations discussed above (26 Federal Plaza, Varick Street, Bedford Hills, Fishkill, and Ulster) will be referred to as “New York Immigration Courts.”

Of these three groups, nondetained individuals comprise the majority of New Yorkers whose removal proceedings are in New York Immigration Courts.

---

16 Bedford Hills handles the women’s cases; the other two courts handle the men’s cases. One immigration judge covers all three locations.

17 Twenty-nine immigration judges, the second largest complement (after Los Angeles, CA) of any immigration court location in the country, are assigned to sit at 26 Federal Plaza. Individuals who were detained and had their cases calendared at Varick Street but were then released (usually on bond) often continue to have their cases heard at Varick Street but are nonetheless included in the “Nondetained in New York” category.

18 The two other Immigration Court locations in New York State—Buffalo and Batavia—both about 400 miles from New York City—were not part of our Study. We limited our Study to the area of responsibility of ICE’s New York Field Office: New York City, Long Island, and seven counties north of New York City.

19 See infra Figure 1.
B. Assessing the Impact of Detention and Transfer out of New York

The data makes clear that two factors significantly impact whether a New Yorker gets legal representation: not being detained and remaining in New York. It further shows that minor changes to ICE’s detention and transfer policies would significantly decrease the number of individuals subject to detention and transfer.

1. Impact of Detention on Access to Counsel in New York Immigration Courts

For New Yorkers with cases adjudicated in New York Immigration Courts, their custody status (i.e., whether or not they are detained) strongly correlates with their likelihood of obtaining counsel. As Table 1 shows, detained individuals with cases adjudicated in New York Imm-
migration Courts were unrepresented 67% of the time,\textsuperscript{20} while nondetained individuals in the same courts were unrepresented only 21% of the time.

Table 1
Rates of Unrepresented Cases in New York Immigration Courts:
By Custody Status at the Most Recent Hearing
(For cases, starting between 10/1/2005 and 7/13/2010 having at least one hearing in a New York Immigration Court: N=55,999)

<table>
<thead>
<tr>
<th>Hearing Location</th>
<th>Custody Status at the Most Recent Hearing</th>
<th>Number of Unrepresented Cases</th>
<th>Total Number of Cases</th>
<th>Percentage of Unrepresented Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Detained</td>
<td>4818</td>
<td>7198</td>
<td>67%</td>
</tr>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Nondetained*</td>
<td>10,060</td>
<td>48,801</td>
<td>21%</td>
</tr>
</tbody>
</table>

Data Source: EOIR
* Nondetained includes the two EOIR custody statuses of “never detained” and “released.”\textsuperscript{21}

In order to understand the representation rates in the “detained in New York” group, it is critical to understand two different categories of individuals that fall within that group. Of the 7198 individuals subjected to removal proceedings in New York Immigration Courts while detained, the majority of cases (3720, or 52%) were heard at the Varick Street Immigration Court in New York City. The remaining individuals in the “detained in New York” group (3478, or 48%) were subject to removal proceedings as part of ICE’s IRP. IRP respondents, unlike those at Varick Street, are placed in removal proceedings while serving time in upstate prisons for felony convictions. Accordingly, the IRP respondents differ in certain critical respects from those at Varick Street. Specifically, the IRP respondents are significantly less likely to be eligible for relief from removal because many are aggravated felons.

\textsuperscript{20} One accredited representative from the Comite Nuestra Señora de Loreto Sobre Asuntos de Inmigración Hispánica alone represented 28% of people detained in New York during the period of our Study. In May 2011, the representative lost his accreditation from the Board of Immigration Appeals (BIA). This development will likely drive up the rate of those who are unrepresented while detained.

\textsuperscript{21} Of the 48,801 nondetained cases in Table 1, 1020 cases were of individuals who were initially detained and then released. The percentage of released individuals who were unrepresented was 20%, as compared to the 21% of those who were never detained. Because the EOIR data does not track the date of release, but only the last custody status, we were not able to determine when in relation to release counsel appeared. Thus, it is unknown whether obtaining representation increased the chance of release or whether being released facilitated finding representation. We hypothesize that both are true, but the data do not provide answers regarding these possibilities.
and neither ICE nor EOIR has any discretion to release such individuals during the pendency of their proceedings since they are still serving state time. By contrast, Varick Street respondents are in the custody of ICE, not New York State. They are potentially subject to release from custody by ICE or EOIR, and they may or may not have criminal convictions that affect their eligibility for relief.

Not surprisingly, Varick Street respondents are much more likely than IRP respondents to obtain counsel: 57% of the Varick Street respondents lacked counsel as compared to 78% of the IRP respondents. This distinction is critically important to understanding the significance of ICE’s transfer policies since the individuals subject to transfer would otherwise fall within the Varick Street—not the IRP—subgroup.

2. Impact of ICE Transfer Policies on Access to Counsel for New Yorkers

For the New Yorkers who are arrested in New York, detained by ICE, and transferred out of state to litigate their removal proceedings far from home, the representation rates are dismal: this group was unrepresented 79% of the time. ICE’s decision to transfer detainees (which can greatly impact their chance to obtain relief) is based principally on ICE’s operational considerations (primarily bed space), not on any merits-based characteristic of the detainee or on the removal proceedings. Table 2 details the disadvantages flowing from ICE’s decision to detain and transfer 9098 individuals out of New York. This includes the 7517

22 This does not mean, however, that the presence or absence of counsel is unimportant to the outcome of IRP cases. To the contrary, often the only chance of success in such proceedings lies in complicated legal arguments distinguishing respondents’ state convictions from the federal aggravated felony categories. It is precisely such technical legal arguments that pro se respondents are particularly ill-equipped to identify or articulate.

23 See infra Part III.B.4 (discussing circuit splits wherein the Fifth Circuit in Texas and Louisiana foreclosed relief for many while the same avenue of relief would have been available under Second Circuit caselaw in New York).

24 See OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF HOMELAND SEC., IMMIGRATION AND CUSTOMS ENFORCEMENT POLICIES AND PROCEDURES RELATED TO DETAINEE TRANSFERS 0–3 (2009) (finding that ICE officers often do not consult detainees files prior to transfer to see if they have legal representation or a hearing schedule and that “[t]ransfer determinations made by ICE officers at the detention facilities are not conducted according to a consistent process,” which “leads to errors, delays, and confusion for detainees, their families, and legal representatives”); U.S. DEP’T OF HOMELAND SEC., ICE/DRO DETENTION STANDARD: TRANSFER OF DETAINEES 2 (2008) (listing considerations that may affect transfer, which do not include the basis for the charges against the person, and noting that the “determining factor in deciding whether or not to transfer a detainee is whether the transfer is required for operational needs, for example, to eliminate overcrowding”).

25 We did not include the fourteen cases here of persons apprehended and transferred out of New York by ICE who changed their venues back to, and, later, out again, of the New York Immigration Courts.
individuals considered part of the “detained outside of New York” group, the 1161 individuals who eventually won change-of-venue motions to transfer their cases back to New York, and the 420 individuals who were eventually released by the out-of-state immigration courts. Had these 9098 individuals not been transferred out of New York, their cases would have been heard at Varick Street, where the representation rates are appreciably higher (though still unacceptably low), with 57% of respondents appearing without representation. The overwhelming majority (83%) of those whom ICE detained and transferred out of New York remained detained, and their cases were adjudicated outside of New York. Tellingly, the 13% of individuals who were transferred but were able to move their case back to New York were also able to obtain representation at a rate commensurate with the higher representation rates associated with individuals who were detained but never transferred.26 Thus, it appears that access to counsel is closely connected to ICE’s initial decision to venue a case in the New York City Immigration Court or to transfer the case out of state, and in the latter case, is similarly dependent on the transferred individuals’ ability to prevail on a motion to change venue back to New York.27

26 Those who changed venue back to New York were unrepresented at a similarly low rate—13% and 16%—whether they remained detained or were released. The remaining 5% of individuals who were released by the out-of-state immigration courts were unrepresented 37% of the time.

27 These conclusions hold true notwithstanding the significant disparity between the demand for, and the supply of, indigent removal defense services for detained individuals in New York. Several factors improve individuals’ access to counsel in New York, notwithstanding the shortage of free removal-defense services. First, detained New Yorkers have a better chance of winning their release in the New York City Immigration Court, as opposed to courts in Texas and Louisiana, because of access to critical local witnesses and evidence for bond proceedings and because of opportunities for legal arguments in the Second Circuit, as opposed to the Fifth Circuit, that an individual is not subject to mandatory detention. The data in Table 2 supports this conclusion. It demonstrates that 1038 out of 1161 individuals (89%) who won change of venue motions back to New York were able to win release on bond. While some of these individuals may have been released before winning their change of venue motions, the huge disparity between these numbers and the 420 of 7937 individuals (5%) released on bond whose case remained out of state, is telling. Of course, once released, the likelihood of obtaining representation before a New York Immigration Court then increases dramatically. See infra Table 2. Moreover, there are significant impediments to respondents’ and their families’ access to the relatively limited private legal resources in the remote areas where many out-of-state ICE detention centers are located. See HUMAN RIGHTS WATCH, supra note 5, at 53–56. The prevalent role of the private bar in providing removal defense service in New York suggests that the same respondents and their families are more likely to be able to locate and afford counsel in New York City. See discussion infra Part III.D.
Table 2
Rates of Unrepresented Cases Where ICE Apprehended Person in the New York ICE Area of Responsibility
(For cases, starting between 10/1/2005 and 7/13/2010: N=12,758)

<table>
<thead>
<tr>
<th>Hearing Location</th>
<th>Custody Status at the Most Recent Hearing</th>
<th>Number of Unrepresented Cases</th>
<th>Total Number of Cases</th>
<th>Percentage of Unrepresented Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initially not in N.Y. Immigration Courts</td>
<td></td>
<td></td>
<td>9098</td>
<td>100%</td>
</tr>
<tr>
<td>Change of Venue to N.Y. Courts</td>
<td>Detained</td>
<td>16</td>
<td>123</td>
<td>1.3%</td>
</tr>
<tr>
<td></td>
<td>Released</td>
<td>164</td>
<td>1038</td>
<td>11.4%</td>
</tr>
<tr>
<td>Never in N.Y. Courts</td>
<td>Detained</td>
<td>5924</td>
<td>7517</td>
<td>83%</td>
</tr>
<tr>
<td></td>
<td>Released</td>
<td>157</td>
<td>420</td>
<td>5%</td>
</tr>
</tbody>
</table>

Varick Street Immigration Court

Detained

<table>
<thead>
<tr>
<th>Custody Status at the Most Recent Hearing</th>
<th>Number of Unrepresented Cases</th>
<th>Total Number of Cases</th>
<th>Percentage of Unrepresented Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detained</td>
<td>2078</td>
<td>3660</td>
<td>57%</td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE

Given that ICE has stated plans to increase its detention capacity, combined with the expected increase in the number of New Yorkers detained out of state28 and the low representation rates in such detention...

---

28 In various contexts, ICE has indicated that it is actively expanding its detention capacity; this projected increase will accommodate those apprehended through Secure Communities and other enforcement programs connected with state criminal justice systems. See, e.g., U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, U.S. DEP’T OF HOMELAND SEC., SECURE COMMUNITIES: QUARTERLY REPORT, FISCAL YEAR 2010 REPORT TO CONGRESS, FIRST QUARTER 17 (2010), available at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportf101stquarter.pdf (reporting expected increase in detention space based on experience, to date, with Secure Communities); U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, U.S. DEP’T OF HOMELAND SEC., SECURE COMMUNITIES: QUARTERLY REPORT, FISCAL YEAR 2009 REPORT TO CONGRESS, FOURTH QUARTER (2009), available at http://www.ice.gov/doclib/foia/secure_communities/congressionalstatusreportf94thquarter.pdf (requesting additional resources to accommodate expected increase in detained population); U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, SECURE COMMUNITIES FACT SHEET 2 (2009), available at http://www.scribd.com/doc/24689591/ICE-Fact-Sheet-Secure-Communities-9-1-09. At present, ICE is increasing detention space in New Jersey. See Kirk Semple, A Plan to Upgrade New Jersey Jail into a Model for Immigration Detention Centers, N.Y. TIMES, Jan. 28, 2011, at A26 (describing DHS’s plan to increase detention capacity by almost 60%, including the addition of almost two thousand beds in Essex County, New Jersey). Several hundred beds will also be added in other facilities run by Community Education Centers, Inc. (CEC), a private prison corporation. Id. The plan to expand detention capacity at Essex has been particularly concerning because of its long...
situations, it appears that obstacles to representation will increase for New Yorkers in removal proceedings. Rather than mitigating this phenomenon, ICE is expanding its use of detention, notwithstanding that detention inhibits the attainment of legal representation more than any other factor. Indeed, ICE acknowledges that its new “Secure Communities” initiative—which potentially involves immigration screening of all individuals arrested by local and state police—will significantly increase the number of individuals it detains each year. In part to accommodate this anticipated increase in the number of detained individuals, ICE plans to greatly expand its detention capacity at the Essex County Jail in Newark, New Jersey by adding 1750 beds. Whereas individuals at Varick Street are unrepresented 60% of the time, detained individuals facing removal at the immigration court in Newark—a mere fifteen miles away—were unrepresented 78% of the time, a rate comparable to the 81% rate for individuals transferred far away from New York. It is unclear whether New Yorkers at the new Essex facility will have their removal proceedings venued at the Newark Immigration Court or at some new court in the facility. In either case, we can predict with some certainty that ICE’s anticipated increase in detention will negatively affect representation rates. More specifically, regardless of which non–New York court has jurisdiction over these cases, we anticipate that the new facility will significantly diminish individuals’ likelihood of obtaining counsel. By contrast, ICE and EOIR could significantly increase representation rates by calendaring at the Varick Street Immigration Court the cases for New York residents detained at the new Essex facility.


29 See infra Figure 2 (comparing rates of representation before immigration courts located in New York City; Newark, New Jersey; and other non–New York venues).


31 See supra note 28.

32 Semple, supra note 28; see also AM. CIVIL LIBERTIES UNION ET AL., STATEMENT TO THE U.S. DEPARTMENT OF HOMELAND SECURITY ONE YEAR AFTER THE TRANSFER OF VARICK DETAINERS n.7 (2011), available at http://www.aclu.org/files/assets/Statement_on_releasing_detrainees_Feb_28_2011_FINAL.pdf (reporting that during a December 2010 meeting, DHS explained that the expansion of detention space in the Northeast was motivated in part by the implementation of the Secure Communities program).

33 The rates at which respondents were not represented are based on cases that were completed while the respondent was detained.
3. Impact of ICE Bond Policies on Access to Counsel

An analysis of the basis for detaining the individuals in this Study makes clear that minor shifts in ICE’s detention policy would greatly expand New Yorkers’ access to counsel. As a preliminary matter, it is crucial to understand the concept of “mandatory detention,” which is significant to the bond process because it refers to ICE’s authority to detain people without providing a bond hearing under section 236(c) of the Immigration and Nationality Act (INA).\(^\text{34}\) This provision commands the government to take into custody and hold, without bond, many individuals facing criminal-related removal charges. This is customarily referred to as “mandatory detention,” and, for obvious reasons, the scope of this statutory mandate is the subject of much dispute.\(^\text{35}\) People

\(^{34}\) 8 U.S.C. § 1226(c) (2006).

\(^{35}\) There has been a great deal of litigation regarding the breadth of section 236(c). DHS has consistently taken an expansive view of its breadth and the BIA has accepted DHS’s arguments in several circumstances that have precluded large numbers of individuals facing deportation from even applying for bond or other release from custody. See, e.g., In re Saysana, 24 I. & N. Dec. 602 (B.I.A. 2008). After “virtually every district court that has considered this question” rejected the BIA interpretation in In re Saysana, Park v. Hendricks, No. 09-4909, 2009 U.S. Dist. LEXIS 106153, at *7 (D.N.J. Nov. 12, 2009), DHS eventually asked the BIA to reconsider In re Saysana.
who are not subject to mandatory detention may be released on their own recognizance or released after paying bond.

Contrary to some popular claims, however, the mandatory detention provision is not responsible for the majority of those who are held in detention during their removal proceedings. Our data shows that at least three out of every five individuals detained by ICE who are put into removal proceedings could have been released. In fact, at least 63% of those detained and transferred outside of New York could have been released on bond or on their own recognizance to proceed with their removal cases; because these individuals faced only noncriminal charges, none were subject to mandatory detention. Similarly, at least 60% of people in proceedings at Varick Street faced only noncriminal charges and therefore could have been released. This makes clear that it is ICE’s detention practices (and in some cases EOIR bond determination)—and not the mandatory detention law—that subjects this 60% (or more) of cases to conditions that make it extremely unlikely that respondents will obtain legal representation. It further shows that ICE has

and it was reversed in _In re Garcia Arreola_, 25 I. & N. Dec. 267 (B.I.A. 2010). During the intervening years, however, many individuals, who under current law could have been released, were detained due to DHS’s broad interpretation of the mandatory detention rule. Similarly, DHS and the BIA currently hold another broad view of mandatory detention, maintaining that after someone is released from criminal custody, he or she is subject to mandatory detention at any time after release. See, e.g., _In re Rojas_, 23 I. & N. Dec. 117 (B.I.A. 2001). Many district courts have disagreed with DHS and the BIA. See, e.g., Louisaire v. Muller, 758 F. Supp. 2d 229, 236 (S.D.N.Y. 2010) (holding that the BIA’s interpretation “is wrong as a matter of law and contrary to the plain language of the statute”); Waffi v. Loiselle, 527 F. Supp. 2d 480, 488 (E.D. Va. 2007) (rejecting the BIA interpretation of when mandatory detention is triggered); Quezada-Bucio v. Ridge, 317 F. Supp. 2d 1221, 1224 (W.D. Wash. 2004) (holding that mandatory detention does not apply when an individual is detained for immigration proceedings years after release from criminal custody). _But see Gomez v. Napolitano_, No. 11-1350, 2011 U.S. Dist. LEXIS 58667, at *8–10 (S.D.N.Y. May 31, 2011) (concluding that section 236(c) is ambiguous, and thus deferring to agency interpretation). Moreover, the meaning of “custody” in section 236(c) has been narrowly construed by DHS and the BIA. In the criminal justice system, “custody” does not mandate physical incarceration in a brick-and-mortar facility. See, e.g., _U.S. SENTENCING GUIDELINES MANUAL_ §§ 5F1.1–.2 (2010) (authorizing home detention in lieu of imprisonment and community confinement as a form of supervised release). In the immigration context, however, DHS and the BIA have chosen to interpret “custody” as limited to physical incarceration or confinement. See, e.g., _In re Aguilar-Aquino_, 24 I. & N. Dec. 747 (B.I.A. 2009). In short, were DHS to adopt less expansive views of the breadth of mandatory detention, many individuals who are now detained during the pendency of their removal proceedings could be released—avoiding all the attendant detriments to access to counsel and successful outcomes that stem from being detained.

See _infra_ Figure 3.

The remaining 37% and 40%, respectively, of each group detained by ICE faced criminal-related charges, sometimes in conjunction with noncriminal-related charges. The data does not allow us to determine what portion of those 37% and 40% was subject to mandatory detention, but some substantial portion likely was not. Therefore, these figures underestimate the number of people subject to release from custody. For example: (1) not all people deportable for criminal convictions have convictions that fit within the grounds for mandatory detention, compare 8 U.S.C. § 1227(a)(2) (2006), with id. § 1226(c); and (2) the agency’s interpretation of the scope of mandatory detention for those with past convictions is subject to dispute, see _supra_ note 35.
the capacity to expand these individuals’ access to counsel through minor shifts in internal detention and bond-setting practices.38

Figure 3
Removal Charges in Cases of Persons Apprehended by ICE in the New York ICE Area of Responsibility
(For cases starting between 10/1/2005 and 7/13/2010: N=12,034)

Staying at Varick Street (N=4197*)

Criminal- & Noncriminal-Related 14%
Noncriminal-Related 60%
Criminal-Related 26%

38 See supra note 35 (describing ICE’s aggressive detention policies, as well as less aggressive interpretations of the mandatory detention statute).
Even people who are eligible for bond, however, are at a disadvantage in the New York Immigration Courts if they do not have an attorney. 39 Although most people in removal proceedings who are not subject to mandatory detention are eligible for release on bond, the high bond amounts in New York Immigration Courts—averaging nearly $10,000—often effectively nullify the potential for release. 40 Although ICE can set bond as low as $1 and immigration judges can set it as low as $1500 41—and can release respondents on their own recognizance 42—bond amounts in New York Immigration Courts are prohibitively high (almost twice the national average and the highest in the country). Furthermore, unlike other immigration courts, judges who sit on New York Immigration Courts do not exercise their authority to release people on their own recognizance. 43

39 See AMNESTY INT’L, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA 49 n.68 (2009) (reporting observations from one study indicating that individual detainees without representation were more likely to receive a bond of more than $5000 whereas detainees with legal representation were more likely to receive a bond of less than $5000).
40 See id. at 16–17.
41 Id. at 16.
42 Id. at 17 & 49 nn.71–73.
43 AM. CIVIL LIBERTIES UNION ET AL., supra note 32, at 3 n.9; AMNESTY INT’L, supra note 39, at 17–18.
High bond amounts also prevent the release of many immigrants because even those individuals with some funds may be facing a choice of paying either bond or an attorney. This creates a Hobbesian dilemma as the data demonstrates that only release and counsel—but neither one alone—can significantly increase success rates. This phenomenon is significant because in New York Immigration Courts, the private bar provides most of the representation, which comes at a considerable expense to clients. Those who have been granted bond, but are unable to pay, remain in detention, where it is difficult to obtain an attorney. In this way, lack of representation and high bond amounts create a vicious cycle, with access to counsel serving as an important factor in obtaining bond and detention creating a major obstacle to obtaining counsel.

4. Representation Rates on Appeal

Detained individuals likewise generally lack representation when appealing to the Board of Immigration Appeals (BIA). They appeal without the aid of representation significantly more often than nondetained individuals whose cases were adjudicated by New York Immigration Courts. Whereas nondetained individuals were generally unrepresented in their appeals only 6% of the time, detained individuals—whether in New York or out of state—were unrepresented in appeals more than 50% of the time.

<table>
<thead>
<tr>
<th>Hearing Location</th>
<th>Custody Status at the Most Recent Hearing</th>
<th>Number of Unrepresented Cases</th>
<th>Total Number of Cases</th>
<th>Percentage of Unrepresented Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Detained</td>
<td>405</td>
<td>778</td>
<td>52%</td>
</tr>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Nondetained</td>
<td>182</td>
<td>2879</td>
<td>6%</td>
</tr>
<tr>
<td>Outside of New York</td>
<td>Detained</td>
<td>243</td>
<td>477</td>
<td>51%</td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE

---

44 See discussion of success rates infra Part III.E.
This same phenomenon occurs for individuals appealing BIA decisions to federal courts. Individuals who seek judicial review of BIA decisions must file a petition for review in the U.S. Court of Appeals in the circuit where their initial immigration hearing took place. Consequently, New Yorkers who are transferred out of state must seek review from the Court of Appeals in the circuit to which they have been transferred. Because two-thirds of those transferred from New York are sent to Texas and Louisiana, which are in the Fifth Circuit, we focused on the petitions-for-review stage in that circuit and in the Second Circuit (which includes New York). Appellate review plays a significant role not only in assuring justice in individual cases, but also in the development and oversight of the immigration adjudication system. Recently, through this avenue of review, the courts invalidated several far-reaching and aggressive ICE interpretations, thereby protecting important due process rights for both the appellants and future petitioners. In several recent cases, the Fifth Circuit, unlike the Second Circuit, adhered to the subsequently overturned interpretation, meaning that some number of respondents detained in that circuit without counsel might have been saved from deportation if this interpretation had been appealed sooner. Thus, the same ill effects of transfer on rates of representation at the initial Immigration Court–stage inhere at the final stages of the case when judicial review is sought, and even affect whether it is sought, in the Courts of Appeals.

C. Assessing Representation Rates by Case Types

Respondents seeking certain types of relief were far less likely to obtain legal assistance. For every immigrant placed in removal proceedings before the immigration courts, DHS issues a notice to appear that sets forth the charges that the person faces. Like a criminal complaint, DHS must then prove these charges during the immigration proceeding. If the government proves the charges, the immigrant may be able to seek relief from removal by submitting a relief application. Counsel can play a crucial role at every stage: challenging the basis for the charges; identifying forms of relief for which the person is eligible; and develop-

45 See Carachuri-Rosendo v. Holder, 130 S. Ct. 2577 (2010) (rejecting the DHS’s interpretation and holding that two misdemeanor simple possession convictions do not render someone an aggravated felon); Lopez v. Gonzales, 549 U.S. 47 (2006) (rejecting the DHS’s interpretation and holding that felony simple possession of a controlled substance is not an aggravated felony); see also supra note 35 (discussing In re Garcia Arreola, 25 I. & N. Dec. 267 (B.I.A. 2010), a holding that was prompted when federal courts rejected the prior position).

46 See Carachuri-Rosendo, 130 S. Ct. at 2584 n.9 (discussing circuit split); Lopez, 549 U.S. at 52 n.3 (same).
ing and presenting evidence and testimony to support an application for relief.

The likelihood of filing an application for relief is highly correlated with having legal counsel and with custody status.\textsuperscript{47} As Table 4 shows, individuals who filed relief applications were generally represented at much higher rates than those who only filed a voluntary departure application or did not file any relief applications at all. Ninety-five percent to 98\% of nondetained individuals before New York Immigration Courts who filed applications for relief were represented. By contrast, only 48\% to 67\% percent of detained and represented individuals who were transferred outside of New York filed applications for relief.

Table 4
Percentage of Unrepresented Cases: By Hearing Location, Custody Status at the Most Recent Hearing, and Type of Relief Application

(For cases starting between 10/1/2005 and 7/13/2010: N=63,516)

<table>
<thead>
<tr>
<th>Hearing Location</th>
<th>Custody Status at the Most Recent Hearing</th>
<th>Percentage of Unrepresented Cases with Each Relief Application Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>LPR-Related NLPR-Related Persecution Only Other Types Voluntary Departure Only or No Applications</td>
</tr>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Detained*</td>
<td>15% 24% 35% 18% 75%</td>
</tr>
<tr>
<td>N.Y. Immigration Courts</td>
<td>Nondetained**</td>
<td>2% 2% 5% 4% 51%</td>
</tr>
<tr>
<td>Outside of New York</td>
<td>Detained***</td>
<td>33% 34% 52% 50% 84%</td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE

* There are 7198 cases in the detained–New York Immigration Courts group.
** There are 48,801 cases in the nondetained–New York Immigration Courts group.
*** There are 7517 in the detained–outside-of–New York group.

\textsuperscript{47} While some consider an application for voluntary departure to be an application for relief, we do not treat it as such in this Study. Since one case can have more than one relief application, we grouped the cases in Table 4 into several categories based on the combination of relief applications they have. The “LPR-related” category includes cases with an application for section 212(c) relief or LPR cancellation or both, plus any other applications. (Section 212(c) relief and LPR cancellation of removal are forms of discretionary relief from removal where an LPR is deportable because of criminal convictions.) The “NLPR-related” (Non-LPR-related) category includes cases with an application for non-LPR cancellation or adjustment of status or both, plus any other applications. (Non-LPR cancellation of removal is a form of discretionary relief from removal where the person is removable for lack of valid immigration status.) The “persecution-only” category includes cases with an I-589 application for asylum, withholding of removal, or protection under the Convention Against Torture (CAT). The “other types” category includes any application for relief not included in the three other relief-application categories.
Table 4 breaks down by case type the cases of unrepresented individuals who filed relief applications pro se. The data shows that the vast majority of cases in which the individual sought either no relief or only voluntary departure were cases in which the individual was not represented. This is true across the board—regardless of whether the individual was detained or nondetained—but the effect of not having representation emerges most sharply when looking at statistics for detained and transferred cases. Ultimately, Table 4 indicates that having counsel positively correlates with the filing of relief applications. By extension, the data suggests that being in detention and being transferred to remote detention facilities, which make it more difficult to access counsel, negatively impact an individual’s likelihood of applying for relief.48

D. Assessing the Providers

The preceding Parts looked in detail at which groups of New Yorkers facing deportation were unrepresented. This Part examines the representation currently being provided in New York Immigration Courts to better understand the nature of the people and entities providing that representation. Then we can begin to get a sense of how these existing representatives might fit into our long-term goal of universal competent representation for New Yorkers.49

Nondetained respondents whose cases started and remained at the same New York Immigration Courts are represented 79% of the time. Figure 5 breaks down that group, showing that 93% had retained a private attorney, 6% were represented by nonprofit organizations, 1% by pro bono attorneys,50 and 0.5% by law school clinics.51

48 See infra Part III.F for further discussion of relationship between obtaining legal representation and viable claims for relief.
49 Because of our lack of familiarity with the bar in the multiple locations to which ICE transfers people outside of New York, we were unable to determine who represented New Yorkers elsewhere in the country.
50 We quantified pro bono attorneys by identifying attorneys from firms that we know do not customarily handle immigration matters and by accounting for situations—such as Elihu Massel, the attorney who represents most otherwise–unrepresented female state prisoners at Bedford Hills—where we know that pro bono representation is provided. Except for Mr. Massel, we were unable to determine how many cases attorneys who regularly practice immigration law handled pro bono. From anecdotal knowledge, it is a small number. But to that extent, the above information understates pro bono representation and overstates private attorney representation.
51 The Touro Law School Clinic, which primarily or exclusively represented Tibetan asylum seekers, accounted for 151 (81%) of the 186 law school clinic cases. That clinic is no longer operating.
Figure 5
Rates and Distribution of Sources of Representation: Nondetained Individuals in the New York Immigration Courts
(For cases starting between 10/1/2005 and 7/13/2010: N=48,801)

Figure 6 shows that a relatively small number of organizations are providing a relatively large proportion of the representation for nondetained respondents. Sixteen law firms and two nonprofit organizations—Catholic Charities of the Archdiocese of New York and the Comite Nuestra Señora de Loreto Sobre Asuntos de Inmigración Hispaña—accounted for 32% of the representation provided for cases heard in New York Immigration Courts in which the respondent was not detained.52 Other firms or organizations represented less than 1% each of the nondetained cases. Four firms each handled almost 1000 nondetained cases during the almost-five-year period covered by our data. Six other firms handled between 650 and 750 nondetained cases. Six firms and the two nonprofit organizations handled between 400 and 650 nondetained cases. While eighteen firms or nonprofit organizations

---

52 As explained supra note 20, this representative lost his accreditation from the BIA in May 2011, which will likely drive up the rate of those who are unrepresented while detained dramatically.
represented 32% of the nondetained cases with counsel, 1633 firms or nonprofit organizations represented the other 68%.

By contrast, individuals detained in New York were represented only 33% of the time. Figure 6 breaks down that group, showing that 63% of represented, detained respondents in New York had private attorneys; a full 28% were represented by a single accredited representative affiliated with the nonprofit Comite Nuestra Señora de Loreto Sobre Asuntos de Inmigración Hispaña; 2% by other nonprofits; 6% by pro bono attorneys; and 0.3% by law school clinics.

**Figure 6**
Rates and Distribution of Sources of Representation for Cases in the New York Immigration Courts for Persons in Detention

(For cases starting between 10/1/2005 and 7/13/2010: N=7,198)

As with representation of nondetained respondents, a relatively small number of providers account for the vast majority of representation for detained respondents. Seven law firms and one nonprofit organization—the Comite Nuestra Señora de Loreto—accounted for 43% of the representation that was provided for detained cases in New York Immigration Courts. The remaining 57% of respondents in represented, detained cases were represented by 572 different firms or organizations. These 572 other firms or organizations represented fewer than 1% each of the detained individuals. By contrast, the Comite Nuestra Señora de Loreto,
with only one accredited representative and no lawyers, represented 664 detained individuals in the period covered by our Study (in addition to 560 nondetained individuals), accounting for 28% of the detained, represented cases. Elihu Massel, the lawyer who represented most of the female state prisoners at Bedford Hills, represented 126 (5%) of the represented, detained individuals. Mr. Massel was singlehandedly responsible for representing the large majority of the 143 detained individuals in New York who benefited from pro bono representation.

E. Assessing the Impact of Representation on Outcomes

Finally, and most importantly, we sought data measuring the impact of representation on the outcome of a removal case. To gauge the impact of counsel, we examined rates of representation and outcomes for completed cases and found a high correlation between representation and successful outcomes—i.e., obtaining either relief from removal or termination. The NYIRS analysis shows that representation is a highly significant factor determining the outcome of immigration cases. The success rate further improves when the respondent is not detained and has not been transferred.

As Figure 7 shows, 74% of those who were represented and not detained at the time their cases were completed before the immigration judge obtained successful outcomes. By contrast, nondetained individuals who were unrepresented succeeded only 13% of the time. The success rate dropped to 18% for those who were represented but detained at the time of case completion. The combination of not having representation and being detained at the time of case completion drove the success rate down to just 3%.

---

53 See supra note 20.
54 See supra note 13 for explanation of relief from removal and termination.
Figure 7
Cases with Successful Outcomes:
By Representation and Custody Status at Case Completion
(For completed cases, starting between 10/1/2005 and 7/13/2010, of persons who ever had a hearing in the New York Immigration Courts and those apprehended by ICE in New York who were transferred elsewhere and never had a hearing in the New York Immigration Courts: N=48,131.)

Data sources: EOIR, ICE

Thus, people who were represented and not detained at the time of case completion were:

- More than four times as likely to obtain a successful outcome as those who were represented but detained;
- Almost six times as likely to obtain a successful outcome as those who were not detained at the time of case completion but who were unrepresented;
- A full twenty-five times as likely to obtain a successful outcome as those who were unrepresented and detained at the time of case completion.

Representation has powerful effects across all the classifications of relief applications made by people in removal proceedings as well as for those who make no application at all.55 Table 5 shows that represented

---

55 Those who made no application, but who obtained a successful outcome, generally had their cases terminated either by showing that DHS could not prove that they were removable or by obtaining status by making some sort of benefit application to U.S. Citizenship and Immigration Services (USCIS). The EOIR database does not report on applications for benefits submitted to USCIS.
respondents filing persecution-related applications in New York Immigration Courts were four times as likely to be successful as those who were unrepresented (84% versus 21%, respectively). As detailed in Table 5, success rates from other types of applications for relief showed similar dramatic disparities between represented and unrepresented cases in New York.

Table 5
New York Cases with Successful Outcomes:
By Relief Application and Representation Status

(For completed cases, starting and ending in New York Immigration Courts, between 10/1/2005 and 7/13/2010: N=31,421)

<table>
<thead>
<tr>
<th>Relief Application</th>
<th>Unrepresented</th>
<th>Represented</th>
<th>Difference in Success Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Cases</td>
<td>Total Successful Outcomes</td>
<td>Number of Cases</td>
</tr>
<tr>
<td>LPR-related</td>
<td>64</td>
<td>43%</td>
<td>704</td>
</tr>
<tr>
<td>NLPR-related</td>
<td>88</td>
<td>49%</td>
<td>3232</td>
</tr>
<tr>
<td>Persecution only</td>
<td>1072</td>
<td>21%</td>
<td>11,611</td>
</tr>
<tr>
<td>Other</td>
<td>25</td>
<td>36%</td>
<td>399</td>
</tr>
<tr>
<td>No applications/voluntary departure only</td>
<td>11,294</td>
<td>8%</td>
<td>4209</td>
</tr>
</tbody>
</table>

Data source: EOIR

Even for those whom ICE detained and transferred out of New York and who never returned to New York, representation increased the likelihood of a positive outcome. As Table 6 illustrates, however, the disparity in success rates for represented versus unrepresented cases was considerably lower for those transferred than for those who stayed in New York.

56 See supra note 47 for explanation of relief application categories.
Table 6
Cases Resulting in Successful Outcomes for People Arrested in New York and Transferred Outside of New York for Their Hearing: By Relief Application and Representation Status
(For completed cases, starting between 10/1/2005 and 7/13/2010: N=6588)

<table>
<thead>
<tr>
<th>Relief Application</th>
<th>Unrepresented</th>
<th>Represented</th>
<th>Difference in Success Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Cases</td>
<td>Total Successful Outcomes</td>
<td>Number of Cases</td>
</tr>
<tr>
<td>LPR-related</td>
<td>143</td>
<td>43%</td>
<td>288</td>
</tr>
<tr>
<td>NLPR-related</td>
<td>41</td>
<td>10%</td>
<td>87</td>
</tr>
<tr>
<td>Persecution only</td>
<td>143</td>
<td>8%</td>
<td>151</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>0%</td>
<td>2</td>
</tr>
<tr>
<td>No applications/voluntary departure only</td>
<td>5555</td>
<td>1%</td>
<td>964</td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE

F. Scope of Analysis

This Report recognizes that the successful outcomes of represented respondents was not solely due to the fact that they were represented, but also the fact that the respondent had a strong claim for relief. Where attorney and respondent resources are limited, those with colorable claims for relief will tend to show higher rates of representation for two reasons. First, focusing on obviously viable claims for relief allows nonprofit organizations and pro bono attorneys to maximize their limited representational resources. This is true of many private attorneys as well. Second, respondents with obvious claims for relief will be more inclined to seek out and pay for private attorneys if they believe that they are likely to succeed. Those who are unaware of a viable path to relief will be reluctant to cobble together money from family or...

58 See MOTTINO, supra note 9, at 26.
friends to pay high legal costs. Detainees also might prefer to use limited financial resources to post bond, where one has been set, rather than pay for a lawyer.

A well-known study finding that “legal assistance plays an enormous role in determining whether an asylum seeker wins her case,” similarly considers the possibility of a selection effect “weeding out weak claims.”\textsuperscript{59} There, it was clear that “the power of the representation variable makes it unlikely that [the strength of the relief claim] is the only causal factor.”\textsuperscript{60} Indeed, the disparity in success rates for counseled versus uncounseled cases with applications for relief (illustrated in Tables 5 and 6) provide support for the finding that the impact of counsel on outcomes is not due solely to attorneys selecting cases with viable claims for relief. We would expect, for example, to see lower representation rates on cases without applications for relief since these are the cases least likely to have a clear path to victory. However, the large disparity in cases with presumably prima facie eligibility for relief is more suggestive of a causal effect.\textsuperscript{61} The impact of counsel on outcomes is, moreover, self-evident to those familiar with removal proceedings, as actions taken by legal representatives—like tracking down supporting evidence and expert witnesses—make a claim for relief more likely to succeed.\textsuperscript{62}

To the extent that some pro bono and private attorneys are drawn to representing respondents with more apparently worthwhile claims in order to conserve resources, this actually exacerbates one of the problems identified in this Study: respondents who were most in need of counsel to help them make their case may not have been selected by resource-limited providers. Many cases present circumstances where forms of potential relief are less obvious or might require complicated litigation; lawyers might be deterred from undertaking representation because they lack the expertise to analyze and take on these complex issues or because of some of the systemic difficulties inherent in representing detained individuals.

This phenomenon of triaging, which channels pro bono legal resources to the most obvious claims for relief, exacerbates the difficulty of getting representation for detained individuals who cannot afford counsel. For people who are detained and can afford counsel, triaging greatly increases the cost of private legal representation due to the additional time that an attorney must spend to meet and communicate with a

\textsuperscript{59} Ramji-Nogales et al., supra note 57, at 340.

\textsuperscript{60} Id. at 340.

\textsuperscript{61} At times, immigration judges play something of a gatekeeping function, particularly with pro se respondents, generally accepting applications only where there is at least a colorable claim to eligibility for relief.

\textsuperscript{62} Ramji-Nogales et al., supra note 57, at 376.
detained client and assess the possibility of any kind of relief, let alone to provide long-term representation. The fact is that for the respondents in this Study, as with those in similar studies, legal representatives may make a difference by first identifying possible eligibility for relief and, second, turning “good” claims into “successful” claims by securing corroborating evidence, expert testimony, and support from family and friends.63

IV. QUALITY OF REPRESENTATION IN NEW YORK IMMIGRATION COURTS

The data in Part III tells only part of the story of the legal representation of immigrants in New York Immigration Courts; absent from that data is any measure of the quality of representation, including whether this representation meets basic standards of adequacy. There has been much concern about basic adequacy in the quality of representation generally,64 which has been noted at all levels of the judicial system65 and cited as a major strain on the immigration adjudication system, exhausting immigration judges and exacerbating the backlog in courts.66 Reports focused on New York City immigration courts likewise suggest

---

63 See id.
64 Jill E. Family, A Broader View of the Immigration Adjudication Problem, 23 GEO. IMMIGR. L.J. 595, 604 (2009) (“For those who do receive representation, there is alarm about the quality of that representation in some instances. Concerns include unprofessional behavior on the part of some immigration attorneys and unscrupulous behavior of those engaged in the unauthorized practice of law.”); Andrew I. Schoenholtz & Hamutal Bernstein, Improving Immigration Adjudications Through Competent Counsel, 21 GEO. J. LEGAL ETHICS 55, 58–59 (2008) (“The problem is not only lack of representation but also poor quality of representation. Low-quality representation is too often the case at the Immigration Court level.”); Andrew I. Schoenholtz & Jonathan Jacobs, The State of Asylum Representation: Ideas for Change, 16 GEO. IMMIGR. L.J. 739, 747–48 (2002) (“Even when matched with an attorney, asylum seekers must worry about the quality of representation. It is generally recognized that the majority of legal representatives are not sufficiently proficient in this evolving area of law to represent individuals who may face serious threats to life or liberty if returned to their home country.”); Henri E. Cauvin, Lawyers for Immigrants See Rise in Complaints Complex Statutes, Criminal Schemes Heighten Concerns, WASH. POST, Jan. 7, 2007, at C01.
65 See, e.g., Brenman, supra note 9 (“I’ve grown concerned that many attorneys are just not very interested in their work and therefore bring little professional vigor or focus to it.”); Katzmann, supra note 9 (“Often times, the reviewing appellate judge, who is constrained at the time the case comes before her, is left with the feeling that only if the immigrant had secured adequate representation at the outset, the outcome might have been different.”); Richard A. Posner & Albert H. Yoon, What Judges Think of the Quality of Legal Representation, 63 STAN. L. REV. 317, 330 (2011) (“The judge groups . . . agreed that immigration was the area in which the quality of representation was lowest.”).
66 See Stuart L. Lustig et al., Inside the Judges’ Chambers: Narrative Responses from the National Association of Immigration Judges Stress and Burnout Survey, 23 GEO. IMMIGR. L.J. 57, 67 (2008); see also IMMIGRATION COURT OBSERVATION PROJECT, supra note 9 (observing that attorney failures to appear and failure to file documents necessitated multiple court dates, changes of representation, and judicial intervention).
that a major problem exists as to the quality of representation, even as to
the substantial numbers of nondetained cases in which relief is ob-
tained.67 However, the existing information on quality was anecdotal
and the NYIRS project sought more comprehensive information to de-
termine the extent of this problem. To that end, because adequacy is
essential if any proposed plan to expand legal representation is to serve
its purpose, the NYIRS conducted an anonymous survey of New York
immigration judges to determine the level of quality among existing
immigrant representatives in New York. Immigration judges are in a
unique position to assess the quality of representation since they witness
the performance of counsel on a daily basis.

Immigration judges presiding on New York courts offered a blister-
ing assessment of immigrant representation, reporting that almost
half of the time, it does not meet a basic level of adequacy. Nearly half
of all representatives are not prepared and lack even adequate know-
ledge of the law or facts of a respondent’s particular case. Immigration
judges indicated that representation by pro bono counsel and nonprofit
organizations was of significantly higher quality, but also noted that
representation from these categories was rare. Representation by the
private bar was rated significantly lower than any other category of pro-
viders. This raises a serious concern because private attorneys provide
91% of all immigrant representation. In addition to identifying problems
in current representation, however, this data aids in determining how to
best ameliorate this crisis. The reports of higher levels of quality among
pro bono attorneys and nonprofit providers indicate that adequate and
even excellent representation is achievable, thus providing some direc-
tion about models for future solutions.

A. Methodology

We obtained data on the quality of immigrant representation in
New York Immigration Courts by seeking anonymous responses from
immigration judges who hear detained and nondetained cases in the
New York Immigration Courts.68 Judges were asked to answer a series
of questions by rating the quality of the representatives who appear be-
fore them as “excellent,” “adequate,” “inadequate,” or “grossly inade-

67 IMMIGRATION COURT OBSERVATION PROJECT, supra note 9, at 14–17 (reporting attorneys
who failed to appear as well as observations of “dozens of cases where the respondent’s repre-
sentative was not prepared, had poor knowledge of the facts of the case, and was unaware of the
relevant legal issues of the case”); MOTTINO, supra note 9, at 23–25 (noting the poor quality of
private representation in contrast to representation by nonprofit agencies).
68 Participation in the survey was voluntary. The opinions expressed are those of the survey
respondents and do not represent the official position of EOIR or the U.S Department of Justice.
The survey sought information about the general quality of representation, as well as representatives’ preparation, knowledge of law, and familiarity with the facts of the case. This survey also sought information about the quality of representation in the context of various claims for relief and for cases involving particular legal issues. Finally, judges were asked to rate the quality of particular categories of representatives—pro bono counsel, nonprofit organizations, private attorneys, and law school clinics—on a scale of one (low) to ten (high). Thirty-one of the thirty-three sitting immigration judges responded to this survey and the numbers derived from their responses is, to our knowledge, the only data of this type that exists.

69 Judges rated quality by assigning numerical values to representation in various categories. In some cases, where judges were asked to provide a breakdown out of a total of 100%, the numbers assigned did not equal 100%. In those cases, we adjusted the responses to correspond to a total of 100%.

70 Representation at the high end of the quality spectrum was defined to include identification of appropriate defenses to removal and forms of relief, submission of timely and well-written legal papers, thoroughness when investigating and submitting probative evidence, demonstration of good trial skills in examination of witness, and development of a theory of the case. Representation at the low end of the spectrum was defined to include inability to identify apparent defenses to removal or forms of relief, failure to be familiar with the case or the client, untimely or inadequate submissions, failure to produce key witnesses or evidence, and inability to conduct basic witness examinations.

71 Representation at the high end of the spectrum was defined to include timely investigation, timely and well-written submissions, timely and thorough development of the factual record, and preparation of the respondent and witnesses. Representation at the low end of the spectrum was defined to include failure to appear, unfamiliarity with the case or client, failure to make timely submissions, failure to produce key witnesses or evidence, and incoherent oral and written presentations.

72 Representation at the high end of the spectrum was defined to include preparation of appropriate legal research, accurate application of the law to the facts of the case, and articulate citation of and writing about applicable legal provisions. Representation at the low end of the spectrum was defined to include unfamiliarity with relevant provisions of law, failure to research readily apparent legal issues, and an inability to apply the law to facts of the case.

73 Representation at the high end of the spectrum was defined to include excellent knowledge of the factual record, submissions that demonstrated thorough investigation, and the ability to respond to factual questions from the judge. Representation at the low end of the spectrum was defined to include failure to conduct basic investigation, little or no basic knowledge of the record of proceedings, and an inability to respond to basic factual questions from the judge.

74 Judges were asked to rate the quality of attorneys, based on overall performance, in each of the following categories: (1) cases involving adjustment of status, non-LPR cancellation of removal (INA § 240A(b), 8 U.S.C. § 1229b(b) (2006)), and voluntary departure; (2) cases involving criminal removal issues (charges under INA §§ 212(a)(2), 237(a)(2), 8 U.S.C. §§ 1182(a), 1227(a)(2) (2006), and relief under INA §§ 212(c), (h), 240A(a), 8 U.S.C. §§ 1182(c), (h), 1229b(a) (2006)); (3) cases involving persecution or torture claims (asylum, withholding, and CAT); (4) cases involving the Violence Against Women Act (VAWA), Special Immigration Juvenile Status (SIJS), and T or U visas; and (5) cases involving bond issues. Responses to the bond category were omitted from our data because so many immigration judges—the majority of whom hear only nondetained cases—had not had experience with bond hearings and so could not respond to that question.
B. Findings

Table 7
Assessments of Quality of Representation in New York Immigration Court in All Cases

<table>
<thead>
<tr>
<th>Category Evaluated</th>
<th>Excellent</th>
<th>Adequate</th>
<th>Inadequate</th>
<th>Grossly Inadequate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall performance</td>
<td>10%</td>
<td>43%</td>
<td>33%</td>
<td>14%</td>
</tr>
<tr>
<td>Preparation</td>
<td>10%</td>
<td>43%</td>
<td>32%</td>
<td>15%</td>
</tr>
<tr>
<td>Knowledge of law</td>
<td>13%</td>
<td>43%</td>
<td>30%</td>
<td>14%</td>
</tr>
<tr>
<td>Knowledge of facts</td>
<td>16%</td>
<td>44%</td>
<td>27%</td>
<td>13%</td>
</tr>
</tbody>
</table>

Source: Anonymous Survey of New York Immigration Judges (conducted July 2011)

Close to half of the representation in immigration courts was judged to fall below basic standards of adequacy in terms of overall performance (47%), preparation of cases (47%), knowledge of the law (44%), and knowledge of the facts (40%); between 13% and 15% of representation, in all of these categories, was characterized as “grossly inadequate.” This means that immigration judges rated nearly half of the representation before them as marked by various degrees of, inter alia, failure to investigate the case, inability to identify defenses or forms of relief, lack of familiarity with the applicable law or the factual record, inability to respond to questions about facts or legal arguments, failure to meet submission deadlines, or failure to appear in court.75

In terms of overall performance, preparation, and knowledge of the law, “grossly inadequate” performances occurred more often than “excellent” performances.

---

75 See supra notes 70–73 (containing descriptions, from the survey form, of indicia of “inadequacy” and “gross inadequacy”).
Table 8
Assessments of Quality of Representation in New York Immigration Courts: By Specific Types of Cases

<table>
<thead>
<tr>
<th>Category Evaluated</th>
<th>Excellent</th>
<th>Adequate</th>
<th>Inadequate</th>
<th>Grossly Inadequate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases involving adjustment of status, NLPR cancellation of removal, and voluntary departure&lt;sup&gt;76&lt;/sup&gt;</td>
<td>15%</td>
<td>44%</td>
<td>26%</td>
<td>15%</td>
</tr>
<tr>
<td>Cases involving criminal removal procedures</td>
<td>18%</td>
<td>45%</td>
<td>24%</td>
<td>13%</td>
</tr>
<tr>
<td>Cases involving persecution/torture claims (asylum, withholding, or CAT)</td>
<td>13%</td>
<td>43%</td>
<td>30%</td>
<td>14%</td>
</tr>
<tr>
<td>Cases involving VAWA, SIJS, and T or U visas&lt;sup&gt;77&lt;/sup&gt;</td>
<td>23%</td>
<td>52%</td>
<td>19%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Source: Anonymous Survey of New York Immigration Judges (conducted July 2011)

Slight upward deviations in the assessment of representational quality were found among representation related to relief for victims of certain conduct (through Special Immigrant Juvenile Status (SIJS) and Violence Against Women Act (VAWA) petitions, and T or U visas). In that category, sub-adequate representation was found in only 25% of cases as opposed to an average of approximately 40% in all other categories, and “excellent” representation was more prevalent. Though our data does not indicate why representational quality was higher in this particular category, there are two factors that may impact these numbers: first, some providers are highly specialized in these areas; and second, we believe that a high percentage of these cases are handled by pro bono counsel and nonprofit organizations. Assuming that either or both of these factors accounts for this finding, the resultant higher quality of representation makes the relationship between specialization and the way in which pro bono lawyers and nonprofits handle these types of cases relevant to the model for citywide removal defense, which will be designed in Year Two of the NYIRS.

---

<sup>76</sup> One of the judges who completed a survey provided separate numerical values for representation on adjustment and representation on NLPR cancellation. We used the average of these numbers to calculate our results.

<sup>77</sup> Relief from removal through SIJS petitions is available for abused, abandoned, or neglected children. Relief through T visa petitions is available to victims of human trafficking. Relief through U visa petitions is available to victims of serious crime who have cooperated with law enforcement. Relief through VAWA petitions is available for certain victims of domestic violence.
Table 9
Assessments of Quality of Representation, by Provider Category, in New York Immigration Courts on a Scale of 1 to 10

<table>
<thead>
<tr>
<th>Provider Category</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro bono counsel</td>
<td>8.41</td>
</tr>
<tr>
<td>Law school clinics</td>
<td>8.40</td>
</tr>
<tr>
<td>Nonprofit removal-defense organizations</td>
<td>8.10</td>
</tr>
<tr>
<td>Private attorneys and firms</td>
<td>5.22</td>
</tr>
</tbody>
</table>

*Source: Anonymous Survey of New York Immigration Judges (conducted July 2011)*

When assessing the general quality of representation among the different types of counsel on a scale of one to ten, immigration judges rated private counsel significantly lower than pro bono counsel, nonprofits, and law school clinics. Given that private counsel provides the vast majority of representation in removal-defense proceedings in New York Immigration Courts, this significantly lower rating is consistent with the responses indicating that nearly half of all representation falls below basic standards of adequacy. While there is no doubt that there are a number of private attorneys providing high-quality legal services in New York Immigration Courts, this disparity in ratings brings a significant problem into focus. Reflecting the findings of the NYIRS that few removal-case individuals are represented by pro bono counsel, nonprofit organizations, and law school clinics, when several immigration judges commented how few pro bono, nonprofit organization, and law school clinic cases they see.

C. Impact of Quality Findings

These findings—most critically, that nearly half of removal-case representation is inadequate—are of serious concern. Not only does the data suggest that individuals’ cases are undermined even where they are represented, but also that if existing resources for immigrant representation are to be part of the solution to the crisis in immigration courts, the quality of representation must be significantly improved. These findings are particularly alarming because minimally adequate representation is

---

78 See supra Part III.D.
essential to the fundamental fairness of removal proceedings, particularly since it affects a class of people that is likely to be unfamiliar with the law, the procedures, and the evidentiary rules.

When representatives fall short of basic standards of representational adequacy, as the survey findings indicate too often the case, the consequences to a person’s case can be devastating and, as a practical matter, often irreversible.79 Failure to adequately represent an individual in removal proceedings not only results in unsuccessful outcomes, but may also make it difficult or impossible for respondents or competent counsel to subsequently correct errors. Inadequate representation in the first stages of a removal case may, for instance, mean defaulting possible future claims, losing the right to appeal, triggering time or procedural bars, allowing for adverse credibility determinations or erroneous factual findings, creating incomplete records for appeal, or permanently foreclosing options for relief.80 Moreover, poor-quality representation at the immigration court impacts the judicial system broadly, clogging immigration court dockets, increasing the workload of immigration judges, and necessitating consideration and correction by reviewing courts.81

Improving the quality of legal representation must be a theme in any proposal for reform. Ensuring that immigrants in removal proceedings have legal representation is not enough. The goals identified in this Study can only be met if that representation meets basic standards of adequacy. Given the harsh consequences of inadequate counsel, this Study’s proposal to increase the quantity of representation must also incorporate qualitative standards and a plan to ensure that those standards are reached.

V. DATA ON SURVEY OF NONPROFIT REMOVAL-DEFENSE PROVIDERS

In furtherance of our effort to create an integrated citywide system of competent removal-defense representatives, we need to learn more

79 Roberto Gonzalez, Understanding Immigrant Pro Bono Clients, R.I. B.J., July-Aug. 2007, at 13, 13 (“[Inadequate representation] results in grave and devastating consequences, including detention and deportation. Unlike a U.S. citizen who can sue a lawyer for malpractice, or file a complaint with disciplinary counsel, a deported immigrant, due to financial, geographic and other reasons, is unlikely to pursue such recourse.”).
80 IMMIGRATION COURT OBSERVATION PROJECT, supra note 9, at 17 (providing anecdotes about how poor-quality representation by prior attorneys tended to foreclose avenues for relief afterward, even with subsequent competent counsel); Schoenholtz & Bernstein, supra note 64 (explaining various reasons why counsel may be inadequate, including lack of legal expertise, too many cases, failure to give due attention and care to individuals, or even fraudulence).
81 See Brennan, supra note 9; Katzmann, supra note 9.
about existing removal-defense\textsuperscript{82} resources. Accordingly, we conducted a survey of major nonprofit removal-defense providers\textsuperscript{83} in New York to better understand how these organizations function, how case selection criteria and organizational structures impact who ultimately gets legal representation, and what could be done to increase their capacity to take on additional cases. We focused on nonprofit removal-defense providers (RDPs)\textsuperscript{84} because, though they handle a relatively small number of removal cases compared to the private bar,\textsuperscript{85} they are the source of representation for indigent respondents and, according to the immigration judges surveyed for this Report, provide high-quality representation.\textsuperscript{86} Therefore, focusing on RDPs is logical when considering how to expand the availability of competent immigrant representation for those who most lack access to counsel. With that in mind, we surveyed the majority of RDPs in the New York area. This written survey contained detailed questions about the number and types of cases they handled, intake methods and criteria, case management and staffing, and factors that bear on their capacity to take cases. The following Part explains the survey methodology, presents survey data, and analyzes our findings.\textsuperscript{87}

Ultimately, we found that RDPs provided much-needed representation for underserved categories of respondents but operated under constraints that limited the number and types of cases they could take on. The biggest barrier to expanding this type of legal representation is funding: financial constraints prevent RDPs from hiring support staff, staff attorneys, and, most problematically, attorneys with substantial experience who could supervise and mentor less experienced legal and nonlegal staff and volunteers. Lack of funds and personnel, in turn, limits the type of cases that RDPs can accept. Because representing detained clients requires greater expenditure of time and financial resources, RDPs focus nearly exclusively on nondetained individuals. With additional funding, RDPs could make better use of staff, which would include expanding the internal apparatus necessary to partner

\textsuperscript{82} For the purpose of this Study, the term “removal” includes deportation and exclusion cases as well.

\textsuperscript{83} Here, the term “nonprofit organizations” refers to those that provide no cost or, in some cases, extremely low-cost representation to individuals that are generally indigent. For the purposes of this Report, this term also includes law school clinics.

\textsuperscript{84} As used in the remainder of this Report, “RDP” will refer to the RDPs who answered the survey.

\textsuperscript{85} As noted supra Part III.D and Figures 5 & 6, the nonprofit sector represented approximately 6% of nondetained removal cases and approximately 2% of detained removal cases, whereas the private bar represented approximately 93% of nondetained removal cases and approximately 63% of detained removal cases. The RDPs that answered the survey represented a total of 523 individuals in removal proceedings in 2008 and 639 in 2009.

\textsuperscript{86} See discussion infra Part V.B.

\textsuperscript{87} This Report also includes a brief description of the practice and capacity of the core group of agencies that provide a substantial majority of the removal defense services for free or for a nominal fee in the New York City area.
with pro bono volunteers, which would enable them take on more removal-defense cases generally and expand both screening and representation of individuals who are detained.

A. Methodology

We obtained data on RDPs through a detailed written survey requesting data from nonprofit legal service providers in New York. The survey sought information from calendar years 2008 and 2009\(^8\) on staffing, translation and interpretation, intake (including access points and means testing), funding (including fees), quantity and types of cases accepted and declined for representation, and the time and effort spent on representation cases. Of the fifty-six nonprofit organizations that received this survey, twenty-five responded (although only seventeen answered all of the questions).\(^9\) We believe that most of the major removal-defense providers in New York responded to the survey and their answers are included in the results. Many organizations that did not respond provide critical immigration legal services, but do not provide removal-defense services.

B. Removal-Defense Providers: Structure, Practice, and Capacity

This Part provides data on the structure and practices of RDPs in the New York area, which reveals that although they operate through a variety of structures, they rely primarily on their employed staff to provide legal representation and related services. These organizations universally operate with severely limited resources and the capacity of existing RDPs to offer removal-defense services does not meet the tremendous demand for representation. As a result, the surveyed RDPs were forced to decline representation to more than 3000 relief-eligible individuals and a majority was prevented from even preliminarily screening detained individuals to determine if they might be relief-eligible.

\(^8\) Although the survey requested data from calendar year 2008 and 2009, some RDPs did not have up-to-date data for 2009 and, therefore, the 2009 data may be less complete in some cases.

\(^9\) It appears that, in most cases, those who did not answer all of the survey questions either did not think the omitted questions were relevant to their organization or did not have the records available to provide the answers. In the case of questions about sources of funding, there appeared to be reluctance to share this type of information.
1. Structure

RDPs rely on work done by staff attorneys, volunteers, interns, law students, deferred associates, and accredited representatives, and they use a wide variety of models to incorporate these resources into their organizational structure. While a majority of providers used only staff attorneys, others augmented staff attorney work by using pro bono or volunteer attorneys, deferred associates, or law student interns. One provider used staff attorneys to train and mentor pro bono counsel. In 2008 a total of eighty-five RDP-related representatives working as part of RDPs—including staff attorneys, pro bono counsel, law student interns, and accredited representatives—handled removal cases at the reporting organizations; in 2009 the total was 105. These RDP-related attorneys handled approximately 523 removal cases in 2008 and 639 cases in 2009. The majority of these cases were handled by full-time staff attorneys. In 2008, full-time staff attorneys for the RDPs represented approximately 370 removal-defense clients; in 2009, that number increased to 464. Pro bono or volunteer attorneys, law student interns, deferred associates, and accredited representatives handled the remaining removal-defense cases (30% in 2008 and 27% in 2009).

2. Intake Methods and Types of Cases Accepted for Representation

Intake at RDPs occurs in a variety of ways and has relatively few formal constraints. In terms of intake methods, the most common form was through referral from other legal services providers and community-based organizations, followed by intake sites and telephone hotlines. Only two organizations (of which we are aware) travel to detention centers to interview prospective clients. As for strict case acceptance requirements, the majority of the providers used the 125% federal poverty

---

90 Here, “pro bono counsel” refers to attorneys in private practice, virtually always law firm associates, who take on removal defense work. Frequently, pro bono counsel taking on such cases will co-counsel with experienced RDP attorneys or work under the supervision of RDP attorneys. “Deferred associates” refers to recent law school graduates whose start date as associates at New York area law firms was deferred beginning in the fall of 2009 and opted to work for six to twelve months with legal services providers. “Law student interns” refers to law students who volunteer during the school year or summer and those who fulfill their clinical or externship fieldwork requirement at legal services provider offices.

91 Although most RDPs reported an increase in the number of staff handling removal cases from 2008 to 2009, this was widely attributed to the institution of deferred associates programs by New York City law firms in 2009 due to the economic downturn, rather than an increase in funding or permanent staff positions. In fact, only three of the RDPs surveyed cited the addition of new full-time staff as the reason for an increase in its RDP capacity.
guideline mark in 2008 and the 150% poverty guideline mark in 2009 to
determine clients’ eligibility for services. A few also had specific re-
quirements, including medical disability.

To understand the types of cases that ultimately received repre-
sentation, we asked surveyed organizations about the substantive types of
removal-defense cases that were accepted for representation in 2008 and
2009, which refers to the type of claim for relief that individuals raised.
From the RDPs’ responses, we learned that resources at RDPs were
mainly devoted to asylum; cancellation of removal for non–lawful per-
manent residents, and VAWA, U visa, and SIJS petitioners. According
to the data, asylum cases were the most widely accepted for representa-
tion,92 and that criminal immigration and adjustment cases93 were the
least accepted for representation.94 In 2008 and 2009, RDPs accepted
357 asylum cases; 309 cancellation of removal cases for non–lawful
permanent residents, and VAWA, U visa, and SIJS petitioners; 190
criminal immigration cases; and 142 adjustment- or removal-of-
conditions cases. Of course, not all cases raise only one type of claim,
but even where RDPs represented individuals with multiple types of
claims, the claims were generally not in the criminal immigration area.95

3. Geographic Service Area

RDPs focused heavily—almost exclusively—on the New York
City boroughs, despite the fact that the majority of detention centers
(and thus the majority of detained noncitizens facing removal) are in
upstate New York, Elizabeth, New Jersey, and various county jails
throughout New Jersey. The most served areas were New York City’s
five boroughs (twelve to fifteen RDPs), followed by the ICE detention
center in New Jersey (six RDPs), and finally, Nassau, Suffolk, and
Westchester Counties (five RDPs). The upstate correctional institutions
were least served. In 2008 only one RDP took on an individual case
from Ulster Correctional Facility. Two RDPs took on individual cases
from that facility in 2009. The local jails in New Jersey and the Orange
County Jail in New York were comparatively slightly better-served. In

92 Twelve of fourteen RDPs who answered the question stated that they accepted asylum
cases.
93 “Adjustment cases” include both cases of immigrants here in the United States seeking to
become permanent residents (adjustment of status) and immigrants who were previously granted
“conditional residence,” because for example they had only recently married a United States
citizen, and are now seeking to have those conditions removed.
94 Eight RDPs accepted criminal immigration cases, but for a majority of those, such cases
constituted only a small percentage of their cases (less than 10%).
95 Eleven of the surveyed RDPs indicated that they represented individuals in assorted types
of removal defense cases in 2008, including VAWA, U visa, and non-LPR cancellation; in 2009,
that increased to twelve RDPs.
2008 and 2009, six of the RDPs responded that they provided representation to immigrants detained at the detention facility in Elizabeth, New Jersey. Four of the RDPs reported taking on individual cases for representation from Orange County in 2008 and the number increased to five RDPs in 2009. Only two RDPs reported providing representation to clients in county jails in New Jersey and Orange County, New York. The limited geographic catchment area is thus consistent with our data showing that a majority of the RDPs did not represent individuals in detention at all in 2008 or 2009.

4. Accounting for Language Needs

Representing noncitizens is complicated when an individual speaks little or no English because it necessitates interpreters for oral communication and translators for written materials and documentary evidence. The majority of RDP clients were limited English proficient. Spanish was the most common language spoken by removal-defense clients, followed by English, French, and Chinese–Mandarin. Since this is an essential component of any plan for expanded removal representation, we sought detailed information about how RDPs accommodate this demand.

RDPs that offer multilingual services do so primarily through multilingual staff members at the organization. Except for a few outliers, most RDPs had little to no cost for interpreting and translation services, which suggests that their translation and interpretation needs are performed by staff internal to the RDP. Multilingual staff members employed by the RDPs increased from 133 in 2008 to 169 in 2009. For RDPs that must pay for languages services that are not performed by their staff, interpretation and translation services are costly. Two of the major RDPs reported language-related costs of $12,000 to $24,736 in 2008 and $12,000 to $33,830 in 2009. Although we do not have data on how this compares to the RDPs’ overall budgets, these figures suggest that, where an RDP cannot provide for translation and interpretation in-house, the cost of language services can be significant.

5. Financial Resources: Fees, Funding, and Costs

Despite the significant costs involved in removal-defense work, a majority of providers do not charge their clients and those who do charge fees charge rates far lower than even the low-cost private pro-
A majority of the RDPs did not charge any fee for the legal representation provided. Some RDPs charged fees, but those are significantly reduced from normal legal fees and these RDPs universally indicated that this fee could be waived. In terms of cost structure, a majority of the RDPs who charged for their services used a sliding scale to determine their fees (based on income) and one RDP charged a flat fee for representation. Representation costs in 2008 and 2009, from the start to the finish of a case, ranged from $200 to $1250. RDPs charged a minimum of $200 and a maximum of $1250 for asylum cases, $200 to $1000 for cancellation cases, and $300 to $1,000 for removal of conditions and adjustment cases. Charging these fees enabled the providers to recoup some of their operating costs.

In contrast to the private bar, most RDP funding does not come from the clients, but instead from municipal and foundation grants. Obtaining funds this way imposes additional time demands on their staff, who must apply for the funds, prepare reports for the funder, and comply with grant requirements. Of the twenty-five RDPs, ten said that the most common source of funding came from city grants. The second most common source of funding came from foundation grants. Even when RDPs obtain grants for immigration work, often only a portion of this can be used for removal defense. RDPs reported allocating only 11% to 25% of their immigration budget to removal-defense cases.

RDPs indicated that they could not provide accurate information on the total financial expenditures per individual case, but could provide estimates of the total hours invested per case. A majority of RDPs indicated they averaged less than 100 hours on a nondetained case, and between 100 to 200 hours on more complex cases involving filing for multiple forms of relief, habeas petitions, and raising collateral challenges to convictions in criminal court (which may arise where convictions have adverse immigration consequences). Additionally, RDP staff spent upwards of fifty hours managing and supervising volunteer attorneys working on removal cases.

96 While the survey did not include data on private attorney fees, anecdotal evidence indicates that private attorneys who handle removal cases (detained and nondetained) on a flat-fee basis generally charge in the range of $5000 to $8000 for cancellation of removal cases and waivers of inadmissibility, $6000 for adjustment of status cases, and $5000 to $7500 for asylum cases. For those who charge on an hourly basis, or indeed in a detained or a flat-fee case involving multiple forms of relief where various proceedings are required, a complex case may easily rise into the tens of thousands of dollars. The low New York market hourly rate for removal cases is about $200 per hour.

97 The average hours spent is from 2008 only, as there is no data on this for 2009. The average is based on time spent with pro bono attorneys, including meetings to discuss the case, accompanying attorneys to master calendar hearings, reviewing affidavits and document packets submitted to immigration court, strategizing on how to present the case and deal with thorny and ethical issues, and assisting in preparing clients and witnesses to testify at merits hearings.
6. Constraints on Current Providers

As noted above, RDPs declined more than 3000 relief-eligible cases—many more cases than the 1162 cases they accepted for representation—meaning that RDP capacity is far below demand. In total, RDPs declined approximately 1521 removal-defense cases in 2008 and 1821 cases in 2009—nearly 75% of all cases reviewed for representation. According to RDPs, the main reason for declining representation was lack of funding. Other reasons for declining cases included lack of staff, lack of expertise in a particular area of removal defense, lack of relief or waiver options, or that the prospective client did not meet income or geographic requirements.

Aside from financial constraints, the second most common reason that relief-eligible removal-defense clients were declined was lack of staff expertise. RDPs reported needing staff with removal-defense experience to both represent clients and supervise volunteer attorneys and interns working on cases. The RDPs who responded to the survey employed a combined total of only twenty-seven staff attorneys and four accredited representatives with more than five years of removal-defense work experience.

The majority of the organizations concluded that they would need to expand their staff in order to represent more removal-defense clients. RDPs reported needing additional staff members to perform a variety of functions: sixteen organizations reported needing more full-time staff attorneys, fourteen indicated more support staff was needed, and ten reported needing more experienced staff attorneys. Only six of the RDPs stated that more pro bono counsel would help their capacity to represent more removal-defense clients. Some RDPs noted that although pro bono counsel was helpful, full-time staff attorneys were needed to closely supervise the pro bono counsel. When asked what they would do with additional funding, sixteen of the RDPs said that they would hire more full-time staff attorneys, fourteen reported that they would hire more support staff, and five reported they would enhance their pro bono or volunteer attorney programs.

---

98 It should be noted, however, that this number is skewed by the result of one provider in the Buffalo area that reported having to decline over 900 cases in 2008 and 2009.
C. Focus: Removal-Defense Providers in New York City

Among the RDPs surveyed, a small number (approximately eight) provide the bulk of free or nominal fee representation in removal-defense cases in the New York City area. These RDPs include Central American Legal Assistance, Catholic Charities of the Archdiocese of New York, Human Rights First, The Legal Aid Society, New York Legal Assistance Group, Hebrew Immigrant Aid Society, City Bar Justice Center, and Safe Horizon. Given these particular RDPs’ experience with the provision of removal defense on a large scale, Table 10 focuses on these organizations to inform the next stage of the NYIRS project—designing a citywide system of competent removal-defense representatives.

Table 10
Removal-Defense Providers with the Highest Caseloads in New York City

<table>
<thead>
<tr>
<th>Removal-Defense Provider</th>
<th>Major Types of Cases Handled</th>
<th>Approx. Annual Caseload</th>
<th>Accepts Detained Cases</th>
<th>Staffing</th>
<th>Participant in IRP</th>
<th>Model of Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Charities Community Services</td>
<td>Broad range, excluding crim. immigration</td>
<td>80–90</td>
<td>Yes (youth only)</td>
<td>6 att’ys 1 ARep</td>
<td>Yes</td>
<td>Staff att’ys and law student interns</td>
</tr>
<tr>
<td>Central American Assistance Group</td>
<td>Asylum (60%), not much crim. immigration</td>
<td>175–200</td>
<td>Yes (adults only)</td>
<td>3 att’ys 1 ARep 4 other</td>
<td>No</td>
<td>Staff att’ys</td>
</tr>
<tr>
<td>Human Rights First*</td>
<td>Primarily asylum, no crim. immigration</td>
<td>200</td>
<td>Yes (adults only)</td>
<td>2 att’ys 3–4 others</td>
<td>Yes</td>
<td>Pro bono att’ys</td>
</tr>
</tbody>
</table>

99 Brief descriptions of each of these groups are found infra Appendix B.
100 Listed in the table are these organizations’ most common types of removal defense cases. In addition, these organizations represent respondents in other types of cases including applications for relief under the CAT, LPR and NLPR cancellation of removal, and seeking termination by, inter alia, contesting deportability and seeking to suppress evidence.
101 The Immigration Representation Project (IRP) is a collaboration between Human Rights First, Catholic Charities of the Archdiocese of New York, The Legal Aid Society, and Hebrew Immigrant Aid Society. The collaborative provides case consultation and direct legal representation to low-income noncitizen residents of New York City and surrounding counties in removal proceedings at the immigration courts located at 26 Federal Plaza and 201 Varick Street. IRP partners screen cases for possible representation or referral one week each month at 26 Federal Plaza.
<table>
<thead>
<tr>
<th>Organization</th>
<th>Services Provided</th>
<th>Cases</th>
<th>Staff</th>
<th>Pro Bono</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Legal Aid Society</td>
<td>Broad range, including crim. immigration</td>
<td>150–225</td>
<td>Yes (youths and adults)</td>
<td>7 att’ys</td>
</tr>
<tr>
<td>NY Legal Assistance Group (NYLAG)</td>
<td>Broad range, including adjustment of status, asylum, VAWA/U visa</td>
<td>60–70</td>
<td>No</td>
<td>5 att’ys</td>
</tr>
<tr>
<td>Safe Horizon</td>
<td>Broad range, including adjustment of status, asylum, VAWA/U visa</td>
<td>20–30</td>
<td>No</td>
<td>2 att’ys</td>
</tr>
<tr>
<td>Hebrew Immigrant Aid Society</td>
<td>Predominantly asylum</td>
<td>25–30</td>
<td>No</td>
<td>1 att’y</td>
</tr>
<tr>
<td>City Bar Justice Center*</td>
<td>Asylum, VAWA and T visas, and limited crim. immigration</td>
<td>25–30</td>
<td>Yes (adults only)</td>
<td>2 att’ys</td>
</tr>
</tbody>
</table>

*Organizations marked with asterisks operate through partnerships with pro bono counsel and do not utilize their staff to provide direct representation.

This table is meant to provide a sense of how the larger RDPs are structured. The information it contains cannot, of course, serve as the basis for comparison between these RDPs and other legal service organizations for a variety of reasons. For example, some RDPs rely heavily (or exclusively) on partnerships with pro bono counsel or non-staff volunteers to perform work on cases; thus, their case-per-attorney ratio will be higher. Other organizations handle cases that are more difficult to place with pro bono counsel, and thus handle their docket in-house, resulting in lower case-per-attorney ratios. Another reason is that many RDPs, including those in Table 10, use their legal staff to provide other immigration-related legal services in addition to removal-defense services; though not allocated to a removal-defense case, providing such additional services consumes RDP resources and staff time. These non-removal-defense services include: assistance applying for immigration benefits, like Temporary Protected Status; family-based visas; naturalization; and providing advice and consultation on immigration-related matters. Many organizations beyond those surveyed provide these critical immigration-related services to New York residents and may be a significant part of the solution to the problem identified in this Report. Such organizations can prevent the start of removal proceedings and may be able to expand their capacity to begin providing removal-defense services.

---

102 See infra Appendix B (describing some of the other services provided by the RDPs in the chart).
D. Implications of RDP Structure and Capacity for Detained or Transferred Clients

It is clear from the survey data that there is a severe dearth of legal representation available to detained noncitizens facing deportation based on a criminal “ground of deportability.” In fact, the vast majority of RDPs indicated that they did not represent detained individuals in 2008 or 2009. Even fewer (only seven out of twenty-five) represented noncitizens detained in upstate New York or New Jersey. Therefore, given the planned increase in detention capacity in Newark, New Jersey, and ICE’s planned expansion of “Secure Communities,” it appears that, without some significant change, the shortage of representation for detainees is likely to worsen. Even fewer RDPs actually go to the detention centers to screen cases as a way to obtain clients, which means that most noncitizens who are detained have a very low probability of even speaking to someone who might offer legal counsel. The RDP caseloads confirm this: nearly all of the RDPs reported that less than 25% of their removal clients were detained at the time the case started. The reasons for RDPs’ focus on nondetained clients includes lack of expertise in representing detained clients and resource constraints, specifically the time and expense involved in representing detained clients incarcerated in jails in New Jersey and outside the city limits of New York City.

The effects of provider constraints are far worse for noncitizens who are detained and then transferred; RDPs not only refused to take cases that were likely to be transferred, they shied away from cases that even potentially could be transferred. When responding to the survey, RDPs noted that ICE regularly transferred all categories of potential clients in removal proceedings across the country, which makes it practically impossible for New York–based RDPs to represent them. In New York, the RDPs explained, detainees may be transferred—without notice to counsel—out of the New York jurisdiction to places like Penn-

103 Given the projected increase in enforcement against exactly this category of noncitizens, the problem of unrepresentation among these populations is likely to worsen.

104 See discussion supra note 28.

105 Two organizations indicated that less than 50% of their clients were detained at the time the case started; one organization in Buffalo that appears to handle only detained cases reported that 75% to 100% of its clients were in detention.

106 It is practically impossible for New York-based RDPs to represent transferred clients because, among other reasons, RDPs do not have the funding flexibility to represent clients outside of the area, the immense expenditure of time and money to meet with the client, investigate the case, prepare the client for a hearing, and appear in far-off immigration courts. In addition, New York-based RDPs do not have experience with immigration courts or detention centers in transfer destinations, making the institutional expenditure per case significantly greater when RDP attorneys must forge those relationships anew.
sylvania, Louisiana, and Texas. The frequent and indiscriminate transfer of detainees makes it difficult for RDPs to commit to represent any detained clients, even if that individual is, at the moment, detained in the New York area. Pro bono counsel likewise shied away from taking on detained cases for representation because of the threat of a possible transfer.

The disinclination to take on detained cases, where transfer is always a threat, is exacerbated by the difficulty of withdrawing from the case if individuals are transferred. The Immigration Court Practice Manual requires that immigration judges grant permission before an attorney can withdraw from representation, and immigration judges are reluctant to consent to withdrawal unless substitute counsel has been obtained. RDPs reported that although they attempt to avoid taking cases likely to be transferred, ICE may still transfer their client. This creates a significant burden for RDPs that cannot continue to represent these clients, meaning that they must attempt to find free representation for clients in the transferred jurisdiction or assist the detainees to prepare and file motions for change of venue to New York.

CONCLUSION AND NEXT STEPS

The problem is not a new one. For generations, immigrants facing the gravest of consequences—banishment from their homes and families—have been forced to face government attorneys in complex adversarial proceedings, unaided by legal counsel. The scale of the problem has, however, grown enormously in recent years as the annual rate of deportations has skyrocketed and the government has increasingly relied on detention as a mechanism to ensure immigrant attendance at removal proceedings. The readily available national data—with 43% of immigration proceedings occurring without representation annually—is enough to alert us that this perennial problem has developed into a modern immigrant representation crisis. In order to begin to reverse the trend, however, we need to know much more than what this national snapshot has told us. The data set forth in this Report provides, for the first time, the type of detailed and nuanced analysis of the immigration representation crisis necessary to do more than wring our hands at the

107 See OFFICE OF THE INSPECTOR GEN., supra note 24, at 4 (“Transferred detainees have had difficulty or delays arranging for legal representation, particularly when they require pro bono representation. Difficulty arranging for counsel or accessing evidence may result in delayed court proceedings. Access to personal records, evidence, and witnesses to support bond or custody redeterminations, removal, relief, or appeal proceedings can also be problematic in these cases.”).


109 See discussion supra notes 1–2 and accompanying text.
injustice. We now have the knowledge to begin intelligently addressing the problem.

We undertook this two-year Study with the ambitious goal of developing a realistic framework for an integrated indigent–removal-defense system in New York that would meet the full need for such defense. In Year One, the results of which are contained herein, we investigated—as intensely as possible—the nature and extent of the crisis and the existing landscape of indigent removal-defense providers in New York. We now know which immigrants face the greatest hurdles in obtaining counsel, which types of removal cases are least served, who is representing New Yorkers in removal proceedings, how DHS detention and transfer policies interfere with access to counsel, whom existing providers serve, what existing providers require to scale up their removal-defense services, the scale of the quality problems among existing providers, and how representation affects outcomes in removal proceedings.

Our task for Year Two of this Study is to facilitate a year-long discussion among stakeholders, informed by the data in this Report, to understand how best to scale up existing services to meet the full need of indigent New Yorkers facing removal. The goal will be to develop structures to create efficiencies and build on the strengths of existing providers, thereby creating an integrated citywide removal-defense-system model. We hope to learn from and incorporate the experiences and successes of other indigent defense systems in the juvenile justice, criminal defense, and family court systems. Our Study will culminate in a Year Two report, which will lay out a proposed model for an integrated removal-defense system and an accompanying funding strategy.

It is apparent, however, that some factors aggravating the immigrant representation crisis are beyond the control and structure of removal-defense providers. Most significantly, the data shows that the detention and transfer policies of DHS are among the impediments to counsel for immigrants. Accordingly, we also hope to work with DHS to limit the use of detention, to expand alternatives to detention, and to ensure that removal proceedings for New Yorkers are venued in New York. These two policy changes would alone go a long way toward reducing the number of New Yorkers facing removal without the aid of counsel.

We began this effort with an intuitive sense of the scale of the problem. The numbers sadly bear out that intuition in the starkest form. The injustice inherent in a system threatening the gravest of sanctions, in one of the most complex arenas of law, without any aid of counsel is a stain on our legal system. Sadly, it is a problem of enormous scale and one that is only growing. Turning the tide on this crisis will require political, personal, professional, and financial commitments from a wide
variety of actors. We need to create innovative partnerships between nonprofit, pro bono, and private legal providers, but also with ICE and EOIR; with city, state, and local government; and with the philanthropic community. It is only through intense and widespread commitment across stakeholders that we can begin to assure all respondents in removal proceedings the right to competent representation.
We received data for the Study (reported mainly in Part III of this Report) from two sources: the Executive Office for Immigration Review (EOIR), the agency within the U.S. Department of Justice that oversees the immigration courts and the Board of Immigration Appeals (BIA); and U.S. Immigration and Customs Enforcement (ICE), an agency within the U.S. Department of Homeland Security. This Study is rare in that it was able to match EOIR and ICE data, particularly to determine what happens to individuals arrested by ICE in New York but transferred to other parts of the country for their removal proceedings.

The data was derived from a report the Vera Institute of Justice provided to EOIR under its responsibilities as the Legal Orientation Program (LOP) national contractor for EOIR. The Vera Institute received both the EOIR and ICE data used for this Study directly from EOIR. The ICE data consisted of a list of 31,341 A-numbers (the unique personal identifiers used by U.S. immigration-related government agencies) of individuals apprehended and then detained by ICE in its New York Field Office’s area of responsibility from October 1, 2005, through December 24, 2010. The ICE A-numbers were essential to identifying the New Yorkers who were apprehended in New York but transferred to other parts of the United States for their removal proceedings and to determine their numbers, the levels of representation, and outcomes in those proceedings. ICE provided EOIR with the list of A-numbers as an outgrowth of two Freedom of Information Act requests to ICE filed by the New York University Law School Immigration Rights Clinic on behalf of several immigrant-rights groups and a Brooklyn Law School professor. ICE provided EOIR with the A-numbers with the proviso that a report on those data by EOIR’s contractor, the Vera Institute, would be made public on EOIR’s website.

The EOIR data that the Vera Institute received and used in this Study included all immigration court and BIA proceedings in the na-
nationwide EOIR case-tracking database\textsuperscript{112} for cases with an initial master calendar date between October 1, 2005, and July 13, 2010, the cutoff date for the data extraction, with the exception of dependent or beneficiary cases—cases where the outcomes are governed by the case of another family member.\textsuperscript{113} Included in the data were nearly one million cases, each of which can have multiple proceedings. For instance, a removal proceeding with a bond hearing and a change of venue constitutes three proceedings. For use in its data, the Vera Institute consolidated such multiple proceedings for an individual into a single case for that individual.

Table X divides the nearly one million cases that appear in the five-year national EOIR data into cases that had at least one immigration hearing in New York (71,767) and those that had no New York immigration hearing. Of the 71,767 cases, 55,999 started and remained at the same New York Immigration Court. Of those 55,999 cases, 48,801 were for persons never detained or released, and 7,198 for detained persons. Table X also divides the cases for individuals who appeared in the five years of ICE apprehensions in New York who also appeared in immigration court into those who had at least one immigration hearing in New York (9503) and those who had no immigration court hearings in New York (8306).

\textsuperscript{112} EOIR used the Automated Nationwide System for Immigration Review (ANSIR) case-tracking system until 2007, at which time it entirely switched to the currently employed Case Access System for EOIR (CASE).

\textsuperscript{113} To get the truest picture of the percentage of people in removal proceedings with representation and the influence of representation on outcomes, the Vera Institute asked EOIR to exclude all dependent cases from the data extraction sent to it. If a lead case is represented by counsel, the same counsel will also represent the dependent cases; and the outcome of the lead case will generally dictate the outcome of the dependent cases. By excluding data on dependent cases, the Vera Institute effectively treated related lead and dependent cases as a single case rather than as multiple cases.
Table X
Matches Between EOIR and ICE Data

<table>
<thead>
<tr>
<th>Cases in EOIR Database*</th>
<th>Matched with A-Numbers in ICE Database**</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Never had any hearings</td>
<td>897,146</td>
<td>8306</td>
</tr>
<tr>
<td>in N.Y. Immigrations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Had at least one hearing</td>
<td>62,264</td>
<td>9503</td>
</tr>
<tr>
<td>in N.Y. Immigration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>959,410</td>
<td>17,809</td>
</tr>
</tbody>
</table>

* The EOIR dataset is a subset of the data received from EOIR according to the Study’s case requirements. It includes immigration court cases with an initial master calendar hearing between 10/1/2005 and 7/13/2010.

** The ICE dataset is the list of A-numbers received from ICE for persons apprehended in the New York ICE area of responsibility between 10/1/2005 and 12/24/2010.

To learn what occurred with the cases of New Yorkers apprehended by ICE and transferred elsewhere in the country for their removal proceedings, the Vera Institute matched the 31,341 A-numbers received from ICE of people apprehended and detained in New York from October 1, 2005, to December 24, 2010, to the A-numbers in EOIR dataset. Table Y shows that 13,877 (44%) of the ICE A-numbers did not appear in the EOIR dataset used in our analysis.

There are two reasons that an A-number provided by ICE would not appear in the EOIR dataset: (1) the initial master-calendar hearing for the case occurred before October 1, 2005, or after July 13, 2010; and (2) the person with that A-number was facing removal but was not put into proceedings before the immigration court. We estimate that approximately 10% of the ICE A-numbers failed to match because they did not fall within the time definitions of the EOIR data. Assuming our estimate is at least reasonably accurate, that means that approximately 40% (or 12,500) of the New Yorkers taken into custody by ICE from late 2005 through late 2010 were subject to removal by ICE administrative processes without the ability to present claims for relief or defenses to an immigration judge. We do not know how many of these individuals had legal representation, but anecdotal evidence suggests that almost none did, despite the likelihood that some had valid legal claims.

---

114 Among those subject to removal without immigration court proceedings are people charged with aggravated felonies facing administrative removal, people with prior removal orders facing reinstatement of removal, and arriving aliens facing expedited removal.
Table Y

<table>
<thead>
<tr>
<th>Definition of A-Numbers</th>
<th>Numbers of A-Numbers</th>
<th>Percentage of Total A-Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-numbers that appeared in EOIR dataset*</td>
<td>17,464</td>
<td>56%</td>
</tr>
<tr>
<td>A-numbers that did not appear in EOIR dataset*</td>
<td>13,877</td>
<td>44%</td>
</tr>
<tr>
<td>Total Number of A-numbers received from ICE</td>
<td>31,341</td>
<td>100%</td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE
* The dataset is a subset of the data received from EOIR according to the Study’s case requirements and includes 977,219 unique cases.

Table Y also shows that 17,464 (56%) of the ICE A-numbers appeared in the EOIR dataset used in our analysis. They matched 17,809 unique cases in the EOIR dataset. Ninety-eight percent of these individuals had only one case while 2% had two or three cases. In order to see how being transferred out of New York by ICE affected access to counsel, we grouped cases by court-hearing locations for persons originally apprehended and detained by ICE. Of the 17,809 cases that matched with an ICE A-number, 8306 never had proceedings in the New York Immigration Courts, while the other 9503 did have proceedings at least sometime during the course of the case in the New York Immigration Courts.\textsuperscript{115}

Of the 8306 cases without any proceedings in the New York Immigration Courts, 369 were for people who were already not detained when their initial master-calendar hearing occurred.\textsuperscript{116} We focused on the 7937 cases for persons who started their cases in detention. Of the 9503 cases for individuals who had proceedings at least sometime during the course of the case in New York Immigration Courts, 6304 started when the individuals were in detention.

As Table Z shows, of the 14,241 cases starting in detention for individuals apprehended by ICE, 9112 (64%) were for individuals transferred to other parts of the country. Or, looking at the obverse, only

\textsuperscript{115} See supra Table X.
\textsuperscript{116} Based on the way ICE defined the data it turned over to EOIR, it appears that those people were identified for apprehension while in criminal custody (presumably most frequently at Rikers Island) but were released on recognizance, bond, or to an alternative to detention before their case appeared in immigration court.
36% of cases were for New Yorkers who were detained, put into removal proceedings by ICE, and given the opportunity to contest their removal proceedings from their inception in New York.

Table Z
Cases of Persons Apprehended and Detained by ICE in the New York ICE Area of Responsibility: By Initial Hearing Location
(For cases starting between 10/1/2005 and 7/13/2010: N=14,241)

<table>
<thead>
<tr>
<th>Initial Hearing Location</th>
<th>Case Transfer Status</th>
<th>Number of Cases</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initially not in N.Y. courts</td>
<td>9112</td>
<td>64%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Never in N.Y. courts</td>
<td>7937</td>
<td>56%</td>
</tr>
<tr>
<td></td>
<td>COV to N.Y. courts</td>
<td>1161</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>COV to N.Y. courts, but COV out again</td>
<td>14</td>
<td>0.1%</td>
</tr>
<tr>
<td>Initially in N.Y. courts</td>
<td>5129</td>
<td>36%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>14,241</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

Data sources: EOIR, ICE
APPENDIX B: DESCRIPTIONS OF CORE PROVIDERS IN NYC AREA

A. Central American Legal Assistance Group

Central American Legal Assistance (CALA) has existed since 1986, providing free or low-cost legal representation to asylum seekers from Central and South America, either filing affirmatively or defending against deportation or removal. Asylum cases constitute 60% of CALA’s workload. In addition, CALA attorneys represent hundreds of low-income New York City immigrants (largely Hispanic) in removal proceedings seeking permanent legal status through other types of claims (cancellation of removal based on special hardship to children, adjustment of status, NACARA, Special Immigrant Juvenile visas, U visas) or temporary relief from removal through the Temporary Protected Status programs. CALA takes on approximately 100 new cases per year in Immigration Court and has an accumulated active caseload of roughly 200 removal cases at any one time. CALA provides representation through the BIA and in federal court, where appropriate. CALA has three attorneys and a BIA-accredited representative as well as four support staff. CALA currently receives limited funding from the New York City Council and the New York State Interest on Lawyer Account Fund.

B. Catholic Charities Community Services, Archdiocese of New York

Catholic Charities Community Services, Archdiocese of New York (CCCS) provides low-cost and free immigration counseling and legal representation to documented and undocumented immigrants. CCCS’s six attorneys and BIA-accredited representative provide direct representation in court proceedings before the immigration courts and other federal and state tribunals. They litigate cases, including political asylum, cancellation of removal, family-based immigration, naturalization, filings under VAWA (for immigrant victims of domestic violence, other serious crimes, and trafficking), and Special Immigrant Juvenile Status (SIJS) cases of minors whose reunification with one or both parents is not viable due to abandonment, abuse, or neglect. In 2003, CCCS, in cooperation with St. John’s University School of Law, established an immigration law clinic. Six law students supervised by CCCS attorneys perform research, interview clients, draft briefs and affidavits, and, in some cases, represent clients in immigration court. CCCS is a partner on the Immigration Representation Project (IRP), a collaboration between
C. Human Rights First

Human Rights First’s (HRF) pro bono representation program provides legal services to asylum seekers in the New York area. The New York office handles cases at 26 Federal Plaza, Varick Street, the Newark Immigration Court, and the Elizabeth Detention Center. Working in coordination with pro bono attorneys at New York and New Jersey law firms, HRF secures asylum in more than 90% of its cases. HRF is a partner in the IRP and collaborates with Hebrew Immigrant Aid Society (HIAS), Catholic Charities (Manhattan), and the Legal Aid Society to provide referrals and consultations for immigrants whose cases are pending at 26 Federal Plaza. HRF legal staff also provides legal assistance and referrals to hundreds of individuals detained at the Elizabeth Detention Center in New Jersey, conducting in-person legal consultations, legal presentations, and individual interviews with unrepresented detainees. HRF’s legal orientation presentations are conducted through a collaboration with the American Friends Service Committee, Catholic Charities (Newark), and HIAS. HRF also operates a toll-free hotline so that detainees can obtain information or ask for legal help.

D. The Legal Aid Society

The Legal Aid Society is the nation’s oldest and largest not-for-profit public interest law firm for low-income families and individuals. Its citywide Immigration Law Unit (ILU) specializes in representing noncitizens who are in removal proceedings as a result of past criminal convictions or immigration violations. Thirteen staff attorneys (seven full-time attorneys and six attorneys at 25% full-time employment status) provide direct representation to adults and youth who are detained or nondetained, and who are facing removal in immigration court and on appeals before the BIA. Four full-time attorneys have an average of twelve years of experience in removal-defense cases. Access points for clients include 26 Federal Plaza, community-based clinic sites, a dedicated telephone hotline for detainees and their families, and the LOP, funded through the Vera Institute, to provide group orientation, individual orientation, and group workshops to detainees in four county jails in New Jersey and Orange County, New York. Partnerships with other not-for-profit organizations and coordination of a successful pro bono program with New York City law firms enable the ILU to maximize
resources to reach as many immigrants as possible. A fall externship at Columbia Law School and a spring clinic at New York University School of Law also enable a total of twenty-four students to assist ILU attorneys with case preparation and representation. The ILU also has a dedicated attorney who handles impact cases in federal court. Funding comes from a combination of city, state, foundation, and private sources.

E. New York Legal Assistance Group

New York Legal Assistance Group (NYLAG) is a nonprofit organization dedicated to providing free legal services in civil matters to low-income New Yorkers. NYLAG’s Immigrant Protection Unit (IPU) provides benefit assistance and removal defense to immigrant clients. The IPU obtains clients facing removal through referrals from its community-based partners. The IPU’s practice in immigration court is focused on adjustment of status, cancellation of removal for non–lawful permanent residents, removal-of-conditions as well as asylum. The IPU has a staff of six attorneys. The IPU does not represent clients who are in proceedings because of criminal convictions. NYLAG receives funding for immigration work from city, state, and private sources.

F. Safe Horizon

Safe Horizon is the nation’s largest victim assistance organization. Since 1988, Safe Horizon has operated an Immigration Law Project (ILP) dedicated to providing free and low-cost legal services in immigration proceedings to victims of crime, torture, and abuse. The ILP is listed on the EOIR free legal services provider list and also receives direct referrals from immigration judges. The ILP provides representation in gender-based asylum cases, removal of conditions for lawful permanent residence, adjustment of status, and cancellation of removal for both lawful permanent residents and non–lawful permanent residents. Representation is provided by two attorneys and an accredited representative. The ILP does not use students or pro bono attorneys for removal work. Because of limited resources and staff, the ILP provides representation in detained cases only when a client is detained during the course of representation. To sustain its practice, the ILP charges a fee of $750 per removal case. Until it lost city funding in 2011, the ILP had been providing some free removal representation. The ILP does not, however, charge any fees for VAWA cases in removal.
G. City Bar Justice Center

The City Bar Justice Center (CBJC) operates the Varick Removal Defense Project, which screens cases at a monthly pro bono legal clinic at the Varick Street Immigration Court. CBJC has a full-time two-year Fragomen Fellow serving as the Project Attorney and a full-time Project Coordinator to handle administration of the project. CBJC recruits and trains pro bono volunteers from large law firms to handle detained cases where cancellation of removal is a remedy. The CBJC accepts cases screened by the Legal Aid Society’s LOP and referred from other sources. In 2008, CBJC, the American Immigration Lawyers Association’s New York City Chapter (AILA), and the Legal Aid Society launched the collaborative NYC Know Your Rights Project at the Varick Federal Detention Facility. Under the original model, volunteer attorneys from participating law firms conducted screening interviews with detainees under the supervision of AILA mentors to determine whether immigration relief was available. They then made referrals to pro bono (or “low bono”) counsel. CBJC now offers full representation to detainees through a combination of pro bono and staff resources. Our partnerships with AILA-NYC Chapter and the Legal Aid Society are valuable resources in leveraging the legal resources of the private bar.

H. Hebrew Immigrant Aid Society

The HIAS has been providing nonsectarian pro bono representation to individuals in removal proceedings in New York and New Jersey for over fifty years. HIAS is included in the EOIR list of free or low-cost legal service providers. HIAS attorneys and accredited representatives work with clients who are either: detained survivors of torture; Jewish asylum applicants; or who are artists, scholars, scientists, or other professionals interested in applying for asylum. HIAS New York employs one staff attorney and one fully-accredited BIA representative. HIAS participates in the IRP by conducting screenings of unrepresented noncitizens in removal proceedings once a month at 26 Federal Plaza and takes on cases screened at IRP whenever possible. As an extension of its IRP and detention work, HIAS participates in liaison groups with EOIR and ICE in New York, and in Newark and Elizabeth, New Jersey, where a wide range of issues affecting the quality and availability of representation for those in removal proceedings are addressed.
Study Group on Immigrant Representation

The New York Immigrant Representation Study is an initiative of the Study Group on Immigrant Representation, launched by Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit. The Study Group seeks to facilitate adequate counsel for immigrants in the service of the fair and effective administration of justice. The Study Group is drawn principally from law firms, nonprofit organizations, immigration groups, bar associations, law schools, and federal, state, and local governments. Through reports, pilot projects, colloquia, and meetings, the Study Group has focused on increasing pro bono activity, improving mechanisms of legal service delivery, and rooting out inadequate counsel.

Authors and Acknowledgements

The NYIR Study gratefully acknowledges the support of the Leon Levy Foundation and The Governance Institute and ongoing guidance from the Community Resource Exchange. The members of the NYIR Study Steering Committee and their professional affiliations are: Stacy Caplow, Brooklyn Law School (co-chair); Peter Markowitz, Benjamin N. Cardozo School of Law (co-chair); Claudia Slovinsky, Claudia Slovinsky and Associates, PLLC (co-chair); Jojo Annobil, Legal Aid Society, Immigration Law Unit; Peter Cobb, Fried, Frank, Harris, Shriver & Jacobson, LLP (Fried, Frank); Amy Gottlieb, American Friends Service Committee; Lynn Kelly, City Bar Justice Center; Linda Kenepaske, Law Office of Linda Kenepaske, PLLC; Nancy Morawetz, New York University School of Law; Lindsay Nash, Liman Fellow, Benjamin N. Cardozo School of Law; Raluca Oncioiu, Catholic Charities Community Services; Oren Root, Vera Institute of Justice; Maribel Hernández Rivera, Fried, Frank; Jane Stern, Former Program Director, The New York Community Trust; Isaac Wheeler, Immigrant Defense Project; Marianne Yang, Brooklyn Defender Services. Immigration Judges Noel Brennan and Sarah Burr also served although they expressed no opinion as to specific proposals. Tom Sharkey, a student at Columbia Law School, assisted in drafting Section II.B. Valyrie Laedlein of the Community Resource Exchange provided indispensible assistance in guiding the group’s discussions.

Design by Brooke Menschel, b•seen communications & media, brooke@bseencm.com
Accessing Justice II

A Model for Providing Counsel to New York Immigrants in Removal Proceedings

New York Immigrant Representation Study Report: Part II
# Table of Contents

Executive Summary .........................................................................................................1

Introduction ......................................................................................................................4

Background: Deportation and Representation .............................................................7
An Overview of Immigration Removal Proceedings .......................................................7
Legal Status of the Right to Deportation Defense ..........................................................9

Nature, Scope, and Consequences of the Crisis .........................................................11
Key Findings of the NYIR Study Report: Part I .............................................................11
The Consequences of Detention and Deportation on New Yorkers ............................12

Initial Focus on Detained New Yorkers ......................................................................15

The New York Deportation Defense Project Model ....................................................18
Universal Representation ..............................................................................................18
Implementation Through a Small Group of Institutional Providers ............................20
Cooperation with Key Institutional Actors: DHS & EOIR .........................................21
Provision of Basic Legal Support Services ..................................................................22
Necessity of a Reliable Public Funding Stream .........................................................23
Centralized Oversight and Project Management ......................................................24

Conclusion ....................................................................................................................26

Endnotes .......................................................................................................................27
The New York Immigrant Representation Study (“NYIR Study”) is a two-year project of the Study Group on Immigrant Representation to analyze and ameliorate the immigrant representation crisis—the acute shortage of qualified attorneys willing and able to represent indigent immigrants facing deportation. The crisis has reached epic proportions in New York and shows no signs of abating.¹

In its year-one report (issued in the fall of 2011), the NYIR Study analyzed the empirical evidence regarding the nature and scope of the immigrant representation crisis.² In that report, we documented how many New Yorkers—27 percent of those not detained and 60 percent of those who were detained—face deportation, and the prospect of permanent exile from families, homes and livelihoods, without any legal representation whatsoever. These unrepresented individuals are often held in detention and include many lawful permanent residents (green card holders), asylees and refugees, victims of domestic violence, and other classes of vulnerable immigrants with deep ties to New York. The study confirmed that the impact of having counsel cannot be overstated: people facing deportation in New York immigration courts with a lawyer are 500 percent as likely to win their cases as those without representation.³ While, at one end, nondetained immigrants with lawyers have successful outcomes 74 percent of the time, those on the other end, without counsel and who were detained, prevailed a mere 3 percent of the time.

In its second year, the NYIR Study convened a panel of experts to use the data from the year-one report to develop ambitious, yet realistic, near- to medium-term ways to mitigate the worst aspects of the immigrant representation crisis here in New York. The year-two analysis and proposals are set forth in detail here, in the NYIR Study Report: Part II.

A comprehensive solution to the nationwide immigrant representation crisis will require federal action. However, such federal action does not appear on the horizon. Meanwhile, the costs of needless deportations are felt most acutely in places like New York, with vibrant and vital immigrant communities. In addition to the injustice of seeing New Yorkers deported simply because they lack access to counsel, the impact of these deportations on the shattered New York families left behind is devastating. Moreover, the local community then bears the cost of these deportations in very tangible ways: when splintered families lose wage-earning members, they become dependent on a variety of City and State safety net programs to survive; the foster care system must step in when deportations cause the breakdown of families; and support networks to families and children must accommodate the myriad difficulties that result when federal policies are enforced without regard for local concerns. Put simply, the City and State of New York bear a heavy cost as a result of the immigrant representation crisis.
The New York Deportation Defense Project (“Project”)—proposed herein—would be the first deportation defense system created by any jurisdiction within the United States and would meet the legal defense needs of the most vulnerable New Yorkers facing deportation while, simultaneously, providing a replicable model for how jurisdictions that value their immigrant communities can begin to address the representation crisis.

The Project proposes to create a system focused, first, on detained immigrants, because the data from the year-one report demonstrates that this is the most underserved population with the greatest obstacles to representation and to a fair process. The Project would:

- Function through a universal-representation, institutional-provider model with screening only for income eligibility.
- Operate through contracts with a small group of institutional immigration legal service providers who are in a position to handle the full range of removal cases and who can capture efficiencies of scale and minimize administrative complexities.
- Work in cooperation with other key institutional actors, such as the Department of Homeland Security and the Executive Office for Immigration Review, to ensure efficient attorney-client communication, timely access to critical documents, and coordination of court calendars.
- Provide basic legal support services, such as access to necessary experts, and translation/interpretation, social work, mental health assessment, and investigative services.
- Derive funds primarily, or significantly, through a reliable public funding stream of new resources that does not divert existing resources.
- Be overseen by a coordinating organization that provides centralized oversight and project management.

This proposal recognizes that justice is strained when thousands of New Yorkers each year face banishment from their homes and families and must navigate, without counsel, a legal system our courts describe as “labyrinthine.” By implementing the Project—the first deportation defense system in the nation—we can protect New York families, lessen dependence on government safety net programs, ensure a measure of justice for New York residents, and become a model for other cities and states that value their immigrant communities.

2. “Win[ning]” a case or having a “successful outcome,” as used here, means that the individual facing deportation establishes a right to remain in the United States.
"As to its cruelty, nothing can exceed a forcible deportation from a country of one's residence, and the breaking up of all the relations of friendship, family, and business there contracted."1

On any given day in any of our nation's immigration courts, you will find immigrants who lack legal training, access to their own records, and oftentimes basic competency in the English language sitting alone, without lawyers, attempting to defend themselves against deportation charges lodged by the government. The charges are set forth by reference to complex provisions of the legal code and immigrants are asked to concede to deportation. All too often, they do so and deportation orders are entered against them without the immigrant ever having had the assistance of a legal representative. In a matter of minutes, an unrepresented immigrant's fate is sealed: a home is lost, a family is broken, and a livelihood abandoned. This dynamic is exacerbated immeasurably when the person facing deportation is indigent and detained; the choice effectively becomes to concede deportation immediately or to languish in jail with little hope of finding competent, affordable legal representation. In many cases, the aid of a lawyer would have meant the assertion of a valid defense to deportation, release from detention, and relief from deportation. The local community then bears the cost of this loss: the public assistance systems must compensate when splintered families lose wage-earning members; the foster care system must step in when deportations cause the breakdown of families; and support networks are stretched to accommodate the myriad difficulties that result when federal policies are enforced without regard for local concerns.

In recent years, this scenario has become increasingly common as immigration enforcement efforts have expanded vastly, resulting in record numbers of deportations and immigration court cases in 2011. The Department of Homeland Security ("DHS") deported 392,000 foreign nationals from the United States in 2011, representing an increase of approximately 85 percent since 2005.2 Not surprisingly, immigration court removal proceedings increased commensurately over the same time period. Nationwide, the number of matters received by the immigration courts increased by 28 percent over the last five years and by 78 percent over the past decade, totaling over 430,000 new cases filed in immigration court in FY 2011.3

Unlike other legal settings where individuals face the loss of liberty or family—criminal proceedings or actions to terminate parental rights—the government will not appoint counsel to indigent immigrants facing deportation.5 Every day, many of these immigrants, especially those in detention, appear in our nation's immigration courts without any legal representation whatsoever. In 2010, 57.3 percent of all respondents in removal proceedings nationwide
(detained and nondetained) (a total of 164,742 people) appeared in immigration court without counsel.\(^5\) This dearth of representation has persisted for many years, and the crisis shows no signs of abating.\(^6\) Even in New York, with the largest legal community in the world, over the past five years, almost 15,000 immigrants were forced to face the prospect of deportation without a lawyer to assist them.\(^7\)

In 2007, Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit challenged the New York legal community to focus on the unmet legal needs of immigrants who face the prospect of deportation either without counsel at all or with substandard representation.\(^8\) This call led to an unprecedented collaboration between law firms, nonprofit organizations, law schools, bar associations, state and local government officials, the immigration bar, and both federal court and immigration court judges dedicated to investigating and finding solutions to this representation crisis.\(^9\)

The New York Immigrant Representation Study (“NYIR Study” or “Study”) is a multi-year project undertaken by the Study Group on Immigrant Representation convened by Judge Katzmann. The Study’s first year focused on gathering information about the scope and nature of the immigrant representation crisis in New York and was published in December 2011 as NYIR Study Report: Part I.\(^10\) Most critically, the NYIR Study Report: Part I revealed that many New Yorkers in removal proceedings—27 percent of those who were not detained and, even more dramatically, 60 percent of those who were detained—did not have counsel.\(^11\)

The second year of the NYIR Study, the results of which are contained herein, sought to redress this crisis. Facilitating that effort is a Steering Committee comprised of a diverse group of experts drawn from the private bar, nonprofit organizations, bar associations, academia, foundations, and the immigration court bench. The Steering Committee’s mission was to consider the data from the NYIR Study Report: Part I, and other available data, and make ambitious but realistic recommendations for addressing the New York immigrant representation crisis. The resulting proposal, developed by the Steering Committee, draws upon existing efficiencies within the New York City community and sets forth a model for an integrated removal-defense system for detained noncitizen New Yorkers in removal proceedings.

In Section II of this report, we provide necessary background on the deportation system and the legal status of the right to counsel in removal proceedings. In Section III, we examine the parameters of the problem by describing the nature, scope and consequences of the New
York immigrant representation crisis. In Section IV, we discuss the need to prioritize the scarce resources available for bolstering deportation defense representation and explain why the proposed system focuses first on representation for detained New Yorkers facing deportation.  

Finally, in Section V, we set forth our recommendations for a publicly funded endeavor—the New York Deportation Defense Project (“Project”)—that would utilize a small group of competitively selected immigration institutional providers to deliver universal representation to indigent detained New Yorkers, which would be implemented in cooperation with the Executive Office for Immigration Review (“EOIR”) of the U.S. Department of Justice and U.S. Immigration and Customs Enforcement (“ICE”) of the U.S. Department of Homeland Security, and overseen by a centralized project management organization.

Legal representation in deportation proceedings is a moral imperative. While the federal government has abdicated its responsibility to provide this critical component of a fair and just process for immigrants in deportation proceedings, the individual, familial, and community devastation caused by the current enforcement regime is felt most acutely in places like New York, where immigrants play a vital and central role. Thus, it is critical that New York City and State protect their residents, families, and communities from the devastation that deportations cause by establishing a deportation defense system like that described here. Such a system would be the first deportation defense system in the nation and would seek to protect New York families, ensure a measure of justice for New York residents, and become a model for other cities and states that value their immigrant communities.
A. An Overview of Immigration Removal Proceedings

In order to understand how the lack of legal representation impacts a removal proceeding, a brief description of the immigration adjudication process is helpful. Individuals can come to the attention of DHS in a variety of ways, most commonly: after submitting an unsuccessful application for legal immigration status (e.g., asylum, adjustment of status, or naturalization); after an arrest or conviction for a crime; after encountering a DHS agent when returning from international travel; or during a DHS enforcement action within the United States. A noncitizen who is prosecuted by DHS for an alleged civil violation of immigration law is issued a charging document.13

After DHS files the charging document in immigration court, EOIR obtains jurisdiction over the case. EOIR is a division of the Department of Justice and oversees the 59 immigration courts located throughout the United States. In the New York region, immigration courts are located at 26 Federal Plaza and 201 Varick Street in Manhattan, in Newark and Elizabeth, New Jersey, and at New York State prisons in Fishkill, Napanoch (Ulster), and Bedford Hills.

Immigration court proceedings take place before an immigration judge who is an administrative judge within EOIR. The respondent either contests or concedes the charges against him or her. If the individual contests the charges, the respondent must identify and develop legal arguments as to why he or she is not deportable. If deportability is established, there are complicated legal issues related to eligibility for relief and, often, trial-like hearings to establish factual issues related to whether the respondent is eligible for relief and/or whether he or she merits a favorable exercise of discretion.

Although both are defensive in posture, immigration-removal defense is different from criminal defense practice in critical ways. Unlike criminal proceedings, a respondent in immigration proceedings is often compelled to testify and is subject to cross-examination by the government lawyer, regardless of the respondent's mental capacity, language skills, or general competence. Moreover, in contrast to criminal proceedings, if a respondent invokes the Fifth Amendment right against self-incrimination, the immigration judge may draw an adverse inference.14 Contesting removability and establishing eligibility for relief can require complicated legal analysis and investigation. Meaningful representation, therefore, seldom consists simply of “poking holes” in the government’s case, as might occur in criminal cases where the government carries the burden of proving guilt beyond a reasonable doubt. A successful removal defense
most often involves affirmatively presenting a claim for relief that requires marshaling evidence and making effective, often complicated, legal arguments. It may also involve using this evidence to persuade DHS to exercise its discretion favorably pursuant to recently updated prosecutorial discretion guidelines, which is an application that pro se respondents rarely have the information or capacity to pursue. Finally, in some cases, effective representation in a removal proceeding will require collateral legal work in other fora such as in the state criminal or family courts.

Most critically, while the noncitizen respondent has the right to representation by counsel in criminal cases or cases in which parental rights may be terminated, the respondent is not guaranteed a legal representative in deportation proceedings if he or she cannot afford or obtain one. Accordingly, individuals unable to secure the services of a legal representative must appear pro se at their removal hearings. Meanwhile, counsel from DHS represents the government, creating a harsh asymmetry when respondents cannot afford counsel.

After hearing a case, the immigration judge renders a decision. If the immigration judge decides that the respondent is not removable, the judge may terminate the proceedings. If the immigration judge finds that the person is removable, the judge may either order the noncitizen removed or, in some cases, may decide that the person should not be deported because he or she merits some form of relief, such as cancellation of removal, asylum, or adjustment of status. Both parties—the respondent and the government—may appeal the decision of the immigration judge to the Board of Immigration Appeals (“BIA”) within EOIR. After a decision by the BIA, the immigrant may seek judicial review, in some cases, by a U.S. Court of Appeals. In rare cases, it may appeal the U.S. Court of Appeal’s decision, through a petition for certiorari, to the U.S. Supreme Court.

DHS may decide to detain any individual it places in removal proceedings. However, immigration judges can preside over bond hearings where detained respondents seek release from detention during the pendency of their removal proceedings. Many individuals are granted bond and therefore are not detained further during proceedings. But federal law prescribes “mandatory detention” for certain classes of respondents, including some lawful permanent residents, which means that they cannot be released on bond even if they pose no danger to the community or risk of flight. Hundreds of thousands of foreign nationals are detained throughout the pendency of their removal proceedings, including the period of time for appeals. DHS described its detention of 429,000 such people in 2011 as an “all time high.”
In New York City, respondents who have been released on bond generally appear at the immigration court located at 26 Federal Plaza, although, after a release on bond, some might continue to appear at the Varick Street Immigration Court. Many New Yorkers, however, have not been granted bond or are not able to pay the high bond amount. These people are detained in DHS-contracted, privately-run facilities in Elizabeth and Newark, New Jersey, and in several local jails in New Jersey and New York State; none are detained in New York City. Yet another group of New Yorkers in removal proceedings—those who are serving criminal sentences in state or federal prison—appear in immigration courts upstate through the Institutional Removal Program (“IRP”). This program, which is mandated by the Immigration and Nationality Act (“INA”), allows for removal cases to proceed while a person is serving a criminal sentence. In New York, IRP removal cases take place in three prisons—in Ulster, Dutchess, and Westchester Counties—with one immigration judge handling all of the cases.

B. Legal Status of the Right to Deportation Defense

The extent to which noncitizens are entitled to counsel in deportation proceedings is the subject of controversy; while courts have not recognized a right to counsel, scholars, immigrant advocates, and major bar associations have argued that noncitizens’ right to due process in these proceedings suggests that many, if not all, cases necessitate the provision of counsel for those who cannot afford representation. The INA and related regulations make clear that Congress did not affirmatively provide for appointment of counsel in deportation cases. However, failing to provide indigent respondents with counsel in immigration removal proceedings raises serious constitutional concerns. In 2006, the American Bar Association passed a resolution supporting “the due process right to counsel for all persons in removal proceedings.” Likewise, the New York City Bar Association has found that “basic due process requires assignment of counsel at government expense to all detained indigent respondents facing removal from the United States.”

While the courts have traditionally held that removal hearings are civil and therefore outside the purview of the Sixth Amendment right to appointed counsel in criminal proceedings, removal hearings mirror many of the unique traits of criminal trials. Scholars have noted an accelerating trend in the past twenty years towards greater “criminalization of immigration law.” The Supreme Court has similarly taken note of this blurred line between criminal and removal proceedings. In Padilla v. Kentucky, the Court held that, given the harshness of immigration law, effective criminal defense attorneys have an affirmative duty to advise defendants of immigration consequences. Further, it noted that “[t]hese changes confirm
our view that, as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty imposed on noncitizen defendants . . . . 28

Separate and apart from any Sixth Amendment right, the lack of counsel in removal proceedings raises significant due process concerns. All persons within the United States, regardless of immigration status, are entitled to due process; 29 including a right to appointed counsel in certain civil cases. 30 In determining when due process requires the appointment of counsel in a civil case, the gravity of the private interest at stake is central to the analysis. 31 It is beyond dispute that the private interest for those in removal hearings is "without question, a weighty one." 32 This is because a respondent faces the possibility of "los[ing] the right to 'stay and live and work in this land of freedom'" 33 and may "lose the right to rejoin her immediate family," 34 a right that ranks high among the interests of the individual. 35 It is for this reason that the Supreme Court has long recognized that removal "may result also in loss of both property and life; or of all that makes life worth living." 36 Detention related to removal also threatens the private interests of respondents. 37 Indeed, some have argued that the restraints upon a person's life that flow from removal constitute a deprivation of physical liberty. 38

In Turner v. Rogers, the Supreme Court recently addressed the right to counsel in a civil case and focused on three considerations, namely, whether the question before the court is straightforward or complex, whether the opposition is represented by counsel, and whether there are substitute procedural safeguards that significantly reduce the risk of the erroneous deprivation of liberty. 39 These factors would seem to cut in favor of a right to counsel in removal proceedings, where procedures are inadequate to correct the imbalance between respondents and agency attorneys making legal arguments to judges about issues of law that are "labyrinthine." 40 The risk of erroneous outcomes for persons in removal hearings is also a serious and important factor triggering the need for institutionally-provided counsel. 41 Finally, the difference in results for those who are represented and those who are not is striking—and underscores why counsel is critical to prevent error and to ensure relief when it is warranted. 42

Whatever the legal merit of the arguments in favor of the right to government-provided representation, the present reality is that no such right has been legislatively mandated or judicially declared by the Supreme Court and there is no indication from Congress, the Executive, or the federal judiciary that such recognition of a right to counsel is on the horizon. Accordingly, our present task is to determine, given the current legal landscape, how best to expand access to counsel. With so much at stake and the difficulty or impossibility of self-representation in these proceedings, the implications for fairness and justice are obvious.
n its first year, the NYIR Study quantified the extreme extent of the unmet legal needs of New Yorkers in removal proceedings, and showed where the most serious and consequential deficiencies occur. Examining the reasons for this situation allowed us to determine the scope of representation that the Project must provide. Coincidentally—but not surprisingly, given the swelling rates of detention and deportation, during the time leading up to and following the NYIR Study Report: Part I—numerous reports have been issued describing the impact of detention and deportation on families and communities. We surveyed this literature as well to complete the picture of the representation crisis. This section, therefore, describes the impact that detention and deportation, as well as access to counsel, have on New York City residents, which informs the proposed design of the Project.

A. Key Findings of the NYIR Study Report: Part I

The comprehensive data gathered by the initial NYIR Study confirmed the widely held beliefs that many New Yorkers do not have counsel by the time their cases are completed and that legal representation makes an enormous difference to an individual’s ability to defend against deportation. The Study found that:

- **27 percent** of nondetained immigrants do not have counsel by the time their cases are completed; and
- **60 percent** of detained immigrants do not have counsel by the time their cases are completed.43

The Study also revealed that:

- People facing deportation in the New York immigration courts with a lawyer are **500 percent** as likely to win their cases as those without representation.

The two most important variables affecting a successful outcome (i.e., termination of proceedings or the grant of some form of relief) were having representation and being free from detention during the pendency of removal proceedings.44 The Study reported, with respect to the positive impact of representation on a successful outcome, that:

- **74 percent** of nondetained immigrants with representation (who were either released or never detained) have successful outcomes whereas only **13 percent** of nondetained immigrants without representation have successful outcomes; and
• 18 percent of detained immigrants with representation have successful outcomes whereas a mere 3 percent of detained immigrants without representation have successful outcomes.45

Although there are approximately 100,000 attorneys in New York City46—more than in any other city on earth—legal representation is nonetheless beyond the reach of many in deportation proceedings. The NYIR Study Report: Part I documents that fifteen miles across the Hudson River, in Newark Immigration Court, detained immigrants (many of them New Yorkers housed in northern New Jersey detention facilities) are unrepresented in 78 percent of deportation cases.47 Based upon the most recent data available, approximately 1,050 immigrants a year facing deportation at the Varick Street Immigration Court (the venue for detained cases in New York City) are unrepresented, while approximately 750 detained New Yorkers a year are unrepresented in the New Jersey immigration courts in Newark and Elizabeth. An additional 3,000 nondetained immigrants a year are unrepresented at the 26 Federal Plaza Immigration Court (the venue for nondetained cases in New York City).

B. The Consequences of Detention and Deportation on New Yorkers

As the data above demonstrates, lack of representation for immigrants facing deportation translates directly to larger numbers of deportations. In New York City, the effects are palpable, as children are left without parents, spouses are separated, and the City must fill in the gaps left by deported members of the community.

The grim consequences that the increase in deportations has on families have been studied and well documented on a national level. Between FYs 1998 and 2007, 108,434 noncitizen parents of U.S. citizen children were removed.48 More recently, between January 1, 2011, and June 30, 2011, DHS reported that it had removed 46,486 persons who claimed to have at least one U.S. citizen child.49 These dramatically rising figures forecast that, if the current rate of deportation continues, DHS will deport more parents in two years than it did over the previous ten-year period (a 400 percent increase).50 While these numbers are not disaggregated by cities and states, areas with large immigrant populations, like New York, feel the brunt of the familial dislocation attendant to deportation.51

The financial and psychological effects of a parent’s arrest, detention, and removal on their U.S. citizen children have increasingly drawn the attention of leading NGOs and researchers. In 2009, The Urban Institute examined the short-term trauma and long-term financial and...
emotional harms caused to children following an immigration enforcement action.\textsuperscript{52} A subsequent Urban Institute study investigating six cities reported that not only did household income decline, but also more than half of the families studied eventually relied on assistance from community organizations for basic needs and the number who relied on food stamps and public assistance increased significantly.\textsuperscript{53} The Applied Research Center documented that, in 2011, at least 5,100 children were in foster care as a result of an immigrant parent's detention or removal.\textsuperscript{54}

The steep rise in deportations has had a severe impact on New Yorkers and their families. Since New York has one of the highest concentrations of immigrants in the United States,\textsuperscript{55} it is not surprising that the effect of immigration laws and policy is so strongly felt here. There are more removal cases than almost anywhere in the country: 63,516 new deportation cases were begun against New Yorkers between 2005 and 2010, the time period reflected in the NYIR Study Report: Part I.\textsuperscript{56} In FY 2011 alone, 27,693 new matters were filed in New York City (at 26 Federal Plaza and Varick Street) while another 887 cases were filed in the regional courts (Fishkill and Ulster).\textsuperscript{57}

A July 2012 report analyzed DHS data, which included the data underlying the NYIR Study, to more closely investigate, for the first time, the impact of immigration enforcement on New Yorkers in particular.\textsuperscript{58} It concluded that, increasingly, New Yorkers face deportation while in detention for long periods of time. More than 34,000 New Yorkers were arrested and detained by DHS between October 2005 and December 2010.\textsuperscript{59} The annual rate of detention has increased nearly 60 percent since 2006, which is the first full year captured by the DHS data.\textsuperscript{60} It also revealed that bond-setting practices play a significant role in the rising rate of detention. Four out of every five New Yorkers arrested by DHS have no bond set and therefore no opportunity to remain at liberty during the pendency of their removal proceedings.\textsuperscript{61} Moreover, it found that bond amounts set in New York City are higher, on average, than the national norm. Unsurprisingly, almost 50 percent of all detainees for whom bond is set remain detained because they simply cannot afford to pay such high amounts.\textsuperscript{62} For these reasons, a full 91 percent of those who are initially detained stay detained, either because they never have bond set, or the bond amount is prohibitively high.\textsuperscript{63} As a result, large numbers of New Yorkers struggle to represent themselves in removal proceedings while behind bars.

The greatest number of affected New Yorkers are residents of Queens (35 percent of all detained New Yorkers) and Brooklyn (29 percent).\textsuperscript{64} Nineteen percent of detained New Yorkers are Bronx residents, 14 percent are from Manhattan, and 3 percent live in Staten
Island.65 Within these boroughs, not surprisingly, certain neighborhoods with large immigrant populations have been hit the hardest: Washington Heights/Inwood, Jamaica, Bedford-Stuyvesant/Crown Heights, Hunts Point/Mott Haven and Fordham/Bronx Park.66

The devastating impact of immigration detention on U.S. citizen children in New York mirrors the trend nationwide. Since DHS decisions about who is detained rarely account for an individual’s ties to U.S. family and their community, these choices may seriously threaten the safety, health, and well-being of children whose parents are detained. In recent years, DHS has detained parents of U.S. citizen children in record numbers without regard to the impact on families or communities. At least 13,500 U.S. citizen children in New York had a parent detained by DHS between 2005 and 2010,67 of those children, more than 87 percent were separated from their parents during the pendency of the proceedings since they were detained without bond.68 Troublingly, this practice is on the rise. In 2010 alone, ICE apprehended the parents of at least 3,382 U.S. citizen children in New York City, which is a 169 percent increase over 2006.69

The effects on children of detained parents are, in general, even worse at the conclusion of proceedings because they may be permanently separated from their parents if their cases end in deportation. Between 2005 and 2010, U.S. citizen children living in New York lost 3,887 parents to deportation, which amounts to 17 percent of the cases completed in New York during this period.70 These figures would be even larger if one were to include the additional impact when DHS detains and deports parents of children who, although not U.S. citizens, nonetheless have lawful permanent resident or other legal immigration status in the United States.71

Detention and deportation wreak havoc on New York families. They often result in the loss of a primary breadwinner, creating instability for children and the inability of a parent to protect his or her custody of the child when it is challenged by the other parent or the state. It also traumatizes both parent and child. According to a 2010 psychological study by The Urban Institute, children of detained parents “experienced severe challenges, including . . . adverse behavioral changes . . . . [A]bout two-thirds of [these] children experienced changes in eating and sleeping habits. More than half . . . cried more often and were more afraid, and more than a third were more anxious, withdrawn, clingy, angry, or aggressive.”72
Given the high stakes for those facing deportation, their families who face permanent separation from their loved ones, and the community that must pick up the pieces when families are shattered, the legal rights of people facing deportation must be adequately protected. The NYIR Study Report: Part I demonstrated that legal representation is critical to that endeavor.

Since the data from the year-one report makes clear that the representation crisis and its concomitant effects affect a higher percentage of respondents who are indigent and detained in the New York region, that population is the logical starting point for closing the representation gap. As the first NYIR Study report details, this population faces the greatest barriers to accessing counsel. When detained respondents lack counsel, the obstacles are compounded and a successful outcome is nearly impossible; indeed, only three percent of unrepresented, detained respondents obtain relief. Moreover, the liberty interest at stake for detained respondents is significant since they may remain behind bars during deportation cases that can take months, or even years. Finally, the resulting damage that deportation proceedings cause to families and communities is most severe in detained proceedings—where, for example, families lose access to breadwinners, children lose access to parents, and employers lose access to workers. This Project, therefore, focuses on the most urgent need: solutions for providing representation to immigrants who are detained and facing removal. This focus does not imply, however, that nondetained respondents do not also have a compelling need for legal representation. They face similar barriers to representation and impact from the lack thereof; efforts must be made to expand access to quality representation for this population as well.

Barriers to representation faced by those in detention are far higher than for those who are not detained. Sixty percent of detained individuals appearing before the Varick Street Immigration Court, which is located in the heart of Manhattan, lack counsel. Seventy-eight percent of the detained respondents appearing before the Newark Immigration Court have no representation. In contrast, only 27 percent of nondetained respondents (still a significant number but clearly not as severe) in New York lack representation—less than half and approximately one-third, respectively, of the Varick and Newark rates for detained respondents.

Purely from a logistical standpoint, the prospect of representing a client in detention can be dissuasive. In the absence of a central structure with institutional knowledge, detention poses an enormous disincentive to attorneys—whether fee-charging, nonprofit, or pro bono—when considering whether to take such cases. The locations of the detention centers alone deter lawyers. These facilities are all outside of New York City, several at considerable distances, and are difficult to access by public transportation. Seven of the area immigration detention facilities
are located in northern New Jersey and an additional one in Orange County, New York. Without the efficiency that comes with structured systems of representation, the time and effort required to represent an immigrant in detention can be daunting for an attorney trying to navigate logistical obstacles alone. First, there must be time to travel to detention facilities in New Jersey and upstate New York, which often must be done by public transportation, and frequently multiple visits are necessary in order to properly prepare the case. The attorney must then wait for jail officials to produce the client, sometimes for hours. Additionally, there are obstacles to communicating with the client between visits and court appearances, complications and costs of obtaining interpreters (when needed), and the added difficulties of obtaining and reviewing relevant documents. However these strains, which are similar to those in the criminal justice system, would be greatly alleviated by the systemized procedures that result from institutionally-provided representation.

Immigration hearings for detained respondents most often take place in difficult to access locations. Detained cases are heard in six immigration court locations in the New York area. While the Varick Street and the Newark courts are located in urban areas with public transportation, the Elizabeth court is in an industrial area that is difficult to access. The three New York State prisons with immigration courts in the region (where the overwhelming majority of immigrants whose cases are heard are New York City residents) are 40 to 100 miles from New York City.

In addition to the added time and effort of travel and attempts to overcome communication difficulties, detention itself undermines access to counsel. A recent report concerning the limitation on access to counsel for immigration detainees exposed some of the reasons for this. For example, the report found that lawyers’ visits are frequently obstructed by detention center personnel who rely on outdated rules or regulations. When access is not barred, it is restricted. These officers also discourage detainees from seeking counsel. While not all impediments exist at all detention centers, the report contains anecdotes from attorneys who describe arriving at a detention center only to be denied access altogether, having to wait a whole day for a short client meeting, or being told that the documents that would allow entry to the facility were unacceptable. These problems can occur at the county jails, at privately-run centers, and at DHS facilities.

These obstacles, including the vagaries of the detention system, the travel time, and the complications of finding interpreters and securing documents, combine to undermine the good-faith efforts of even the most committed volunteer lawyers who have many competing
pressures from their full-time jobs.

Existing legal resources, whether nonprofit, volunteer, or private, cannot satisfy the unmet legal needs of immigrants in removal proceedings generally, and in detained removal proceedings especially. Over the years, considerable and worthy efforts have been made to fill this gap through representation by pro bono counsel. However, given the rising need for such services, pro bono efforts cannot keep pace with the demand. Even among those respondents with cases at Varick Street and 26 Federal Plaza who are successful in obtaining counsel, only one percent are represented by pro bono counsel. To be sure, greater efforts to procure pro bono counsel could increase that percentage incrementally. However, experience and economic reality make clear that pro bono representation cannot fill that gap, particularly for those in detention where the barriers to representation are so onerous that they deter many pro bono lawyers.

Nor can existing nonprofit resources meet the demand for counsel for detained New Yorkers. The data shows the limited capacity of law school clinics and nonprofits—at least at their current level of funding. Of those nondetained respondents in New York who were able to get representation, only six percent were represented by nonprofits and less than one percent were represented by law school clinics. Of the 40 percent of detained respondents who were able to get representation, less than one percent were represented by law school clinics and, after adjusting the data to exclude the one representative whose accreditation was revoked, only three percent were represented by nonprofits.

Of those individuals facing deportation in New York who do manage to obtain representation, the vast majority—93 percent of nondetained respondents and 63 percent of detained respondents—are represented by private lawyers. But private attorneys confront the same practical difficulties as other lawyers when attempting to represent detained respondents. Even the private attorneys who are willing to represent detainees often charge higher fees because of the significantly greater logistical challenges attendant to representing detained respondents. And, it is much harder for people in detention to afford counsel because respondents cannot earn a living while in detention, which makes it difficult to pay legal fees at all, let alone at a higher rate. This problem is exacerbated in detained cases, where the comparative speed of proceedings provides less time for respondents and their families to scrape together legal fees. The net result is that, without some assistance in accessing counsel, these individuals stand a very high chance of being deported and there is a very high chance that New York will have to pick up the pieces of broken homes.
Building on the data from the NYIR Study Report: Part I and the collective experience of the Steering Committee members, the Committee recommends implementation of the Project, which is targeted to the area of most intense need for New Yorkers. This would be the first indigent deportation defense system in the nation and would serve as a model of how to provide a basic measure of fairness and due process to immigrants facing the prospect of permanent exile from their homes, their families, and their livelihoods. Implementing such a system would be a landmark breakthrough for New York immigrants and for the nation as a whole.

Accordingly, we set forth below our recommendations, which are explained in the sections that follow, for the establishment of the Project that:

- Functions through a **universal-representation**, institutional-provider model with screening only for income eligibility.
- Operates through contracts with a **small group of institutional immigration legal service providers** who are in a position to handle the full range of removal cases and who can capture the efficiencies of scale and minimize administrative complexities.
- Works in **cooperation with other key institutional actors**, such as DHS and EOIR, to ensure efficient attorney-client communication, timely access to critical documents, and coordination of court calendars.
- Provides **basic legal support services**, such as access to necessary experts, translation/interpretation services, social work and mental health assessment services, and investigative services.
- Derives funds primarily, or significantly, through a **reliable public funding stream of new resources that does not divert existing resources**.
- Is overseen by a coordinating organization that provides **centralized oversight and project management**.

### A. Universal Representation

The Project will strive to serve all income-eligible individuals in the detained population whose immigration hearings are held at the Varick Street, Newark, and Elizabeth immigration courts, as well as those whose hearings are held at New York State prisons through the IRP, with a goal of full representation for all detainees. Only individuals who meet designated income guidelines will be eligible for representation through the program. Once income eligibility is determined, however, cases will be accepted for full representation without any determination of the merits of the case.
Universal representation is key to protecting the due process rights of immigrant detainees, for several reasons. As noted above, universal representation is essential to the just disposition of removal cases. The extraordinary complexity of modern immigration law makes it all but impossible to accurately assess relief eligibility without detailed factual investigation and legal research. Neither of these things can be accomplished at an initial screening interview, no matter how detailed, and detainees’ restricted access to relevant records or information makes the task even more impractical. Some kinds of relief from removal, such as persecution-based relief or special remedies for victims of domestic violence, trafficking, or other crimes, relate to sensitive or painful experiences that a detainee may be unwilling or unable to divulge to an attorney before a relationship of trust has been established. Other kinds of relief, such as claims to the automatic acquisition of citizenship from parents or grandparents, hinge on facts that may be unknown to the respondent and which require investigation. Still other forms of relief depend on the nature of prior criminal proceedings, which may require obtaining plea or trial transcripts or other official records that take time to unearth. Representation models that rely on merits-based screenings to limit services inevitably fail to uncover meritorious claims to relief. Meanwhile, for the reasons described above, the hardships of immigration detention put immense pressure on individuals to forego valid claims to relief in order to avoid prolonged custody. Such life-altering decisions about the abandonment of a defense to deportation should only be made with the advice and counsel of an attorney who has enough information to accurately advise his or her client of the probability of a successful defense and the consequences of abandoning it.

Second, immigration detention is a significant harm in itself. Detainees are frequently transferred among facilities, particularly in the first several weeks of DHS custody. The combination of transfer and the lack of a standardized system for telephone access or family visitation can make it very difficult for detainees and their families and support networks to maintain contact at the critical early stages of a removal proceeding. In addition, DHS’s failure to ensure the provision of consistent and adequate medical care in these facilities is well documented. Every detained immigrant therefore deserves a capable advocate who can intervene with DHS and local custodial authorities to safeguard her or his physical well-being, help to maintain contact with family and loved ones, and advocate for release from custody at the earliest possible juncture.

Finally, in those cases in which it can quickly be determined that there is no meritorious defense to removal, it is advantageous to the respondent, the court and the government to
equip the respondent with this knowledge at the earliest point possible. Given the importance of beginning the relief eligibility assessment process right away and the significantly increased likelihood of release from detention when a detainee is represented by qualified counsel, the Project will initiate contact with potential clients at the earliest possible stage, but no later than the first master calendar hearing in immigration court. Representation will begin immediately upon a determination that the individual is income-eligible.

B. Implementation Through a Small Group of Institutional Providers

We believe representation responsibilities should be divided among a small number of participating service provider organizations (“SPOs”). Each SPO will conduct intake screenings to determine income eligibility for representation by the Project, and will take on cases for representation. To minimize administrative costs and inefficiencies, a system of case intake will be developed to randomize case distribution among the participating SPOs. For example, each SPO could be assigned a day of the week to interview and represent all eligible individuals at a particular master calendar hearing in a particular immigration court. The assigned SPO will then remain responsible for the case for its duration. Representation will be available at all stages of an immigration court proceeding, including master calendar hearings, bond proceedings, merits hearings, and appeals.

A limited number of SPOs will be selected through an open and transparent bidding process which carefully scrutinizes for quality representation and experience in the field. SPOs may be existing law firms or nonprofit legal service organizations, or may be new consortia of nonprofit organizations or private firms that join together to bid for a contract. Each SPO, however, will be collectively accountable as a single unit for the provision of the contracted services. Consistent with most publicly funded systems for the provision of legal services, SPOs will contract with the administering agency to represent a minimum number of detained individuals in removal proceedings in each program cycle. The “deliverable” outcome for the SPOs will be the number of cases in which they provide representation.

Limiting the contract to a few SPOs capable of providing a high volume of services reduces administrative overhead costs; facilitates EOIR and DHS cooperation with SPOs to maximize the efficiencies in completing cases; allows for greater program oversight and accountability at lower cost; and allows for more efficient sharing of legal resources and training among providers. In seeking a solution to the gap in representation for detained persons facing deportation in the New York region, the Project would not displace or undermine existing service providers. A
number of organizations currently provide or coordinate the services of pro bono or reduced-
fee legal services to specific populations (such as domestic violence victims, or natives of
certain countries or regions) or to respondents in removal proceedings who are raising
certain defenses to removal (such as asylum claims). The expertise of these organizations is a
valuable asset that this proposed system for universal representation would maximize rather than
supplant. SPOs will be encouraged to collaborate with these organizations as co-counsel,
to refer them appropriate cases, or otherwise capture their expertise. In addition, as noted
above, the Project would not provide representation to respondents who otherwise would
retain private counsel. If representation is undertaken initially but the client is subsequently
released, the Project will determine whether the client will be required to seek private counsel
due to income ineligibility or whether representation will continue.

To assure the highest possible quality of representation, all organizations providing legal
services must develop and maintain a system of recruiting, supervising, training, and retaining
qualified lawyers.

C. Cooperation with Key Institutional Actors: DHS & EOIR

In order for this Project to function smoothly—a benefit to respondents, the government and the
immigration courts—it is imperative that the Project work cooperatively and in conjunction with
both DHS and EOIR to improve the current conditions that undermine effective representation.
These steps will not only assure a high quality of legal representation, but also increase
efficiency and fairness in the entire adjudication process. We identify here several areas where
cooperation will be key:

- The Project will seek to work with DHS and local detention centers (whether public or
private) to ensure efficient attorney visits and access by lawyers, law students, paralegals,
investigators, interpreters, and other support personnel.
- The Project will seek to work with DHS to ensure that attorneys are able to communicate
with their clients privately and efficiently. This requires adequate time and space for private
attorney-client visits both at detention locations and at immigration court, confidentiality
of telephone calls and other communications, sufficient access by detainees to phones to
both place and receive calls, videoconferencing capacity, photocopying, and incoming and
outgoing legal mail.
- The Project will seek to work with DHS and EOIR to ensure regular, routine, voluntary, and
prompt disclosure of all documents in their possession regarding each case and to facilitate
systematic access to records and documents in possession of local and state agencies.

- The Project will seek to work with EOIR to calendar cases to accommodate the schedules of lawyers from the SPOs.

D. Provision of Basic Legal Support Services

To provide adequate legal representation, the SPOs will need a range of legal and extra-legal support, including: language services, social work and mental health services, expert services, and investigative services. Such support services enhance the quality of representation because staff perform services that attorneys are not trained for and also is cost-efficient because support staff can do work that does not require a law degree.

- Language Services: Detainees with limited English language ability must be provided reliable in-person interpretation and document translation as well as access to a language-service line on telephones.

Deportation defense, by its nature, involves a client population from a wide range of ethnic and linguistic backgrounds. The necessity of adequate language services is widely recognized as a prerequisite to adequate legal representation. The best solution is multilingual staff, such that lawyers can communicate directly with clients in their best language. The use of a smaller group of institutional providers with larger legal teams devoted to the Project will allow such providers to prioritize the hiring of multilingual staff. However, regardless of staffing, the nature of the work is such that providers will, at times, have to employ outside translators and interpreters.

- Social Work and Mental Health Services: Services of social workers and/or mental health specialists must be made available to provide adequate mental health assessments, to provide written and oral testimony, and to facilitate access to health and social services to individuals while in detention and after release.

Social work and mental health services can be critical to serving an indigent detained population in the deportation context. Mental health expert assessments, and sometimes testimony, are necessary to adequately present claims for many forms of relief from deportation. Persecution-based claims, such as asylum, routinely rely on mental health assessments to evaluate the impact of past persecution and the fear of future persecution. More generally, the psychological toll that deportation will have on an immigrant facing deportation, or their
family members, is often a central issue in a deportation case. In addition, mental health experts are essential if an attorney is attempting to mount a defense to deportation or request an exercise of prosecutorial discretion premised on a mental illness or a lack of mental capacity. Treatment plans are often necessary to secure release, or even possibly relief, for a respondent with a mental disorder.

- **Expert Services:** Expert witnesses to provide evidence of country conditions and other forms of relief.

In addition to mental health experts, a wide variety of other experts are sometimes necessary. Most commonly, experts in country conditions are a routine part of most adequate applications for persecution-based relief. Medical experts are also frequently necessary to demonstrate past persecution. Forensic experts can be critical to establish a lack of future dangerousness.

- **Investigative Services:** Investigators to unearth relevant documents and locate witnesses.

In deportation proceedings, investigative services can be critical both in challenging erroneous removal charges and in winning claims for relief from removal. The allegations related to the removal charge commonly involve, for example, claims of technical violations, fraud, or criminal convictions. In all of these cases, tracking down the relevant documents and/or witnesses necessary to defend against an erroneously-lodged charge is a time-consuming endeavor most effectively accomplished by trained, dedicated investigators. In addition, virtually all forms of relief from removal require a presentation of the broad equities of the individual and his or her family, which requires the collection of records, documents, and witness statements related to family, taxes, work, education, religious practice, community involvement, medical and mental health history, and many other realms requiring the services of an investigator. Again, the economies of scale offered by an institutional provider reduce these costs.

### E. Necessity of a Reliable Public Funding Stream

A reliable public funding stream is the only realistic mechanism to sustain a long-term system. While it is possible and desirable that philanthropic sources could play a critical role in launching the Project, few private sources will commit the amount of funds over time required to carry out the mission of the Project. Significant funding for other indigent civil legal service areas has historically been available through reliable government funding streams—from the
Legal Services Corporation, state or city governments, or IOLA programs—although such funding generally covers only a small percentage of the need. In contrast to even these inadequate levels of support, government funding has thus far played a de minimis role in deportation defense work notwithstanding the widespread recognition of the gravity of the stakes in deportation cases.

Funding by New York State and City for the representation of indigent immigrants in removal proceedings would not be wholly novel. Both the City and State have already acknowledged the appropriateness of this responsibility but have only provided funds to a very limited extent. The New York City Council funds a number of nonprofit organizations that serve the immigrant community, but a very low percentage of those funds go towards the defense of New Yorkers in removal proceedings and an infinitesimal portion is devoted to the defense of detained New Yorkers facing deportation. More recently, in 2011, New York State provided funds for ten new immigration lawyers—one at each of the New York City criminal defender borough offices—to help ensure that defendants were receiving constitutionally appropriate advice regarding the immigration consequences of contemplated plea agreements. While this is a good beginning, the effort must be greatly expanded in order to truly address the crisis.

It is critical to clarify that the Project seeks to fill a gap in representation, but does not—and cannot—take the place of the various immigrant legal services that organizations currently offer. Therefore, the funds that the Project seeks would be new resources devoted to immigrant representation and would not divert resources from existing providers.

F. Centralized Oversight and Project Management

The Project will be administered by a coordinating organization, which will serve as the primary grantee and fiscal agent for all program funds. The coordinating entity will be a neutral organization (i.e., one not involved in the delivery of the legal services) with a demonstrated track record of responsible program oversight and grant administration. This organization will be the prime contractor with the funder in order to avoid wasteful overhead expenses of creating a new nonprofit entity.

The coordinating organization will: determine reimbursement rates and promulgate requests for proposals; select SPOs and negotiate and award subcontracts to carry out the program; collect program data for quality assurance and reporting to funders; facilitate the sharing of legal resources; and coordinate training among SPOs.
It is particularly critical that the coordinating organization work with EOIR, DHS, and other relevant agencies to develop efficient procedures and for the timely sharing of necessary documentation. To achieve success, the organization will work with the SPOs, EOIR, and DHS to coordinate the scheduling of court hearings and to ensure proper client access for attorneys, interpreters, witnesses, and other parties to the hearings.

This organization will also coordinate resources and training for the legal services providers, support staff, and others involved in the Project.
Threatening hundreds of thousands of people each year with banishment from home and family and forcing them to navigate alone a legal system our courts describe as “labyrinthine” strains any conception of justice. There is no doubt that the federal government, which runs this system, is responsible for ensuring a fair process with adequate legal representation for immigrants who cannot afford private counsel. But it is also incumbent upon cities and states like New York, which value their immigrant communities, to ensure that such communities are not devastated by wrongful deportations that could have been prevented simply through the provision of counsel. New York can and should be a national leader in providing access to counsel, an essential element of due process, to indigent New Yorkers caught up in removal proceedings. While a number of states have entered the immigration arena in ways generally hostile to immigrants, a more enlightened New York City and New York State could be among the first to use state and local power to preserve the rights of immigrants, to keep immigrant families intact, and to retain the vibrant immigrant character of its diverse communities.

The proposed Project is ambitious, but realistic. It represents a serious and practical step that New York can take to bring justice to its residents, protect its immigrant communities, and provide a model for other communities across the nation. By demonstrating the feasibility and impact of an institutional-provider model for universal representation in deportation proceedings, we can bring our nation’s immigration system a significant step closer to the standard of justice that we expect to see in all of our courts.
Endnotes


4. INA § 240 (b)(4)(A); 8 C.F.R. § 1003.16.

5. EOIR, Dep’t of Justice, FY Statistical 2010 Yearbook at G-1. This EOIR statistic represents a combination of detained and nondetained cases. A recent report found that, “[i]n our analysis of completed cases that began in detention in 2006, the nationwide representation rate was 14 percent; the rate was even lower for cases that began and ended in detention.” *Vera Inst. for Justice, Legal Orientation Program Evaluation and Performance and Outcome Measurement Report, Phase II* at 59 (May 2008).

6. Id. at 59-60.


10. The NYIR Study tracked data from October 1, 2005, through July 13, 2010, provided by EOIR that identified cases initiated in that time period in the New York immigration courts. See NYIR Study Report: Part I, supra note 7, at 368. The total number of cases in that almost five-year period was 55,999. Id.

11. Id. at 363.

12. The Project focuses on this segment of the population as an initial step and with full recognition of the significant need amongst the nondetained population for improved access to quality legal representation. It is hoped and expected that subsequent efforts will fill that gap as well.

13. The most common charging documents are the Notice to Appear (“NTA”) and the Notice of Referral to Immigration Judge.


15. ICE, DHS, Memorandum on Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, Policy No. 10075, FEA No. 306-112-0026 (June 17, 2011).

16. INA § 240 (b)(4)(A); 8 C.F.R. § 1003.16.

17. INA § 236(c).

19. In New York City, there was a detention center run by DHS at Varick Street, but that facility is now closed. The only time that respondents are detained there is during the day while immigration court is in session. The NYIR Study Report: Part I found that approximately two-thirds of noncitizens arrested in New York City are transferred to facilities outside the City, which are oftentimes as far away as Louisiana or Texas. See NYIR Study Report: Part I, supra note 7, at 363; see also HUMAN RIGHTS WATCH, LOCKED UP FAR AWAY at 1-2 (2009), available at http://hrw.org/sites/default/files/reports/us1209webcover_0.pdf (documenting transfer phenomenon and finding that transfers "erect insurmountable obstacles to detainees’ access to counsel, the merits of their cases notwithstanding, . . . impede their rights to challenge their detention, lead to unfair midstream changes in the interpretation of laws applied to their cases, and can ultimately lead to wrongful deportations").

20. In 2010, the IRP completed 5,794 cases. EOIR, DEP’T OF JUSTICE, FY 2011 STATISTICAL YEARBOOK at P-1.


22. INA § 240(b)(4)(A) (stating that “the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings”); 8 C.F.R. § 1003.16.


25. Id. at 3.


27. 130 S. Ct. 1473, 1483 (2010).

28. Id. at 1480.


30. See, e.g., In re Gault, 387 U.S. 1, 41 (1967) (right to counsel in juvenile delinquency hearings).

31. Relevant factors in this analysis include (1) the nature of “the private interest that will be affected,” (2) the comparative “risk” of an “erroneous deprivation” of that interest with and without “additional or substitute procedural safeguards,” and (3) the nature and magnitude of any countervailing interest in not providing “additional or substitute procedural requirement[s].” Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976).


33. Id. (quoting Bridges v. Wirson, 326 U.S. 135, 154 (1945)).

34. “The majority of states have determined that due process mandates the appointment of counsel for indigent
parents before their parental rights may be terminated. Because parental rights are often terminated once a parent is deported, a removal hearing may be the only hearing that the parent receives before her rights are terminated. To refuse counsel to immigrants when such a fundamental right is on the line seems to violate due process."


35. Landon, 459 U.S. at 34.


37. There are also substantial risks to those being held in detention facilities pre- and post-hearing. A lack of transparency leads to "more than one in ten immigrant detention deaths [being] overlooked and omitted from a list submitted to Congress" amid poor medical treatment within detention facilities. Nina Bernstein, Officials Hid Truth of Migrant Deaths in Jail, N.Y. TIMES, Jan. 9, 2010, http://www.nytimes.com/2010/01/10/us/10detain.html.


41. Recent data suggests that in 2010, well over 4,000 U.S. citizens were mistakenly detained or deported, raising the total since 2003 to more than 20,000. Jacqueline Stevens, U.S. Government Unlawfully Detaining and Deporting U.S. Citizens As Aliens, 18 VA. J. SOC. POL’Y & L. 606, 608 (2011); Aarti Kholi, Peter L. Markowitz, & Lisa Chavez, Secure Communities By the Numbers: An Analysis of Demographics and Due Process at 4 (2011) (reporting that 1.6 percent of people arrested through the Secure Communities program were U.S. citizens); see also Compl., Turner v. Holder, No. 4-10-CV-2683 (S.D. Tex. May 22, 2012) (a fifteen-year-old U.S. citizen was deported to Colombia without counsel in her removal proceeding after lying about her identity); Lyttle v. United States, 4:11-CV-152 CDL, 2012 U.S. Dist. LEXIS 46211 (M.D. Ga. Mar. 31, 2012) (a U.S. citizen with diminished mental capacity was deported to Mexico without counsel in his removal proceeding after officials mistakenly identified him as a noncitizen).

42. Seventy-four percent of represented nondetainees obtained successful outcomes while only 13 percent of those who were unrepresented did. NYIR Study Report: Part I, supra note 7, at 385, tbl. 5. Eighteen percent of represented detainees obtained successful outcomes while only three percent of unrepresented detainees did. Id.

43. NYIR Study Report: Part I, supra note 7, at 368. During the period studied in the first report, a representative accredited by the BIA represented 20 percent of the detained immigrants at Varick Street. After that representative lost his accreditation in May 2011, the percentage of individuals unrepresented at Varick Street likely rose from 60 to 68 percent. See id. at 368 n.20.

44. Id. at 363-64.

45. Id.


47. NYIR Study Report: Part I, supra note 7, at 373.

48. DHS, Office of Inspector General, OIG-09-15, Removals Involving Illegal Alien Parents of United States Citizen Children 4 (2009); see also Int’l Human Rights Clinic, Univ. of Cal., Berkeley School of Law, et al., In the Child’s Best Interest? The Consequences of Losing a Lawful Immigrant Parent to Deportation 5-6 (2010) (examining the impact of separation on health, social development, and education); Women’s Refugee Commission, Torn Apart by Immigration


51. From 2005 to 2010, almost 77 percent of all DHS apprehensions in New York were effected through coordination between local jails and prisons and DHS. INSECURE COMMUNITIES, infra note 58, at 6. This cooperation is certain to increase, as Secure Communities, a federal enforcement initiative, has the potential for causing many thousands more to be placed in removal proceedings. This broad expansion of NYC-DHS cooperation is likely to result in a major increase in New York immigrant detentions and placements into removal proceedings.


54. APPLIED RESEARCH CTR., supra note 50, at 22.

55. See U.S. CENSUS BUREAU, THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2010 at 4-5 (2012) (noting that New York State had the second-highest percentage of foreign-born residents (22 percent of the state’s population) and the second highest number of foreign-born residents nationally (10.8 percent of the foreign-born residents in the nation)); see also U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, NEW YORK (CITY), http://quickfacts.census.gov/qfd/states/36/3651000.html (last visited Oct. 13, 2012) (noting that, for the period between 2006 and 2010, 36.8 percent of New York City residents were foreign-born residents).


57. EOIR, DEPT. OF JUSTICE, FY 2011 STATISTICAL YEARBOOK B-3. Note that “matter,” as used in the EOIR Statistical Yearbook, is not the same as “cases” used in the Study’s 2011 report; there can be several “matters” as defined by EOIR in one “case” as defined by the Study.

58. NYU SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC, ET AL., INSECURE COMMUNITIES, DEVASTATED FAMILIES: NEW DATA ON IMMIGRATION DETENTION AND DEPORTATION PRACTICES IN NEW YORK CITY (2012) [hereinafter INSECURE COMMUNITIES].

59. Id. at 5.
60. Id. at 2.
61. Id. at 9.
62. Id. at 10. While the nationwide average amount for an immigration bond is $5,941.64, the average bond in New York is $9,831. AMNESTY INT’L., JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA at 17 (2009).

63. INSECURE COMMUNITIES, supra note 58, at 12.
64. Id. at 6-7.
65. Id.
66. Id. at 7.
67. Id. at 18. This is most probably an underestimate. DHS data received by the New York University School of Law Immigrants Rights Clinic contained a free text data field for “number and nationality of children.” Some of those fields were left blank, some indicated that there was no information available, and others were entered without
specifying children’s nationalities. These, therefore, could not be included in the tally of detained parents with U.S. citizen children. Id. at 17.

68. Id. at 19.
69. Id. at 18.
70. Id.
71. Id.
72. Chaudry, supra note 53, at viii, ix.
73. This is in addition to the liberty interest at stake for all individuals facing deportation and therefore the chance of permanent exile from home and family.
74. See supra n. 43 (explaining why the 60 percent unrepresented rate is likely now 68 percent).
75. NYIR Study Report: Part I, supra note 7, at 373, fig. 2.
76. Some people in detention are transferred to far-off locales. Id. at 363 (finding that DHS transferred approximately 64 percent of people arrested in New York City between 2005 and 2010). DHS claims that it currently transfers fewer people. However, the decision regarding transfer is made by DHS alone and DHS continues to maintain that it has authority to transfer any detainee to any place in the country at any time.
77. In addition, there are three New York State prison locations with immigration courts: Fishkill, Ulster, and Bedford Hills.
78. Unlike most of the rest of the country, many New Yorkers, including many lawyers, do not own cars.
79. There are many other hurdles when representing detained respondents. For example, the Elizabeth Detention Facility forbids attorney-client visits on the day of appearances in the Elizabeth Immigration Court if the client is detained, for long-term purposes, in another facility.
80. A recent New York State Bar Association report describes the lack of representation at IRP hearings at these facilities as “dire.” REPORT OF THE SPECIAL COMMITTEE ON IMMIGRATION REPRESENTATION (June 2012), available at http://www.nysba.org/Content/NavigationMenu90/SCICF150064h12406510615SpecialCommitteeonImmigration RepresentationHome/SCIRFinalReportApproved.pdf. Other problems that frustrate detainees’ access to counsel and ability to defend themselves include the inability to get translation assistance for people with limited English, frequently broken phones, limited phone time to call or speak with counsel, and high costs of phone use.
81. LEGAL ACTION CTR., BEHIND CLOSED DOORS: AN OVERVIEW OF RESTRICTIONS ON ACCESS TO COUNSEL (May 2012).
82. Id.
83. Id. 11-12.
84. NYIR Study Report, supra note 7, at 380.
85. Id. at 381, fig. 5.
86. Id.
87. See supra note 43.
88. Id. at 382, fig. 6.
89. Id. at 381, fig. 5.
90. NYIR Study Report: Part I, supra note 7, at 381-82 figs. 5, 6 (reporting that 79 percent of nondetained respondents are represented (and of those, 93 percent are represented by private lawyers), whereas only 33 percent of detained
respondents are represented at all (and of those, 63 percent are represented by private attorneys)).

91. Depending on funding realities, the Project may need to limit its geographic scope initially, for example focusing first on the Varick Street court, and build the regional system over time.


94. Id. at 3-5.


96. While the initial master calendar hearing provides an efficient entry point, in some cases SPOs may be able to initiate income screening and intake and begin to advocate for release from custody, even before an initial master calendar hearing is scheduled—for instance, through visits to DHS facilities or to local criminal jails where individuals are subject to immigration detainers. In such cases, the Project will work with DHS and EOIR to facilitate the scheduling of initial hearings on days when that SPO is responsible for court-based intake. In every case, however, indigent detainees will have been connected to counsel by the time of their first master calendar hearing.

97. The role of these organizations has been vital. However, as noted above, only three percent of detained respondents at the Varick Street court were represented by nonprofit organizations, and pro bono attorneys and law school clinics jointly accounted for less than two percent of represented respondents.

98. Organizations that restrict their work in terms of certain classes of individuals or claims for relief will not be awarded primary contracts as SPOs. This is because investigating cases before assigning the case and then sorting the cases by the organizations’ specializations would greatly increase the cost and complexity of the intake process.

99. The compensation rates for SPOs must reflect the need for such critical support services in addition to the attorney’s time. An institutional provider will allow for efficient provision of these services and access to these services which, in turn, will allow attorneys to devote their time to specialized legal work and thereby, maximize resources.


102. See, e.g., INA § 240A(a), (b).


105. Office of the Mayor, Mayor Bloomberg, Deputy Mayor Robles-Roman, and the Chief Policy Adviser John Feinblatt Announce Expansion of Legal Services for Immigrants (Nov. 21, 2011), http://www.mikebloomberg.com/index.cfm?objectid=C7C4788B-C29C-7CA2-FAF797F528F9EE9E.
106. This feature is applicable only if more than one provider delivers the government-funded deportation defense services.

107. Past experience with consortia of service providers sharing a funding stream counsels against having one of the SPOs doing double duty as the program coordinator; a “neutral” organization that is not directly involved in the provision of services is better able to play oversight and resource allocation roles without engendering tensions or perceptions of self-dealing.

108. Unlike in criminal proceedings, existing laws and regulations do not require the government to share information in its possession other than through a cumbersome and prohibitively slow Freedom of Information Act process. Agreements (like the pioneering agreement reached between the Florence Immigrant and Refugee Rights Project and the immigration courts in Florence and Eloy, Arizona) serve the interests of all actors in the immigration court system because easier access to government records facilitates the efficient disposition of cases, greatly reducing the costs to the government of prolonged detention.


111. *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) ("This case vividly illustrates the labyrinthine character of modern immigration law—a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike"); *Corniel-Rodriguez v. INS*, 532 F.2d 301, 304 (2d Cir. 1976) ("[U]nfortunately, unintentional injustices too often can be visited upon the naive albeit honest noncitizen who is understandably unfamiliar with the labyrinthine intricacies of our immigration laws.").
© New York Immigrant Representation Study Steering Committee. All rights reserved

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopying, or any information storage and retrieval system, without permission from the New York Immigrant Representation Study Steering Committee. A full-text PDF of this document is available for free download from: http://www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

Requests for permission to reproduce excerpts of this report should be directed to studygroupimmigrantrep@gmail.com.
Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity

Deportation cases are the only legal proceedings in the United States in which people are routinely detained by the federal government and are required to litigate for their liberty against trained government attorneys without the assistance of counsel. Yet without an attorney, individuals are rarely able to effectively navigate the immigration legal system. The New York Immigrant Family Unity Project (NYIFUP), a program funded by the New York City Council, is the nation’s first public defender system for immigrants facing deportation. Since November 2013, NYIFUP has pioneered universal representation for detained indigent immigrants in deportation proceedings at the Varick Street Immigration Court in New York City who were unrepresented at their initial hearing.

Employing quantitative analyses of administrative and program data, the Vera Institute of Justice (Vera) studied the impact of NYIFUP on case outcomes by comparing NYIFUP cases to similarly situated cases. Drawing also on extensive stakeholder and client interviews, this report outlines Vera’s key evaluation findings, which include the following:

- **NYIFUP clients have strong ties to New York and the United States.** On average, NYIFUP clients had been living in the United States for 16 years at the start of deportation proceedings. NYIFUP clients were the parents to 1,859 children living in the United States, 86 percent with legal status, mainly citizenship. Forty-one percent of NYIFUP clients entered or resided in the United States legally; 30 percent as lawful permanent residents. These strong ties demonstrate the community’s stake in these proceedings and impact immigration court outcomes.

- **NYIFUP has dramatically improved the chances that non-citizens unable to afford private counsel will receive successful immigration court outcomes permitting them to remain in the United States legally.** Analyzing the cases already completed and using advanced statistical modeling that indicates the likely outcomes of pending cases, Vera has projected that 48 percent of cases will end successfully for NYIFUP clients. This is a 1,100 percent increase from the 4 percent success rate for unrepresented cases at Varick Street before NYIFUP.

- **NYIFUP has met its goal of preserving family unity.** In addition to helping more immigrants win favorable outcomes that allow them to remain in the United States, NYIFUP clients obtain bond and are released from detention at close to double the rate of similarly situated unrepresented individuals at comparable courts (49 percent for NYIFUP versus 25 percent for unrepresented individuals at similar courts). NYIFUP has reunified more than 750 individuals with their families.

- **Universal representation through the NYIFUP model improves fairness and the administration of justice.** The high rates of successful outcomes and releases into the community resulted, at least in part, from high levels of activity by the NYIFUP legal teams in immigration court, on appeal, and in collateral proceedings. While it took, on average, longer for NYIFUP cases to achieve successful outcomes than was true for unrepresented cases, the Varick Street court ran more smoothly and efficiently with lawyers present for virtually all non-citizens facing deportation.

- **The success rate of NYIFUP cases has helped hundreds of New Yorkers gain or maintain legal work authorization, thus contributing to federal, state, and local tax revenue.** NYIFUP is estimated to have helped more than 400 New Yorkers gain or maintain work authorization by winning
their immigration cases. Overall, these successful outcomes are projected to produce tax revenue from this cohort of NYIFUP clients of $2.7 million each and every year, for years to come. The annual increase in tax revenue will be compounded significantly with the addition of each new cohort of NYIFUP clients.

For more information

To read the full report, visit www.vera.org/nyifup-evaluation and, to review the quantitative and qualitative methodological appendices, visit www.vera.org/nyifup-evaluation-methodology. For more information about this report, contact Oren Root, director of Vera’s Center on Immigration and Justice.

The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely upon for safety and justice, and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America’s increasingly diverse communities. For more information, visit www.vera.org.

© 2017 Vera Institute of Justice. All rights reserved.
THE STATE OF IMMIGRATION REPRESENTATION

+680,000
Cases pending in immigration courts nationwide and rising.

63%
Immigrants in removal proceedings without counsel.

6x
An immigrant who has representation is six times more likely to have a successful outcome.

- Millions of immigrants including asylum seekers, long term residents and minor children are at risk of deportation.
- Many are eligible for immigration benefits under U.S. immigration law.
- Many are low-income immigrants who cannot afford counsel.
- There is no right to free legal representation in immigration court.
- Detained immigrants who represent themselves have a 3% chance of success.

IN A LITTLE OVER THREE YEARS...

41,664 INDIVIDUALS HELPED
Including U.S. citizens and Lawful Permanent Resident spouses, parents and children.

20,000
Fellows have handled more than 20,000 immigration matters.

93%
Fellows win 93% of the immigration cases they take on.

3,957
Community Fellows have requested 3,957 application fee waivers for low-income clients.

$2,000,000
Community Fellows saved low-income clients nearly $2 million dollars by requesting application fee waivers.

OUR FELLOWS

141
Justice Fellows (lawyers) and Community Fellows (college graduates) trained to provide legal services.

50
Justice Fellows have graduated from the fellowship program.

96%
Justice Fellows practicing in the immigration field.

77 FELLOWS IN THE FIELD

57 Justice Fellows and 20 Community Fellows.

39 HOST ORGANIZATIONS

Comprised of – not-for-profit legal services providers and community based organizations in New York, New Jersey, Connecticut, and Texas.
The Need
There are few people who are as vulnerable as immigrants, and the urgent need for accessible and affordable competent counsel in deportation proceedings has never been more critical. The U.S. government’s recent aggressive immigration enforcement policies have resulted in the arrest and detention of tens of thousands of long term immigrants, asylum seekers and vulnerable, unaccompanied minor children and mothers with children fleeing extreme violence from their countries of origin. There are three primary issues that have been exacerbated in this climate: volume of quality representation, cost, and success rate.

- **Volume of quality representation:** Today, there are more than 680,000 deportation matters pending in immigration courts nationwide. A justice gap exists because there are few qualified immigration lawyers.

- **High Cost:** While there is a shortage of quality immigration lawyers overall, there are even fewer available for low-income clients. Because there is no right to appointed counsel in immigration court, immigrants are likely to pay high fees to inferior quality private counsel or forced to represent themselves.

- **Success rate:** Representing oneself, significantly reduces chances of success. Recent studies show that a non-detained immigrant with a lawyer has a 74% chance of success, while a detained immigrant representing himself or herself has only a 3% chance of success. For low income immigrants, having a quality attorney is the difference between being allowed to stay in this country with family and suffering catastrophic deportation.

Our Story
**Immigrant Justice Corps (IJC)** is the visionary idea of Chief Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit, the Robin Hood Foundation and other private philanthropy to provide legal representation to poor immigrants. 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. IJC also fosters a culture of innovative thinking that produces new strategies to reduce the justice gap for immigrant families, ensuring that immigration status is no longer a barrier to social and economic opportunity. In little more than three years, IJC has assisted more than 41,664 immigrants and their family members, with a 93% success rate in cases completed.

Our Approach
IJC is the country’s first fellowship program dedicated exclusively to meeting the urgent need for high quality legal assistance for immigrants fighting deportation, and those seeking lawful status or a path to citizenship. 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.

[www.justicecorps.org](http://www.justicecorps.org)
Justice Fellows provide representation in complex immigration matters, particularly in deportation defense. Community Fellows conduct outreach, interview prospective clients, and complete immigration benefit applications for low income immigrants. Presently, there are 77 Fellows (57 Justice Fellows and 20 Community Fellows) working at 39 not-for-profit organizations throughout New York, New Jersey, Connecticut and Texas. IJC Fellows have also travelled to Karnes, Texas, to assist detained Central American mothers and children seeking asylum from gang and domestic violence. IJC will replicate its model in other parts of the country in the coming year and establish an earned revenue program to further increase representation nationwide.

Our Board
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, Co-Founder and President of ASK Foundation; Chief Judge Robert Katzmann; Stephanie Khurana, Managing Director of Draper Richards Kaplan and Robie Spector, Director, Spector Charitable Fund.

Our Accomplishments
IJC has gone from an idea to a fully-formed nonprofit – championed across the country as a new model for serving immigrant families – in little more than three years. This rapid development is due in no small part to extensive financial support from private philanthropy. As an organization, we’ve achieved meaningful progress towards each of the three most pressing needs detailed above - quality representation, lower cost, and higher success rate. Our accomplishments to date:

Increasing volume of quality representation
- We have recruited and trained 140 Fellows (100 lawyers and 40 Department of Justice accredited representatives). The Fellows, selected after a highly competitive selective process, include many first-generation immigrants and bilingual graduates from the country’s top law schools and universities.
- In just three years, IJC has scaled to four states and has plans to reach six more in the next three years.
- Our first two classes of 50 Justice Fellows have graduated from the fellowship program and 96% have secured employment practicing immigration law.
- Our Fellows have screened more than 41,000 immigrants and their families for immigration benefits.
- Our Fellows have substantially increased the capacity of more than 39 large, medium and small size non-profit organizations in New York City, Long Island, Lower Hudson Valley, New Jersey, Connecticut and South Texas to serve more immigrant clients.
- Hosts include The Legal Aid Society, Catholic Charities of the Archdiocese of New York, American Friends Services, Prisoners’ Legal Services, Refugee and Immigrant Center for Education (RAICES), and non-traditional partners like the Brooklyn, New York and Queens Public Libraries.
- Rapid Response Teams: Since September 2015, Justice Fellows and Community Fellows have traveled to Karnes, Texas, on two-week and three-month rotations to provide legal assistance.
to more than 1,000 detained Central American mothers and children who are at risk of deportation, even though they have viable asylum claims.

- We are currently staffed with 77 Justice Fellows and Community Fellows and a core team of six full-time employees.

**Decreasing cost**
- IJC Fellows have worked on more than 20,000 cases with a 93 percent success rate and saved immigrants nearly $2 million in application fees.
- IJC’s free high-quality legal services has also saved clients millions of dollars in private attorney fees.

**Increasing success rate**
- Our Justice Fellows have opened more than 4,300 complex cases and 92% of cases completed have had successful outcomes, avoiding deportation and separation of families.
- Our Community Fellows have filed more than 6,000 benefit applications with a 94% success rate.
- IJC has been recognized for its work in meeting these three needs in major news outlets, including two New York Times editorials calling IJC “a groundbreaking effort.”

**Expansion and Replication**
In 2015, IJC with financial support from the JPB Foundation engaged The Bridgespan Group to conduct a study on when and where IJC should look to expand our program. The study laid the groundwork for IJC’s regional and now national expansion in just three years.
- In 2015, IJC expanded regionally and placed Fellows in underserved communities on Long Island and Newark, New Jersey.
- In 2016, IJC expanded legal services to the Lower Hudson Valley, Westchester and underserved African and Arab communities in New York City.
- In 2018, IJC will place Fellows in Baltimore, Maryland and Miami, Florida to assist detained immigrants in deportation proceedings

**Low Bono Practice**
IJC plans to launch in September 2018, a low bono practice that will use an innovative earned revenue approach to help close the justice gap for immigrants in poorly served areas of the United States. This practice will:
- Offer high-quality legal services to immigrants who are ineligible for pro-bono services;
- Meet the demand for quality representation in underserved locations;
- Train a cadre of committed young attorneys and legal representatives to run a high-quality private practice and;
- Develop a sustainable, replicable business model based on reasonable fees and exceptional management.
Immigrant Justice Corps’ Added Value
“The addition of two IJC Justice Fellows has made a significant impact in RAICES’ ability to effectively serve detained families. The fellows have reenergized our team with new ideas and insight gained in other parts of the country, and have taken on challenging and difficult legal issues with ease, demonstrating their high skill sets and ability to zealously represent our clients. The fellows have also provided new opportunities for overall staff development and offered additional context for our work. We are grateful to IJC for providing this much needed support to the mothers and children detained in Texas and hope that this partnership will continue in the future.” - Manoj Govindaiah, Director of Family Detention Services at the Refugee and Immigration Center for Education and Legal Services (RAICES)

“Our partnership with the Immigrant Justice Corps has propelled our organization to meet the needs of the Arab-American and immigrant population of Southwest Brooklyn. Hosting both IJC Justice and Community Fellows has helped build a foundation for our organization to grow from offering legal services through a part-time pro bono attorney to a staff of seven immigration professionals.” – Ashleigh Zimmerman, Deputy Director, Arab American Association of New York

“Similar to many aspiring immigration attorneys, my initial interest in this area of law stemmed from my parent’s migration story. Growing up listening to my friends and family members’ difficult immigration stories led me to pursue a career in immigration law. The Immigrant Justice Corps offers recent graduates the opportunity to develop a career among a dedicated and vibrant community of immigration advocates. The mentorship and legal resources this fellowship provides allows me to continue to expand on my advocacy and immigration skills, in order to better serve the immigrant community.” – Natali Soto, 1st Year Justice Fellow

“Immigration provides one of the greatest sources of opportunity for people around the world. Families seeking better, safer futures can come to the United States to rebuild their lives. But between global conflicts, new policies, challenging labor markets, and limited access to higher education, hard-working immigrant families are struggling. I believe everyday philanthropists can create life-changing ladders of opportunity through smart investments in the best nonprofits around the country...Immigrant Justice Corps is among the most innovative nonprofits in the country meeting the needs of our immigrant neighbors.” - Veyom Bahl, Robin Hood

Contact Information:
Jojo Annobil
Immigrant Justice Corps, Executive Director
17 Battery Place, Suite 236
New York, NY 10004
(o) 646.690.0481
jannobil@justicecorps.org

How to Donate:
You can visit our website to make an online donation; or mail checks to:
Immigrant Justice Corps
c/o Operations Manager
17 Battery Place, Suite 236
New York, NY 10004
### III. Plenary Panel – Replication and Expansion

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Denver Immigrant Legal Defense Fund Two-Pager</td>
</tr>
<tr>
<td>8.</td>
<td>Hennepin County 2018 Budget Amendment No. 2-R1 (Immigrant Legal Defense Fund Policy)</td>
</tr>
</tbody>
</table>
Additional Recommended Reading


2. John Murray, Denver launches growing immigrant defense fund to aid people with problems stemming from their legal status; move is among city actions that have drawn federal ire amid crackdown on illegal immigration, The Denver Post (Mar. 19, 2018, 2:01 PM), [https://www.denverpost.com/2018/03/19/denver-immigrant-defense-fund/](https://www.denverpost.com/2018/03/19/denver-immigrant-defense-fund/).


The New York Immigrant Family Unity Project:

Good for Families, Good for Employers, and Good for All New Yorkers
The Center for Popular Democracy (CPD) promotes equity, opportunity, and a dynamic democracy in partnership with innovative community-based organizations, local and state networks, and progressive unions across the country. CPD develops cutting-edge state & local policies that deliver tangible benefits to communities and builds organizational infrastructure & capacity so our partners can grow stronger and expand.

The Northern Manhattan Coalition for Immigrant Rights (NMCIR) is a non-profit organization, founded by affected community members in 1982 to educate, defend and protect the rights of immigrants. Recognized by the Board of Immigration Appeals, NMCIR provides legal immigration services to the dispossessed and leads in innovative policy making that includes the participation of directly affected members.

The Kathryn O. Greenberg Immigration Justice Clinic at Cardozo School of Law responds to the vital need today for quality legal representation for indigent immigrants facing deportation, while also providing students with invaluable hands-on lawyering experience. It represents immigrants facing deportation before federal immigration authorities and in the U.S. Court of Appeals for the Second Circuit, and represents immigrant community-based organizations on litigation and advocacy projects. The work of the Immigration Justice Clinic is generously supported by The JPB Foundation.

Make the Road New York (MRNY) builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services.

This report was made possible through the generous support of The New York Community Trust & The JPB Foundation.
Executive Summary

Each year, thousands of New Yorkers — parents, siblings, employers, workers and students — face detention and the possibility of deportation without the assistance of legal counsel. These New Yorkers are isolated from their loved ones and confront the possibility of long-term and, in some cases, permanent separation from their communities.

This system of detention and deportation calls our collective commitment to due process into question. Immigration proceedings share many of the same features as criminal proceedings, with immigrant New Yorkers risking their liberty and extended separation from their families and communities. Yet, unlike criminal proceedings, immigration proceedings lack basic safeguards to guarantee fairness. Most strikingly, because New Yorkers have no guaranteed access to counsel in immigration proceedings, thousands face trained government attorneys in these high-stakes proceedings every year without the benefit of legal assistance. This leads to detentions that continue for months or years longer than necessary and deportations of New Yorkers who have viable legal claims to remain in the communities they call home.

But these are not the only costs. Current policies and practices are also costly in economic terms, resulting in significant annual outlays. Needless detentions and avoidable deportations burden Empire State employers, New York State government, immigrant families and, ultimately, New Yorkers as a whole.

This analysis demonstrates that New York State can dramatically reduce these costs by providing high-quality legal counsel for detained immigrants who are facing deportation through the New York Immigrant Family Unity Project (NYIFUP). For an annual investment of $7.4 million — or 78-cents per personal income taxpayer per year — NYIFUP would help ensure that deportation proceedings reflect our fundamental values, providing a measure of fairness for immigrant New Yorkers.

The program would generate nearly $1.9 million in annual savings to New York State by reducing spending on public health insurance programs and foster care services and capturing tax revenues that would otherwise be lost. In addition, NYIFUP would produce $4 million in savings for Empire State employers each year, by preventing turnover-related costs stemming from detentions and deportations. Taken together, these savings offset the majority of the investment needed to establish the program.

- New York State employers pay an estimated $9.1 million in turnover-related costs annually as they are forced to replace detained or deported employees. NYIFUP would save employers $4 million in such costs each year.
- The detention or deportation of a parent makes it difficult for some students to complete school, limiting their long-term earning potential, increasing reliance on public health insurance programs and decreasing tax revenues. Over 10 years of the NYIFUP program, this would translate into $3.1 million in annualized costs to the state each year. NYIFUP would save New York over $1.3 million in such costs each year.
- Detentions and deportations cost New York’s State Child Health Insurance Program (SCHIP) about $685,000 each year. NYIFUP would save the state over $310,000 per year in such costs.
- Detentions and deportations cost over $562,000 a year to provide foster care for the children of detained or deported New Yorkers. NYIFUP would reduce these costs by over $263,000 each year.

Few investments have the potential to yield such far-reaching returns. We urge New York State to seize the opportunity to create a first-in-the-nation, statewide system of universal representation for individuals who are detained and facing deportation. Doing so will produce $5.9 million in savings each year to New York State and employers, ensure that the system lives up to our most closely-held ideals and help to keep Empire State families whole.
An Investment in Fairness for All New Yorkers

THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT (NYIFUP)

would guarantee universal, quality legal representation for New Yorkers who are detained and facing deportation. While the New York City Council, recognizing the importance of this program for immigrants, their families and the City as a whole, has funded a pilot initiative, thousands of Empire State residents continue to face detention and deportation simply because they cannot afford counsel. NYIFUP would be the nation’s first, statewide government-funded deportation defense system, ensuring access to due process and helping to keep immigrant families together. This analysis discusses the often-overlooked impacts of detention and deportation at the state level and demonstrates the fiscal benefits associated with statewide implementation of a system of universal representation.

Currently, federal law fails to guarantee representation to immigrants involved in deportation proceedings because these proceedings are considered civil, not criminal. However, deportation proceedings resemble criminal cases in at least three important ways:

• They involve direct and severe restrictions on physical liberty;
• A negative outcome results in separation from family and community; and
• Many immigrants in removal proceedings are confined in county jails and DHS detention centers, in conditions identical to those of pre-trial criminal defendants.

Indeed, the Supreme Court has characterized deportation as a “drastic measure” that can result in the “loss of all that makes life worth living.”

NYIFUP would address this problem. Through an investment of $7.4 million – or 78-cents per personal income taxpayer per year – the program would bring our detention and deportation policies and practices in line with our shared values. NYIFUP’s system of universal representation with screening only for financial eligibility would produce six important benefits for the families that call New York home, the businesses that help to drive its economy and the state as a whole.

1 NYIFUP would bring immigration proceedings in line with our deeply-held values of justice, due process and equal treatment, and demonstrate the state’s commitment to its families;

2 The program would reduce dramatic disparities in outcomes in removal cases, enhancing the integrity of the current system;

3 A statewide system of universal representation would save New York State employers millions in costs associated with replacing employees who are lost due to deportation or detention;

4 NYIFUP would reduce costs associated with students who drop out of school due to the deportation or detention of a parent;

5 NYIFUP would reduce costs to the State Child Health Insurance Program (SCHIP) that result from elevated rates of obesity among children of detained and deported New Yorkers as well as the loss of a parent’s employer-provided coverage; and

6 The program would ease state costs related to foster care for children who are left without caregivers following detention or deportation of a parent.
1. NYIFUP Will Align Judicial Processes with Core Values. The failure of government to ensure legal counsel for detained immigrants is in stark conflict with our values of justice, due process, and equal treatment. This failure undermines our most closely held ideals as New Yorkers and as Americans. NYIFUP would help ensure that deportation proceedings reflect fundamental values. With NYIFUP, New York State would also signal that it values all New Yorkers. The program would represent an investment in Empire State employers who create jobs that fuel our economy and New York workers whose steady commitment and skill generate critical revenue and growth. By funding NYIFUP, New York State would also make it clear that it is fully invested in the young people who will both drive its economy and lead its communities in the years to come. Finally, NYIFUP would demonstrate a commitment to supporting strong families for a stronger New York.

2. NYIFUP Will Prevent Vastly Unequal Outcomes Among Similarly Situated New Yorkers. The lack of guaranteed, high-quality representation translates into disparate outcomes for immigrant New Yorkers involved in removal proceedings (see Chart 1). Immigrants who are unable to retain counsel are released from detention while their deportation cases are pending at significantly lower rates than immigrants who are able to secure counsel. Those detainees who are released have much more successful outcomes. Moreover, even among those immigrants who remain detained throughout their proceedings, representation makes a crucial difference. As a result of the lower release and win rates, detained immigrants with counsel are approximately 1000 percent more likely to succeed in preventing deportation than detained immigrants who are forced to proceed without attorneys. Indeed, immigrants who remain detained without counsel have almost no chance of preventing their deportation.

While a number of factors contribute to the government’s decisions about who is ultimately ordered deported, a particularly important factor is whether immigrants have qualified legal counsel. Competent immigration lawyers are able to help detained immigrants understand their rights, identify and fully prepare their legal claims to stay in the United States, seek release from detention, and communicate with employers and family members who can participate in their defense. Qualified attorneys are also able to provide accurate advice to detained immigrants about their legal options, including advising some immigrants that they have a low likelihood of success under current immigration

**Chart 1. Successful Outcomes by Legal Representation Status.**

- Successful outcomes of represented detainees: 39.2%
- Successful outcomes of unrepresented detainees: 3.8%

<table>
<thead>
<tr>
<th>Outcome Description</th>
<th>Annual Savings (in $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per income tax payer per year</td>
<td>78 cents</td>
</tr>
<tr>
<td>Turnover related savings for NY State employers</td>
<td>$4M</td>
</tr>
<tr>
<td>Health insurance savings and tax revenue</td>
<td>$1.3M</td>
</tr>
<tr>
<td>Per year in savings to State Child Health Insurance Program costs</td>
<td>$310K</td>
</tr>
<tr>
<td>Foster care savings per year</td>
<td>$263K</td>
</tr>
<tr>
<td>Total annual savings for NY State and employers</td>
<td>$5.9M</td>
</tr>
</tbody>
</table>
law. Accurate advice thus leads to shorter period of detention and shorter proceedings for immigrants who understand that they are unlikely to prevail.

The current system, in which most detainees lack legal representation, results in immigrant New Yorkers being detained months or years longer than necessary and results in the deportation of people who have viable legal claims to stay in the United States. These unnecessarily long detentions and avoidable deportations burden our state, our businesses, immigrant families and the millions of residents who live, work and attend school with immigrant New Yorkers every day.

3. **NYIFUP Will Reduce Costs to New York State Employers.** When immigrants are detained for long periods of time without legal counsel, they miss the opportunity to communicate with employers through an attorney and to prepare a strong case for detention release, increasing the likelihood that they will lose their jobs. When immigrants are wrongly ordered deported, they will certainly lose their jobs. As a result, employers who need to replace these lost workers will incur new hiring and training costs and will experience a decline in productivity as new workers learn the ropes.

By ensuring that immigrants with viable claims to remain and work in the United States are not wrongly ordered deported without a chance to present those claims, NYIFUP will greatly reduce the business costs associated with unnecessary employee turnover. A Center for American Progress review of 30 previous studies of turnover costs shows that these costs are regularly 20 percent of annual wages for workers earning less than $50,000 and 16 percent of annual wages for workers earning less than $30,000. Assuming that all deportees and detainees held through their proceedings will be replaced, New York employers will bear up to $9.1 million in detention- and deportation-related turnover costs. Under NYIFUP, with the help of skilled attorneys, more New Yorkers would be released from detention and able to return to work while challenging removal, and more would prevail. As a result, turnover and re-training costs would drop to $5.1 million, saving New York’s businesses $4 million each year.

4. **NYIFUP Will Allow More Children of Detained and Deported New Yorkers to Complete Schooling and Secure Better Jobs, Providing Increased Revenue for New York State.** Roughly 23 percent of detainees report having U.S. citizen children. The government does not keep statistics regarding non-citizen children and, as a result, the estimates in this section do not capture the full savings New York State will actually realize. Those detainees with children average 1.8 U.S. citizen children each. With approximately 2450 New Yorkers detained for deportation each year, roughly 1200 U.S. citizen children are directly affected. Several studies have detailed the effects on the psychological well-being, sense of security and stability, and school attendance and performance of the children of detained and deported immigrants. As a direct result of detention and deportation of a parent, children are at an increased risk for dropping out of school, which has lifelong implications for not only their earning potential, but also for state and local tax revenues and public health insurance costs.
The long-term consequences of citizen children dropping out are devastating, and the long-term costs to the state are enormous. Students who drop out of school become adults who earn significantly less because they lack a high-school diploma. As a result, they contribute less to state and local tax revenues and rely more heavily on public health insurance programs.

While these impacts are not felt in the year parents are deported or the year that children leave school, they accrue over time as families attempt to deal with the emotional and economic costs of loss of a loved one. We estimate that over the course of a decade, the state will lose $31,625,000 as a result of educational disruption that is linked to detention and deportation. This translates into an annualized cost of $3.1 million. Under NYIFUP, however, fewer New York students would be forced to deal with the prospect of long-term or permanent separation from a parent while also trying to complete their studies. These young people would be more likely to remain in school, increasing their chances for significantly higher earnings over time and boosting tax revenues. As a result, in the first decade of its operation, on average NYIFUP would save New York over $1.3 million in educational disruption costs each year.

5. NYIFUP Will Reduce Costs to the State Children’s Health Insurance Program. Currently 57 percent of U.S. citizen children have health insurance through private coverage or their parents’ employer-based program. The detention or deportation of a parent who provides a family’s health insurance can often result in a lapse in coverage and children entering the State Children’s Health Insurance Program (SCHIP). This shift costs the state just about $161,000 per year. Under NYIFUP it would cost about $91,000 each year.

Further, one study found that 60 percent of the interviewed children of deportees were obese, compared to 19.1 percent among Latinos more generally. This is likely due to depression and anxiety arising from the loss of a parent and resulting financial instability. The public health-insurance medical costs for obese patients exceed those for normal-weight patients by $1100 per year. Under current conditions, we estimate the obesity related costs to SCHIP to be $523,000 annually. These costs carry on beyond the year in which a parent is deported. Under NYIFUP, we estimate the obesity related costs to SCHIP to decrease to $281,000 a year.

With NYIFUP, fewer immigrant New Yorkers would lose employer-based care, forcing their children to enter the SCHIP program. In addition, fewer deportations would lead to less obesity among children of immigrant New Yorkers and reduced public-health insurance medical costs for such patients. Based on these two factors, we estimate that detentions and deportations cost SCHIP around $1.1 million each year and that NYIFUP would save the state about $313,000 annually.
6. **NYIFUP Will Reduce State Foster Care Costs.** Immigrant parents are often detained even if they are single parents or primary caretakers for their minor children. Of the approximately 1,200 children in a given year whose parents are detained, 32 will likely enter the foster care system as a result of their parents’ detention or deportation, at a cost of about $562,000 per year to the state Office of Children and Family Services (OCFS). Under NYIFUP, more detainees will be released while awaiting proceedings and fewer will be deported. Among these will be parents who will be able to continue providing care. As a result, NYIFUP would reduce foster care costs by over $263,000 each year.

**Chart 5. Foster Care Costs resulting from Detention and Deportation.**

This study shows some of the ways in which NYIFUP will benefit New York economically, as it saves government and New York employers $5.9 million in costs associated with the detention and deportation of immigrant residents. NYIFUP will decrease costly, avoidable disruptions in employment, education and family life, while ensuring that New York more closely adheres to core values of justice, due process, and equal treatment for all.

New York State has an opportunity to lead by creating the nation’s first, statewide system of universal representation for residents who are detained and facing deportation. Investment in NYIFUP will demonstrate New York’s commitment to building strong families and safeguarding its economic future.

We urge the Governor and Senate and Assembly leaders to ensure that the 2014-2015 state budget includes a $7.4 million line item for NYIFUP, providing resources to bring judicial processes in line with core values, avert losses to New York State business and prevent the needless destruction of New York State families. An investment at this level would fund representation for the 2,450 New Yorkers statewide who are detained and face deportation but are unable to afford counsel each year.

If, however, New York State fails to seize this opportunity, we urge New York City leaders to do so. We strongly encourage the Office of the Mayor and the New York City Council to include a $5.3 million appropriation for NYIFUP in the 2014-2015 budget, furnishing resources for quality legal representation for the 1,650 New York City residents whose cases are venued either at the Varick Street immigration court or at courts in Elizabeth and Newark, New Jersey.

With federal immigration reform stalled, it is incumbent on state and local governments to innovate. Through NYIFUP, state and local leaders in New York can address weaknesses in our current immigration system that tear families apart, undermine our most deeply-held values, impose costs on Empire State businesses and sap resources from important public programs.

**Conclusion & Recommendations**
APPENDIX: Methodological Notes

Statewide Impact of Detention and Deportation. We estimated that 2,450 New Yorkers are detained each year. A Vera Institute analysis of Executive Office for Immigration Review data shows that 33 percent of detainees are represented. The same analysis shows that represented detainees have a 74.1 percent chance of being released before their hearing and unrepresented detainees have a 23.2 percent chance of being released before their hearing.

Rate of Deportation. We applied New York Immigrant Representation Study findings of the rates of deportation and relief for the different groups of detainees: detained through proceedings, without representation; detained through proceedings, with representation; released, without representation; and released, with representation.\textsuperscript{xv}

To calculate the deportation rates under the NYIFUP condition, we applied the rates of deportation or relief for immigrants with legal representation under the current condition.

Detainees with U.S. Citizen (USC) children and affected children. We relied on figures from a recent study of the impacts of detention and deportation practices in New York City on families.\textsuperscript{xvi} This study shows that 23 percent of detainees report having U.S. citizen children and that those detainees average 1.8 children each. Importantly, this number is a conservative estimate because it is based on reports to ICE agents at the time of apprehension, when parents might be fearful for their families’ safety.

Immigrants at or below 200 percent of the Federal Poverty Level. To calculate the number of detainees and USC children of detainees at this income level, we used the figures for unauthorized immigrants in A Demographic, Socioeconomic, and Health Coverage Profile of Unauthorized Immigrants in the United States (Washington, DC: Migration Policy Institute, page 4).

Workforce Disruption. To calculate the employer costs of workforce turnover caused by detention and deportation, we focused on
the number of USC children in economically vulnerable families of immigrants detained through their proceedings and/or deported by 5.8 percent to get the number of USC children in foster care, based on findings in Shattered Families: The Perilous Intersections of Immigration Enforcement and the Child Welfare System (New York: Applied Research Center, November 2011, pages 11 and 23). We multiplied the USC children of immigrants detained through their proceedings but not deported by the estimated cost of foster care for 32 days, derived from “Cost Benefit of Kinship Services,” a special section of the Kinship Care in New York: Keeping Families Together (New York: NYS Kincare Coalition, 2010). We multiplied the USC children of deportees by the average annual cost of foster care per case, as reported in the same source.

CHILDREN’S HEALTH INSURANCE COSTS. We multiplied the number of USC children of immigrants detained until their proceedings and of deportees by the percent of US-born and naturalized citizen children covered by employer or private coverage, according to A Demographic, Socioeconomic, and Health Coverage Profile of Unauthorized Immigrants in the United States (page 8). We multiplied that product by the annual average per-child cost to NYS of the State Children’s Health Insurance Program, as reported in Total CHIP Expenditures, FY 2009 (Henry J. Kaiser Family Foundation) and FY 2010 Number of Children Ever Enrolled in CHIP (Washington, DC: Medicaid.Gov, 2010).

We, then, calculated the number of USC children of deportees likely to be obese because of a parent’s deportation (so, subtracting out the rate of obesity in the general population of children, based on the interview data from Left Behind: Children of Dominican Deportees in a Bulimic Society (dissertation by Fenix Arias, 2011) and “Obesity Prevalence among low-income, preschool-aged children – NYC and LAC, 2003-2011 (Atlanta, GA: Centers for Disease Control and Prevention, 2013). We multiplied the number of deportation-induced pediatric obesity cases by the inflation-adjusted medical costs to Medicaid of care required by obese patients and not patients within a normal weight range, as reported in Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates (Eric A. Finkelstein, Justin G. Trogdon, Joel W. Cohen, and William Dietz, Health Affairs, July 2013).

EDUCATIONAL DISRUPTION. We multiplied the USC children of every detainee except those “released and not deported” by one-fifth to get the number of children having difficulty maintaining their grades, based on Facing Our Future: Children in the Aftermath of Immigration Enforcement (Washington, DC: The Urban Institute, February 2010, page 51). We then applied the high-school non-completion rate associated in “Finishing High School: Alternative Pathways and Dropout Recovery” (John H. Tyler and Magnus Lofstrom, Future of Children, Spring 2009, page 87) with struggling children in 6th and 9th grades to the estimated USC children of detainees in 6th grade or higher. We multiplied that non-completion number by the increased spending on public health insurance for and decreased tax revenues from school dropouts (“Finishing High School”, page 87).

FOSTER CARE COSTS. We multiplied...


xi The impacts reported here do not necessarily occur in the year of the detention or deportation. To calculate the impact we took the cumulative effects of 10 years of children of deportees under each condition and annualized them. We held the dollar value and number of deportees constant.


ii This analysis includes costs that are borne directly by the state as well as others that are borne indirectly through costs to local governments, most notably New York City.

iii While detentions and deportations impose costs at the city and federal levels as well, this analysis focuses on state-level impacts, which are less frequently discussed.


v *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922).


BLAZING A TRAIL

The Fight for Right to Counsel in Detention and Beyond
THE NATIONAL IMMIGRATION LAW CENTER is one of the leading legal advocacy organizations in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Our work focuses on key issues that affect low-income immigrants’ lives. These include paths to citizenship and legal status, access to health care and economic support programs, workers’ rights, access to education and training, and immigration enforcement policy reforms. A distinctive feature of our approach is that we use core, integrated strategies—litigation, policy analysis and advocacy, and strategic communications—to advance our mission.

NILC is at the forefront of many of the country’s greatest challenges when it comes to immigration issues. Over the past 35 years, we have won landmark legal decisions protecting basic human and civil rights, and advanced policies that reinforce our nation’s values of equality, opportunity, and justice. Headquartered in Los Angeles with an office in Washington, DC, NILC has decades of federal advocacy experience combined with a long history of strong partnerships with state and local groups across the country. Policymakers, community organizers, legal advocates, and the media recognize NILC staff as experts on a wide range of issues that affect the lives of low-income immigrants.
CONTENTS

ACKNOWLEDGMENTS ................................................................................................................................. iv

INTRODUCTION .............................................................................................................................................. 1

THE IMMIGRATION DETENTION SYSTEM AND ACCESS TO LAWYERS ........................................... 3
  Hundreds of thousands are held in detention each year .......................................................... 4
  Being held in detention severely reduces access to legal help ............................................. 4
  The legal help available to detained people often is inadequate ...................................... 6
  The present system forces many immigrants to abandon their legitimate claims to immigration relief ................................................................. 6

THE CASE FOR UNIVERSAL REPRESENTATION ................................................................................... 8
  Fundamental fairness requires that all detained immigrants have access to counsel .......... 8
  Access to counsel will reduce detention costs ................................................................. 9
  Access to competent counsel will improve the immigration court system’s efficiency ........ 10
  Access to counsel will reduce the human costs of detention ........................................ 11
  Bit by bit, barriers to accessing legal representation are crumbling .............................. 12

RIGHT-TO-COUNSEL PROJECTS ............................................................................................................ 14
  The New York Immigrant Family Unity Project .............................................................. 14
  NYIFUP at the Buffalo Federal Detention Center in Batavia, New York ....................... 18
  American Friends Service Committee (AFSC) Friends Representation Initiative of New Jersey (FRINJ) ................................................................. 18

THE FORMATION OF WORKING GROUPS AS A CATALYST FOR CHANGE ........................................ 20

OTHER APPROACHES TO RIGHT TO COUNSEL .................................................................................. 22
  Alameda and San Francisco County public defender offices ........................................... 22
  Immigrant Justice Corps .............................................................................................................. 23
WHAT DO ADVOCATES SEE AS ESSENTIAL ELEMENTS OF A GOOD REPRESENTATION PROGRAM? ................................................................................................................................. 24

Universal representation is the goal ................................................................................................................................................................................................. 25
Representation should be holistic ................................................................................................................................................................................................. 25
Representation should be connected to the struggle to transform and reform the immigration system ................................................................................................................................. 26
Representation must be high-quality and supported by adequate resources ................................................................................................................................. 26
EOIR and ICE are critical players in establishing a successful program ................................................................................................................................. 27
Programs must address the challenges that arise when detention facilities are isolated or scattered ................................................................................................................................. 28

HOW TO GET FROM HERE TO THERE: WHAT DO ADVOCATES SEE AS ESSENTIAL STEPS TOWARDS BUILDING A GOOD REPRESENTATION PROGRAM? ...................................................................................................................... 29

Pursue private and public funding ................................................................................................................................................................................................. 29
Create a working group ................................................................................................................................................................................................. 30
Collect data ................................................................................................................................................................................................................................................................. 30
Broaden the working group to a coalition ................................................................................................................................................................................................. 31
Organize a convening ................................................................................................................................................................................................. 32
Lift up the stories of directly impacted people ................................................................................................................................................................................................. 32
Maintain an ongoing media strategy ................................................................................................................................................................................................. 32
Develop a multifaceted advocacy strategy ................................................................................................................................................................................................. 33

CONCLUSION ................................................................................................................................................................................................................................................................. 34

CASE PROFILES ................................................................................................................................................................................................................................................................. 35

Mr. T ................................................................................................................................................................................................................................................................. 35
Paul Williams ................................................................................................................................................................................................................................................................. 36
Santos Cid Rodríguez ................................................................................................................................................................................................................................................................. 37
Ms. XE ................................................................................................................................................................................................................................................................. 39
Mrs. Pearson ................................................................................................................................................................................................................................................................. 40

NOTES ................................................................................................................................................................................................................................................................................................................................. 42
ACKNOWLEDGMENTS

The principal authors of this report are Andrea Black and Joan Friedland, who, in their capacity as NILC consultants, worked closely with NILC policy attorney Avideh Moussavian on conceiving the idea and content of the report. The authors thank the following NILC staff for their involvement in providing critical editorial feedback on the report: Tanya Broder, senior attorney; Shiu-Ming Cheer, senior staff attorney and field coordinator; Adela de la Torre, communications director; Karen Tumlin, legal director; and Marielena Hincapié, executive director. Richard Irwin, NILC’s editor, edited the report, and LBMS, LLC designed and formatted it for publication.

In preparing the report, the authors conducted interviews with attorneys, immigrants’ rights advocates, organizers, and academics who are working on the ground to ensure that immigrants have a fair chance to present their cases for immigration relief, and also to bring about a more just immigration system. The authors are grateful for their work and their help with this report.

The following people were interviewed or assisted us in contacting previously detained immigrants: Ahilan Arulanantham, Brittany Castle, Lauren Dasse, Sophie Feal, Angela Fernandez, Judy Flanagan, Anton Flores, Jennifer Friedman, Carlos Garcia, Mekela Goehring, Iris Gomez, Juan Carlos Gomez, Michelle Gonzalez, Amy Gottlieb, Andrea Guerrero, Iliana Holguin, Talia Inlender, Raha Jorjani, Stephen Kang, Jen Klein, Hiroko Kusuda, Arthur Laeo, Meredith Linsky, Victoria Lopez, Ruben Loyo, Lloyd Munjack, Joanne Macri, Peter Markowitz, Mary Meg McCarthy, Lisa Palumbo, Julie Pasch, Abraham Paulos, Jackie Pearce, Laura Rivera, Jennifer Rizzo, Oren Root, Grisel Ruiz, Jonathan Ryan, Andrea Saenz, Caitlin Sanderson, Rebecca Sharpless, Jessica Shulruff, Jayshri Srikantiah, Fred Tsao, Emily Tucker, Tim Warden-Hertz, Amelia Wilson, and Edna Yang.

We also interviewed previously detained immigrants who prevailed in their cases with the help of representation by the programs that provide what we are calling “universal representation” in this report (see p. 2). We are grateful that they shared their experiences with us.
INTRODUCTION

The legal protections that most Americans take for granted are a false promise for the tens of thousands of immigrants—both documented and undocumented—facing deportation and permanent exile from the United States. These immigrants include asylum-seekers; survivors of domestic violence, trafficking, or torture; people who have overstayed their visas or entered the U.S. without authorization; lawful permanent residents who have been convicted of crimes—including minor crimes or crimes committed long ago—and served their time; and longtime community members who have built families and lives in the U.S. Some have lived here almost their entire lives. Some are even U.S. citizens whom U.S. Immigration and Customs Enforcement (ICE) has wrongly held in custody. Their individual circumstances may differ, but all face deportation and exile without the right to a court-appointed lawyer.

The federal government has long interpreted the immigration laws to mean that immigrants have a right to be represented by counsel in their deportation proceedings, but not at government expense. Making the right to counsel a reality is an imperative for all immigrants in removal proceedings, but the situation is even more critical for detained immigrants. As this report shows, the very circumstances of detention make that right a legal fiction for almost all detained immigrants. The difference in outcomes for immigrants who are represented by a lawyer in immigration court—even for those not in detention—is undeniable. Mounting empirical data show that having a lawyer to help navigate the complex maze of the immigration detention and court systems makes a profound difference in a person’s ability to gain release from detention, challenge the government’s grounds for seeking their deportation, and present and win a defense that allows the person to remain in the U.S.

Upholding true due process of law and the right to a fair trial—fundamental principles in the American legal system—requires the guarantee of actual, high-quality representation that is available to all immigrants in removal proceedings. This report focuses on how the fight to secure a universal right to representation in immigration court is taking shape in the U.S., beginning with efforts targeted specifically at detained immigrants. It also highlights the importance of such a policy not only as a matter of fundamental fairness, but also of fiscal responsibility, since, when practiced, it (1) significantly reduces detention costs, (2) helps our overburdened immigration courts function more efficiently and fairly, and (3) lowers costs borne by state and local governments incurred when immigrant families lose a breadwinner or primary child care–provider—and when employers lose valued workers—to detention or deportation.
Recognizing a universal right to counsel in U.S. immigration courts makes economic and functional sense for the legal system that carries out the detention and deportation process. And while a universal right to representation is most acutely needed for immigrants in detention, it should not stop at the jailhouse door. For many, the prospect of deportation is a life sentence of separation from loved ones and from a country where they have built their lives. Given the dire consequences that any immigrant in removal proceedings faces, a universal right to representation should extend to all immigrants who face deportation proceedings—whether they’re in or outside of immigration jails.

Innovative projects in New York and New Jersey have begun to provide what we are calling in this report “universal representation,” i.e., representation to any detained immigrant within the jurisdiction of a particular immigration court who does not have a private lawyer and who meets certain income requirements. Inspired by these examples, other localities across the country are examining how they can develop similar programs. Meanwhile, court decisions and the executive branch have begun to chip away at the status quo that denies a guarantee of representation and protection of fundamental rights for immigrants facing removal.

While states and localities attempt to address this problem, any comprehensive solution must be made at the federal level. The innovative local projects described in this report are valuable stepping stones toward that goal.
ICE, the agency within the U.S. Department of Homeland Security (DHS) charged with immigration enforcement in the country’s interior, has the authority to detain, jail, and prosecute noncitizens for violations of immigration law. The Executive Office for Immigration Review (EOIR), an agency within the U.S. Department of Justice, administers the immigration court system, whose proceedings are considered civil law proceedings. Even though immigrants whom ICE detains are deprived of fundamental liberties and held in punitive conditions similar to those in which people charged with criminal violations are held, they are not afforded the same rights or protections in their immigration proceedings as people in criminal proceedings are afforded.

In principle and as a practical matter, EOIR, which runs the extremely overburdened immigration courts, has an interest in the immigration laws being applied in a fair, efficient, and uniform way. When the laws are so applied, outcomes are more just; fewer people, including longtime permanent residents who have a right to stay in the U.S. with their families, are deported wrongfully; and the ballooning backlog of cases overwhelming immigration judges’ dockets is reduced.

Immigrants who are detained while in removal proceedings face the most calamitous of possible consequences: lifetime separation from their families, or being returned to a country where they may have no strong ties or may be persecuted, or both. With limited exceptions, currently people in immigration detention are not granted a court-appointed lawyer as they would be in a criminal case. They have the right to be represented by counsel but not the right to government-appointed counsel. They must instead depend on hiring and paying a lawyer, or finding a lawyer who volunteers their services or an organization that provides legal services to detained immigrants, options that are available only for an extremely limited number of people in immigration detention.
HUNDREDS OF THOUSANDS ARE HELD IN DETENTION EACH YEAR

Each year, the federal government holds hundreds of thousands of immigrants in its immigration detention system—the world’s largest—which encompasses a patchwork of about 200 jails, some run by ICE, some run by for-profit corporations, and some of which are state and local jails with which ICE contracts. This system operates under a congressionally imposed bed quota that mandates funding for 34,000 immigration detention beds per day. A record 477,000 people were detained in immigration jails in FY 2012 alone. An August 2015 report by the National Immigrant Justice Center found that immigration detention in the U.S. is “a failed system that lacks accountability, shields DHS from public scrutiny, and allows local governments and private prison companies to brazenly maximize profits at the expense of basic human rights.”

Nor has ICE taken full advantage, or adequately funded an expansion, of community-based alternatives-to-detention programs designed to ensure that people arrested by immigration enforcement agents or released from immigration detention will appear for their immigration court hearings. These programs could keep many immigrants who are arrested by immigration authorities from being held in immigration jails in the first place and allow others to be released from detention without being required first to pay costly—often unaffordable—bonds.

BEING HELD IN DETENTION SEVERELY REDUCES ACCESS TO LEGAL HELP

In addition, immigration jails often are located in isolated places, far removed from the detained immigrants’ families or any opportunity for legal support. The first National Study of Access to Counsel in U.S. immigration courts found that from 2007 to 2012 only 14 percent of detained “respondents” had legal representation, compared with 66 percent of nondetained. This means that nondetained people had an almost 5 times greater chance of having a lawyer.

The study also found that almost a third of the cases of detained people were decided in immigration courts in rural areas and small cities where barriers to representation are the highest. In addition, some immigration judges placed detained immigrants’ cases on “rocket dockets” to prioritize and speed up their completion; as a result, continuances granted to detained people so they could find legal representation were, on average, one-fifth the length of time of those given to never-detained respondents. And even
if they were given more time to find a lawyer, they were far less likely to find one than those who were never detained or had been released from detention. Accelerating the process—even if it’s intended to reduce the time a person spends in detention—undermines the process’s fairness for detained people who don’t have lawyers.

The distance to immigration jails and the restrictive—often arbitrary—rules imposed by jail staff contribute to making lawyers reluctant to take detained immigrants’ cases.

» Nothing is standardized. Each facility has its own rules—even neighboring facilities run by the same company. ICE also has different rules. When you try to get an answer to a question, officials just point to each other.

Attorneys report that prolonged drive times, extended waiting times to see clients, limited number or availability of rooms in which to meet with clients, inability to reach clients by telephone, and inability to bring basic equipment such as cell phones and laptops into immigration jails make representing detained people financially burdensome, discouraging both paid and pro bono lawyers.

» The Colorado AILA chapter has outstanding national experts, who are very qualified to take cases for detained people, yet it’s hard for the private bar to take on detained cases. It’s hard to make this work financially viable because of logistical challenges and because it’s time-intensive, with time spent waiting for a client to be brought up. Scheduling of cases for the detained docket is also challenging.

The barriers to representation are compounded by ICE detention and release policies that change overnight, require massive detention in new jails, or keep people in detention even when they do not present a flight risk or threat to public safety.

» ICE used to release those who passed credible fear interviews but then stopped last May. They stopped giving bonds, basically locking people up and throwing away the key. ICE claimed flight risk, even if people provided a support letter, saying it was not a close-enough relationship or didn’t show there was not a flight risk. Now the jail is near capacity, so they started giving bonds to some people who passed credible fear, but the bonds are very high, usually around $15,000. Under the contract, ICE has to pay for a guaranteed minimum number of beds and so appears to use bond denials to keep the numbers up.
THE LEGAL HELP AVAILABLE TO DETAINED PEOPLE OFTEN IS INADEQUATE

Immigration cases are often complicated, which makes representing immigrant clients a fast-paced, time-consuming affair requiring considerable expertise.

» Every criminal immigration case is so complicated. The level of investment attorneys have to make in sorting through issues and executing the case is costly in attorney time. It’s even more difficult because they have to go to jails where immigrants are held.14

But the legal representation that is available, especially from the solo or small-firm lawyers who make up the bulk of immigration law practitioners, is often inadequate. According to the 2011 report Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings ("New York Immigrant Representation Study: Part I"), "Immigration judges presiding on New York courts offered a blistering assessment of immigrant representation, reporting that almost half of the time, it does not meet a basic level of adequacy. Nearly half of all representatives are not prepared and lack even adequate knowledge of the law or facts of a respondent’s particular case."15

THE PRESENT SYSTEM FORCES MANY IMMIGRANTS TO ABANDON THEIR LEGITIMATE CLAIMS TO IMMIGRATION RELIEF

In the absence of available high-quality, affordable representation by for-profit lawyers, a system for representing immigrants in detention that’s built on pro bono attorneys, nonprofits, and law school clinics is woefully insufficient to meet the legal representation needs of people in immigration jails. According to the National Study of Access to Counsel, only 2 percent of immigrants in removal proceedings—either detained or nondetained—obtained pro bono representation from nonprofit organizations, law school clinics, or large law firm volunteer programs.16 Even the best of the nonprofits and law school clinics are too under-resourced or too small to meet the needs of all the detained immigrants who need representation.

» Our nonprofit can only meet a fraction of the overwhelming need, considering the number of people who would like representation—400 to 600 people going to court
with at least half of them unrepresented. We don’t have the capacity to meet this need. We can meet with everyone and talk with them, but, for most of them, we can’t provide the representation that they need.17

Nor can most people in immigration detention even begin to adequately represent themselves, given how complex the law is and their lack of access to legal resources or family support. Detained immigrants, whose access to telephones and information about the law (law books, online legal resources, etc.) is severely limited and whose families often live far from where they’re detained, usually are in no position to marshal the arguments and supporting documentation that could help them win release from detention. As a result, many who have valid legal claims and good cases for being released from detention cannot present them adequately or effectively. Facing the demoralizing prospect and conditions of prolonged detention, and having little or no support in preparing and presenting their cases, many people in immigration detention feel that they have little choice but to abandon any claims they may have for relief.
THE CASE FOR UNIVERSAL REPRESENTATION

FUNDAMENTAL FAIRNESS REQUIRES THAT ALL DETAINED IMMIGRANTS HAVE ACCESS TO COUNSEL

Because deportation can often mean permanent banishment from the U.S., separation from family and loved ones, and even persecution or death, it is a punishment far greater than many criminal sentences. It is the product of a fundamentally unfair, adversarial process in which one side—the U.S. government—is well represented and the other side—an immigrant unfamiliar with the U.S. legal system and often unable to speak English—is not.

Immigration proceedings are adversarial. These cases take place in a court where a government-funded attorney is representing the government’s interest, which is to deport that person. The person in removal proceedings is most often not on equal footing; they have little understanding of the law that is being used. Most people don’t understand this about the system. In most cases people would be offended if thrown into a courtroom to defend themselves without an attorney or access to materials to know what the consequences are.

If these were criminal proceedings, the right to counsel would be guaranteed. However, because immigration proceedings are considered civil law proceedings, no such guaranteed right exists, despite everything that’s at stake for the immigrant respondent. Given that the fundamental unfairness of proceeding without a lawyer in immigration proceedings is at least as compelling as it is in criminal proceedings, “[i]n this context, the right to appointed counsel is the essential starting point for ensuring fairness in the deportation system.”
Simply put, in the world of immigration detention, access to a lawyer changes everything. A lawyer can argue that the detained person should be released from detention on bond or parole, force the government to meet its burden of proof in establishing any grounds for deporting the person, and marshal the documentary evidence and witnesses necessary to make the case for why the person should be granted protection from deportation, such as asylum, adjustment of status to lawful permanent residence, or cancellation of removal. An attorney also serves as a bridge between the detained person and between the detained person and loved ones on the outside who desperately want to help.

Legal representation has a dramatic effect on outcomes. According to the *National Study of Access to Counsel*, detained people who have a lawyer are 10.5 times more likely to be allowed to stay in the U.S. than if they do not have one. Representation by nonprofit organizations, big law firms, and law school clinics increases the success rate even more.21

The New York Immigrant Representation Study: Part I found that unrepresented and detained immigrants had a dismal 3 percent rate of successful completion of their cases (as measured by case termination or relief from removal) compared with 74 percent for those who were represented and not detained, 18 percent for those represented but detained, and 13 percent for those unrepresented but released or never detained.22 A study by the Northern California Collaborative for Immigrant Justice and a preliminary report by the Chicago Immigration Court Working Group reached similar conclusions.23

**ACCESS TO COUNSEL WILL REDUCE DETENTION COSTS**

Access to counsel will result in shorter detention times, which in turn will reduce detention costs.

Immigration detention is expensive: it costs at least $119 per “daily bed,” according to ICE estimates, and $159 per day if ICE operational costs are included.24 The FY 2016 budget for detention is $2 billion.25 Some of this money—including savings gained by reducing detention times—could well be used to fund a legal representation program.

Ensuring access to representation would not resolve the underlying inequity of the immigration detention system, but it would definitely lower detention costs. A study conducted by NERA Economic Consulting at the request of the New York Bar Association found that “legal representation is likely to reduce the aggregate number of days that the government must provide food, housing, and other provisions for … detained respondents,” because (1) cases would move more quickly due to (a) fewer continuances
and (b) detained people accepting a removal order if they knew they had no chance of relief, and (2) representation would result in more people being released on bond. The NERA study concludes that a federally funded representation program would actually pay for itself.

ACCESS TO COMPETENT COUNSEL WILL IMPROVE THE IMMIGRATION COURT SYSTEM’S EFFICIENCY

The relatively few—and minimal, in terms of the number of individuals they can help navigate the legal system—programs currently providing legal representation to detained immigrants demonstrate that ensuring access to legal counsel will improve the immigration court system’s efficiency, in addition to reducing detention costs.

The Legal Orientation Program (LOP), which is funded by the Executive Office for Immigration Review, provides group legal orientations, individual orientations, self-help workshops, and some pro bono referrals in a limited number of immigration jails. A 2012 EOIR analysis found that, consistent with earlier findings,

» detained aliens’ participation in the LOP significantly reduced the length of their immigration court proceedings. On average during FY2009-2011 ..., detained aliens who participated in the LOP completed their detained immigration court proceedings an average of 12 days faster than those who did not participate in the LOP. ICE data showed that these same LOP participants spent an average of six fewer days in ICE detention than the aliens in the comparison group.

According to the analysis, the reduction in time required for immigration court proceedings when immigrants were assisted—even minimally—in navigating the system translated into an average detention cost savings of $677 per participant, or a total of more than $19.9 million annually. The savings would likely have been even greater if immigrants had had full legal representation.

The National Study of Access to Counsel provides evidence that “involvement of counsel was associated with certain gains in court efficiency: represented respondents brought fewer unmeritorious claims, were more likely to be released from custody and, once released, were more likely to appear at their future deportation hearings.”

Immigration courts currently face tremendous backlogs. As of November 2015, 463,627 cases were pending in immigration courts nationwide, with only 233 judges to handle them. Representation alone will not resolve the backlogs. But immigration judges
themselves recognize that access to high-quality representation increases the efficiency of immigration courts. In a survey conducted for the consideration of the Administrative Conference of the United States, 92 percent of immigration judges agreed that, “When the respondent has a competent lawyer, I can conduct the adjudication more efficiently and quickly.”

And as the New York Immigrant Representation Study: Part I points out, “poor-quality representation at the immigration court impacts the judicial system broadly, clogging immigration dockets, increasing the workload of immigration judges, and necessitating consideration and correction by reviewing courts.” The New York Immigrant Family Unity Program—the “universal representation” program described below—is proving the point. Advocates report that the program has changed the culture of the courtroom, creating a more professional atmosphere in which the government is held to its required level of proof. They report that the law clerks say that they get better briefs from the parties and that the level of practice has gone up.

ACCESS TO COUNSEL WILL REDUCE THE HUMAN COSTS OF DETENTION

Detained immigrants, their families, and U.S. communities pay a heavy price when people in immigration proceedings lack legal representation.

In very many cases, the detained person is their family’s main breadwinner, so the person’s detention causes the family’s income to drop drastically.

Typically, the primary wage-earner is detained. Families are trying to feed their children and not lose their homes or be evicted. If their only recourse is private representation, how do they pay for it?

Advocates consistently report that immigrant detention has devastating effects on families.

People are in the dark about next steps to help loved ones. There’s an impact on the legal outcome because they can’t organize or facilitate testimony. So much time and effort and emotional energy are exhausted trying to piece together legal advice from short conversations with attorneys. They end up spinning their wheels, suffering confusion and anxiety, with no real guidance. We see the impact on kids, with numerous kids in juvenile proceedings directly due to the absence of a parent, and an impact on their ability to read, reason, function, and focus.

Trying to find a lawyer and struggling to get help to the detained family member takes a great toll on the person’s family, who are desperate to help their loved one. That toll is
both emotional and financial, and there’s a snowball effect. Families trying to get their loved one released from detention who can’t hire a lawyer to work on getting the bond reduced find themselves in debt to bond companies or evicted from their homes because they used rent money to pay a bond.

» *It’s a huge stress on families, who are the only communication with the outside world. ... They try to get an attorney by all means necessary, selling cars and houses to get legal advice. They lose their breadwinners, and stay-at-home wives have to work for the first time to support family and pay an attorney. A lot of responsibility is shifted to kids, who are relied on for interpretation/translation.*39

As a report titled *The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers* explains, ensuring that immigrant respondents have access to representation will save millions of dollars in costs to the community. Employers bear the burden of replacing employees who are detained and deported. Students are forced to drop out of school because a parent is detained or deported. Children suffer health setbacks when a parent is detained or deported. The State Child Health Insurance Program (SCHIP) bears the brunt of coverage when a parent’s employer-provided coverage is lost. Children who are left without caretakers when a parent is detained or deported become part of the foster care system.40

Over and above these costs to communities are the costs of decreased economic activity, and reduced tax revenue, when longtime community members—workers, business owners, customers, mortgage- and lease-payers—are locked up and deported, denied the opportunity to regularize their immigration status and continue making long-term contributions to the local economy.

---

**BIT BY BIT, BARRIERS TO ACCESSING LEGAL REPRESENTATION ARE CRUMBLING**

The right to counsel in criminal cases, which today we take for granted as a foundational civil right, was finally won after years of organizing, advocacy, and litigation, culminating in the landmark legal decision *Gideon v. Wainwright.*41 A similar process is underway to develop and extend the right to representation in immigration proceedings. Court decisions, lawsuits, and executive actions have begun to establish a right to representation for vulnerable groups, acknowledge the immigrant family unit as a locus for protection of fundamental rights for immigrants in detention, and recognize that constitutionally mandated effective assistance of counsel in criminal cases is directly related to its consequences in immigration proceedings, because the penalty of deportation is so drastic.
Advances in the effort to expand access to representation for respondents in immigration proceedings include:

- The 2013 groundbreaking federal court decision in *Franco-Gonzalez v. Holder*, recognizing the right to legal representation for a particularly vulnerable group in detention—those who suffer from severe mental disabilities.42
- The U.S. Department of Justice’s creation of the National Qualified Representative Program (NQRP) in 2014 to provide legal services for detained immigrants with mental disabilities. As of September 2015, NQRP was operating in California, Arizona, Washington, Colorado, Florida, and Texas.43
- The U.S. government’s funding of a program to provide legal representation for some unaccompanied minors through the justice AmeriCorps program announced in 2014.44
- A nationwide class action suit filed in the U.S. District Court for the Western District of Washington in 2014 challenging the federal government’s failure to provide all children with legal representation in removal proceedings.45
- The Obama administration’s recognition in an August 2013 directive of “the fundamental rights of parents [in detention] to make decisions concerning the care, custody and control of their minor children without regard to the child’s citizenship.”46
- The 2010 U.S. Supreme Court decision in *Padilla v. Kentucky* holding that all noncitizen defendants in the U.S. have the constitutional right to be advised of the immigration consequences of a criminal disposition of their cases.47 In response to *Padilla*, Federal Public Defender offices across the country are training their staff in the immigration consequences of criminal pleas and, in some offices, have hired immigration attorneys to serve as in-house consultants to their criminal attorneys.48

The road to the *Padilla* decision itself reflects how putting in place the building blocks to establish a constitutional right to counsel in immigration cases can work.49 The decision was preceded by advocates’ work in establishing standards at the state level and through state and national trainings and publications, so that the Supreme Court could say that competent advice about immigration consequences was a matter of “prevailing professional norms” and was constitutionally mandated.

Advocates are using a similar strategy to move toward a universal right to representation.
The exciting news is that efforts to forge a universal right to counsel for detained immigrants are making progress. At the forefront of this activity is the New York Immigrant Family Unity Project in New York City and programs in upstate New York and in New Jersey that are piloting similar models on a smaller scale. Other locales are not far behind. Working groups have already formed in Chicago, Boston, Los Angeles, San Francisco, Houston, New Orleans, Atlanta, and Miami to assess what needs to be done locally and take steps to ensure that all immigrant respondents in those cities actually have access to legal representation.

THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT

The New York Immigrant Family Unity Project (NYIFUP) is a public defender program for all detained immigrants in the jurisdiction of the New York City Varick Street Immigration Court who cannot find an attorney and who meet income criteria. The project’s name reflects the fact that its clients are workers, family members, and breadwinners who are residents of New York.

This first-in-the-nation “universal representation” program is a collaboration of the Vera Institute of Justice, 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. Actual representation is provided by Brooklyn Defender Services, Bronx Defenders, and the Legal Aid Society, which won the contracts in a competitive bidding process.50

The New York City Council provided $500,000 to launch a pilot project in 2013, with the aim of representing 190 of the 900 indigent detained immigrants whose cases were before the Varick Street court. That pilot project proved so successful that in 2014 the city council allocated $4.9 million dollars for FY 2015 for NYIFUP to provide 100 percent coverage to eligible immigrants with cases before the New York Immigration Court, as
well as to all New York City residents detained and facing deportation whose cases are before the immigration courts in Newark and Elizabeth, NJ.51

During the pilot phase, the NYIFUP campaign also received private funding from the JPB Foundation to support efforts by coalition members to publish a report focusing on the costs to New York State and to the families and communities connected to detained individuals. This funding also supported efforts by local community-based organizations to provide advocacy and leadership opportunities for formerly detained people who had won their cases through the NYIFUP pilot program, to participate in and build support for the NYIFUP campaign.

NYIFUP attorneys from the three contracted agencies represent all detained immigrants who meet income criteria and request counsel, regardless of eligibility for relief from removal. They have negotiated access to the notices to appear for people whose cases appear on the court docket for detained immigrants, and they meet with detained immigrants the morning of their first court appearance to screen the cases. They then appear with their clients at that afternoon’s master calendar hearings.

Sometimes representation ends at this point, if the clients accept voluntary departure or a removal order and there is no need for multiple appearances to obtain this relief.52 For those individuals who proceed with their cases, lawyers from the three contracted agencies will continue their representation, going to the jails to talk to them, talking to their families, and representing them in their immigration hearings and appeals.

NYIFUP attorneys also assist clients in family, criminal, and federal court when collateral proceedings are necessary for their immigration cases.53 The agency attorneys are assisted in this process by a holistic set of services offered by social workers, expert witnesses, interpreters, investigators, and mental health evaluators.

NYIFUP in New York City has represented 1,554 clients from its beginning in November 2013 through November 2015. As of August 2015, 52 percent of clients from the pilot phase of the project at Varick Street had been reunited with their families, with NYIFUP attorneys winning 71 percent of their trials. NYIFUP is projected to increase the percentage of immigrants who will win the right to remain in the U.S. by 1,000 percent, compared with prior success rates for detained, unrepresented immigrants.”54

NYIFUP was formed as a result of a strategic and focused plan to provide representation to detained immigrants. It developed through an organic process that stemmed from its location, existing infrastructure, demographics, and political context. It also benefited tremendously from important leadership within the legal and immigrant advocacy community. Judge Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit played a lead role in the project, helping to expose the fundamental inequities experienced by unrepresented immigrants in immigration court, galvanizing the legal community and elected officials, and using “the prestige of his office to push for more and better legal representation of immigrants.”55
In 2008, Judge Katzmann began convening the Study Group on Immigrant Representation, which included representatives from law firms, nonprofits, bar associations, immigrant legal service providers, immigrant organizations, law schools, and federal, state and local governments, as well as a colleague on the court of appeals.56

Understanding that the project needed to move from anecdote to data, a subcommittee of the study group undertook a two-year study to obtain data about the scope of the immigration representation problem in New York City and to propose a plan to address it. That study resulted in two reports.

The first—*Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings*—analyzed data from EOIR and ICE as well as from two surveys, one of immigration judges, the other of nonprofit staff who do removal-defense work.57 Data and evidence cited in the report painted a picture of an abysmally low success rate for detained individuals, the damaging effect of ICE detention and transfer policies, the generally low quality of representation by the for-profit bar, and the lack of funding and resources for the nonprofit organizations that provide high-quality representation in New York City.

City council members knew, based on calls to their offices, that there was a problem. The report provided them with empirical evidence of a crisis in representation in immigration proceedings as well as concrete justification for why immigrants needed attorneys.58

The second report—*Accessing Justice II: A Model for Providing Counsel to New York Immigrants in Removal Proceedings*—built on the findings of the first report to propose the creation of the first deportation defense system of its kind in the country.59 The program would provide for universal representation of detained individuals, with screening only for income eligibility. It would operate through a small group of institutional providers with capacity to handle the full range of removal cases and in cooperation with ICE and EOIR. It would provide basic legal support services such as experts, translators/interpreters, social workers, investigators, and mental health evaluators. The program would have a dedicated funding stream and would be overseen by a coordinating organization.

The coalition that formed as a spinoff from the working group garnered support from elected officials, resulting in the city council’s approval of the pilot representation project in 2013.60 With the pilot project, which ran from November 2013 to March 2014, NYIFUP was able to definitively demonstrate the positive impact of representation and subsequently obtain funding for a full program. The coalition’s success in securing funding was due to a multifaceted campaign, with robust organizing, education and media components; longstanding relationships with groups such as unions that were developed over years of advocacy on other issues; and political kismet.61
Coalition members were able to persuade the city council to hold hearings on the issue. At their urging, some council members met with individuals and their families who had been in immigration proceedings and also attended hearings at the Varick Street Immigration Court to observe the problems first-hand. The coalition also issued its own report—*The New York Immigrant Family Unity Project: Good for Families, Good for Employers, and Good for All New Yorkers*—in conjunction with the start of the pilot project. The report focuses on the issue of basic fairness and on reducing the costs to families and their communities resulting from lack of representation for detained immigrants in removal proceedings.

The coalition conducted a media campaign, getting clients in front of the press to present the human consequences of lack of representation. The coalition also demonstrated public support by, for example, being able to produce letters that were signed by every immigrant legal service group in New York. Allies, including union leaders, made calls to the city council urging approval and expansion of the program. The political context for approval of the full program became more favorable when a supportive city council president and new city councilors won election.

The Vera Institute of Justice and Cardozo Law School will conduct an evaluation of NYIFUP in 2017. The evaluation will cover the project’s first two complete years of operation plus the pilot stage, using comparison groups and a rigorous social science analysis. The groups hope to influence the debate with a numbers-driven, credible report. An evaluation of this nature would not only affect New York City’s support of the project, it could also provide information about cost savings to the federal government and could serve as a tool for other localities seeking support for similar programs.

NYIFUP’s successful implementation shows that universal representation of all detained individuals is possible. It lays the data-driven groundwork for projects elsewhere, so that other projects don’t have to duplicate the depth and extent of data analysis done in New York. It also demonstrates the capacity to involve a wide range of stakeholders—from federal judges, to elected officials, to immigrants—in the process of developing a program that ensures representation for all detained individuals.

The success of the NYIFUP model in New York City generated support for two pilot projects elsewhere.
NYIFUP AT THE BUFFALO FEDERAL DETENTION CENTER IN BATAVIA, NEW YORK

In November 2014, NYIFUP began a five-month pilot program at the Buffalo Federal Detention Center in Batavia, NY. Run by the Erie County Bar Association Volunteer Lawyers Project (VLP) and funded with a $100,000 grant from the New York State Assembly, the pilot’s goal was to provide free legal services to 55 immigrants facing deportation proceedings—men held at the Buffalo Federal Detention Facility in Batavia and women held at local jails in nearby Allegany and Chautauqua Counties—and whose household income did not exceed 200 percent of the federal poverty guideline. In 2015, the program was renewed for a second year (August 2015 through March 2016) with the goal of representing 50 additional people. In 2015 the State Assembly increased its grant from $100,000 to $200,000, enabling NYIFUP to fund Prisoners’ Legal Services of New York to launch a second upstate program at the Ulster Immigration Court in November 2015.

The VLP project staff (1.5 full-time attorneys) conducts intake interviews on Fridays after the court docket for the following week is released. As of July 2015, NYIFUP at Batavia had represented 55 clients, 62 percent of whom had been released either while the case remained pending or through a disposition.

AMERICAN FRIENDS SERVICE COMMITTEE (AFSC) FRIENDS REPRESENTATION INITIATIVE OF NEW JERSEY (FRINJ)

In neighboring New Jersey, the American Friends Service Committee (AFSC) has created the Friends Representation Initiative of New Jersey (FRINJ) based on the NYIFUP model. Considered a “baby pilot,” it offers representation to all detained immigrants who appear before the Elizabeth, NJ, immigration court two days a week, which represents half of the detained immigrants that come to court in a given week. This includes immigrants detained at the Elizabeth Detention Center and Delaney Hall Detention Facility. All detained individuals who appear in court on the designated days are eligible for a free attorney from the program if they do not have an attorney, are unable to afford an attorney (i.e., their income doesn’t exceed 250 percent of the federal poverty guideline), and consent to representation.
The pilot began in March 2015. In the first three quarters of the project, staff represented 232 people in detention and 146 people were released from detention on bond. This far exceeds the expected first-year goal of 150 cases. To date, they have represented a number of people in their bond hearings and a few with removal orders, along with people who have applied for relief from removal, including cancellation of removal, asylum, and withholding. They have referred a few cases to pro bono attorneys but represent most individuals in-house. With the launch of FRINJ, AFSC staff estimates that between 95 and 100 percent of detained immigrants are represented by counsel on the days that the program covers. Prior to this project, they estimate, only 35 percent of detained immigrants were represented by counsel in their immigration hearings.

The project’s staff—three bilingual attorneys and a bilingual legal assistant—is assisted by volunteer lawyers and law students who help conduct intake interviews and follow up with families. The project also has hired a consultant to develop monitoring tools.

The FRINJ pilot is funded by the David Tepper Charitable Foundation. In 2014, David Tepper expressed interest in supporting immigration legal services in New Jersey. The foundation approached AFSC because of its strong track record supporting immigrants as well as solid infrastructure and staffing. Because the pilot is 100 percent funded by a foundation grant, AFSC did not take the route of New York advocates to develop a coalition, gather statistics, and make the case to the public through media attention.

AFSC developed the program in close cooperation with the Elizabeth Immigration Court judges and staff and local ICE staff. But the program is hampered by limits on meeting space and access to telephones and does not have the NYIFUP advantage of receiving documents from ICE in advance of hearings.

The biggest challenge for the Elizabeth, NJ, and Batavia, NY, pilot programs is how to expand each project to cover the full court dockets in Elizabeth and Batavia as well as other detained-immigrant dockets in New Jersey and upstate New York. Funding for legal services in New Jersey is very scarce overall, so the prospect of securing funding from government entities is low.
THE FORMATION OF WORKING GROUPS
AS A CATALYST FOR CHANGE

There’s no obvious answer to the question of how to replicate the “universal representation” model developed in New York in the wide variety of locations, facilities, and political contexts that exist throughout the U.S. Inspired by the New York example, working groups have formed in Chicago, Boston, Los Angeles, San Francisco, Houston, New Orleans, Atlanta, and Miami to find their own ways.

While membership in the working groups varies, in general the groups have included both private and nonprofit immigration providers; representatives from state bar organizations, the American Immigration Lawyers Association (AILA), and the National Immigration Project of the National Lawyers Guild; law school immigration clinic personnel; immigrants’ rights advocates; pro bono coordinators at private law firms; community-based organization staff; and sometimes judges. Members of the Association of Pro Bono Counsel (APBC), representing private firms’ pro bono counsel, have played important roles in many of the working groups.

Usually there is a lead agency or individual to help facilitate the process. In New York, a clerk in Judge Katzmann’s court played a key coordination role, while Human Rights First staff has played a strong coordination role during different phases of the working groups’ efforts in New Jersey, Houston, New Orleans, Atlanta, and Miami. According to Jennifer Rizzo at Human Rights First, “It is important to get the pulse of what people are thinking early on, determine what is the will for [building a local movement for representation], and form individual relationships before you can bring people together in a working group.”

Judge Katzmann and NYIFUP project partners have proved to be a resource to the groups, meeting with several of them. In Chicago, Judge Katzmann delivered the keynote address at a November 3, 2014, symposium organized by the Chicago Immigration Court Working Group.
Several of the working groups have produced their own reports. The Northern California Collaborative for Immigrant Justice and the Chicago Immigration Court Working Group each conducted its own study of the extent and effect of legal representation in their communities. After studying EOIR data “to analyze the effect of representation on case outcomes for detainees” and surveying Northern California nonprofit organizations that provided low- or no-cost representation to immigrants before the San Francisco Immigration Court, the Northern California Collaborative in its report called for a “universal representation framework for detained immigrants” and for a pilot program as an interim measure.

Likewise, the Chicago working group’s preliminary report found that “[a]ccess to counsel … has a profound impact on outcomes for detained immigrants before the Chicago Immigrant Court” and access to counsel will make immigration court proceedings in Chicago fairer.

The working groups in all of the cities have complex issues to resolve:

• How can the working groups be broadened to coalitions that involve local communities more fully?
• What are the best ways to make the public aware of how lack of representation impacts families and communities?
• Where will funding come from, especially in cash-strapped states and localities?
• How can funding be obtained without undercutting funding currently available for direct representation?
• What political support is there for a program?
• What support can be generated from the local immigration courts and ICE?
• In some jurisdictions, the immigration court is in a city or town substantially removed from where the people with cases on its docket are detained—in multiple far-flung jails, sometimes in a different state. How will a representation program deal with such a situation?
• What are the best arguments for establishing a program in an area where most detained immigrants are either recent arrivals or their homes are far away from where they are detained and where they need to appear in immigration court?
• Will access to lawyers facilitate immigrants agreeing to being deported when, to address the actual underlying problem, what’s called for is a thorough overhaul of the detention and deportation system itself?
• Would beginning by providing services to the most vulnerable and/or politically sympathetic groups result in ignoring the needs of groups that present more complications, such as people with criminal convictions?
• What intermediate steps can be taken to advance detained immigrants’ rights to legal representation?
OTHER APPROACHES TO RIGHT TO COUNSEL

ALAMEDA AND SAN FRANCISCO COUNTY PUBLIC DEFENDER OFFICES

In January 2014, the Alameda County Public Defender’s Office in Northern California launched California’s first Public Defender Immigration Representation Project, which provides immigration representation to a limited number of eligible noncitizen clients in their subsequent immigration matters. A statement issued by the office says, “This [project] marks the first time that a county public defender’s office in California has appeared on behalf of clients in immigration court. The Alameda County Office of the Public Defender sees the program as an important shift toward a more holistic model of indigent defense.”

The project is funded by Alameda County. The project’s one full-time attorney represents any individual who is a former or current Alameda Public Defender client, who is not able to afford an attorney, and who does not present a conflict with any other case the office represents. The attorney screens the cases of immigrant Public Defender clients to see if they may be eligible for some form of immigration relief, when clients request help. In addition, the attorney reviews the expungement docket and all juvenile cases to find anyone who may be eligible for Special Immigrant Juvenile Status relief, and the attorney accepts referrals from local organizations based on their criteria. The staff attorney does not represent everyone regardless of what form of immigration relief they may qualify for; the attorney prioritizes cases according to how much of a difference it will make if the immigrant has legal representation.

The San Francisco Public Defender’s Office started a similar project in August 2014. No additional city funding is being used to pay for its program; the public defender’s office created the role from one of its budgeted attorney positions after assessing the need through its intake forms.
IMMIGRANT JUSTICE CORPS

Judge Katzmann was the impetus for the creation of the Immigrant Justice Corps in 2014. Beginning in New York City with the hope of expanding elsewhere,

> Immigrant Justice Corps recruits talented lawyers and college graduates from around the country and partners them with New York City’s leading nonprofit legal services providers and community-based organizations to offer a broad range of immigration assistance including naturalization, deportation defense, and affirmative applications for asylum seekers, juveniles, and victims of crime, domestic violence or human trafficking.78

IJC not only represents immigrants in detention but also helps immigrants fighting deportation or applying for asylum or for relief as survivors of crimes, domestic violence, or human trafficking.
WHAT DO ADVOCATES SEE AS ESSENTIAL ELEMENTS OF A GOOD REPRESENTATION PROGRAM?

The practitioners and experts we interviewed for this report are quite clear that, given the high stakes, every respondent in immigration proceedings should have the opportunity to be represented by an attorney. To make this happen, advocates must establish workable models and strengthen the legal underpinnings for a right to effective assistance of counsel in immigration proceedings. Although this report focuses on immigrants in detention, the right to representation should, of course, not be limited to those in detention. But the dire context of detention is an important place to start.

From our interviews, it is clear that there is no one model of universal representation that will work in every setting. The immigration detention and court system is complex and byzantine. Though administered by the federal government under the auspices of ICE (the detention system) and EOIR (the courts), in actual fact immigration jails and local immigration courts are governed by practices and policies, many of them seemingly arbitrary, that vary from place to place. As a result, in the absence of a national immigration public defender system, there is no standard project structure that will work for all locales. Everyone interviewed agreed that a particular project would need to be carefully tailored to the detention facility and court where its clients are held and must appear. Several people suggested creating a set of pilot programs in different parts of the country to assess which funding models and program structures would best meet, for example, facilities and populations of different sizes.
However, the experts we interviewed identified common elements for a model of effective representation. Here’s what they said:

### UNIVERSAL REPRESENTATION IS THE GOAL

- First and foremost, the model should focus on universal representation.
  - *Anyone who needs an attorney should have one. Be ambitious. Set the table for the project you want even if it is not achievable in the short term.*

- The programs should not choose among individuals, with only those most “meritorious” getting representation. To do so would disastrously mimic and reinforce the deep divides within the immigrants’ rights movement about “good” versus “bad” immigrants and also undercut the potential overall system efficiency that a universal representation model can provide.

- Participants should be screened for economic necessity. (In the current programs, the standard income ceiling for participation is 200 percent of poverty level, based on the federal guidelines.)

### REPRESENTATION SHOULD BE HOLISTIC

- People should have representation throughout their entire immigration proceedings and any appeals.
  - *Ideally, individuals would be represented until they prevail or are deported.*

- The representation program should provide a broad range of services to meet the needs of an individual going through immigration proceedings: resources for interpreters, expert witnesses, and social workers to support the client and the client’s family as they prepare the case.

- Where possible,
  - *a representation project would help an individual and/or family manage and resolve a crisis that is not only the court proceeding, but likely includes a need for social service, mental health support, and advocacy and representation in collateral proceedings.*
WHAT DO ADVOCATES SEE AS ESSENTIAL ELEMENTS OF A GOOD REPRESENTATION PROGRAM?

REPRESENTATION SHOULD BE CONNECTED TO THE STRUGGLE TO TRANSFORM AND REFORM THE IMMIGRATION SYSTEM

- A representation program could serve as a check on a harsh and punitive system.
  
  » *It’s not just about providing legal services. The goal should also be to continue transforming the system.*

- Bringing more people into a closed and hidden court process and custody setting to expose abuses in detention and the courtroom would be another way to create greater accountability and oversight. One way to do this would be to engage community partners in a representation program’s development and implementation. They could help identify problems and abuses, and also provide direction about how to address systemic problems. Once a program is in place, clients who have benefited from legal services may also become advocates for access to counsel locally and nationally, as well as for other immigrants’ rights initiatives. In New York, NYIFUP’s clients have played a key role in ongoing advocacy to ensure the program’s long-term sustainability.

REPRESENTATION MUST BE HIGH-QUALITY AND SUPPORTED BY ADEQUATE RESOURCES

- Programs will require government support in the long term, whether from local, county, state or federal sources, without sacrificing existing programs. In the short run, local foundations may support the initial campaign work, conferences and symposia, data collection, and reporting or specific projects, such as pilot projects.

- A sole focus on “making the deportation system work better” is unacceptable. The focus must be on high-quality representation rather than on high volume. Advocates should avoid creating a model that provides universal but inadequate representation and that fails to explore all potential avenues of relief. A key question is “how to make sure it’s a fair system and that people get heard.”

- Attorneys should be granted the resources to mount a legal defense even if the case is difficult.

- The program should not replicate a public defender model, which repeatedly has been critiqued for overwhelming caseloads, which in turn result in minimal attention per
case. The program should help increase the number of local legal service providers with expertise in representing people in immigration court and establish partnerships among such providers.

- To be sustainable, a representation program must be staffed by full-time, paid legal staff.

  » Even successful pro bono projects, such as those supporting detained families in Artesia and Dilley, highlight the challenges of these programs and what it took to interest and engage the support of the legal community.84

---

**EOIR AND ICE ARE CRITICAL PLAYERS IN ESTABLISHING A SUCCESSFUL PROGRAM**

- The engagement and support of immigration judges and court staff, as well as ICE trial attorneys, are essential in developing a representation program. These stakeholders understand that when immigrant respondents have legal representation, court proceedings are more efficient, less time- and resource-consuming, and less stressful.

- ICE can help by making space available in which to conduct interviews and by facilitating communication between lawyers and their clients. Detention center staff can make it easier for lawyers to visit their clients and to use their laptops and cell phones inside detention facilities. EOIR can provide copies of the court docket and assistance with reviewing notices to appear before initial screening interviews. EOIR also could offer simplified court procedures, allow case resets for case preparation, create a straightforward system for changes of venue, and otherwise minimize bureaucracy and delays.

- Since the cases of detained people are complex and take a great deal of time and energy, immigration judges need to give their lawyers sufficient time to analyze legal options, gather information, and prepare a case.

- Attorneys should be able to meet with their detained clients at the earliest possible opportunity, so that people don’t sign deportation orders without understanding their legal options.
PROGRAMS MUST ADDRESS THE CHALLENGES THAT ARISE WHEN DETENTION FACILITIES ARE ISOLATED OR SCATTERED

• There is an acute need for access to legal representation at some of the most remote detention facilities, e.g., in Oakdale, LA; Lumpkin, GA; and Eloy, AZ.
  
  » The Eloy and Florence detention centers are in the middle of the desert without access by public transportation, making it very difficult and time-consuming for attorneys and families to visit detained individuals.85

• Creating a representation program will be particularly challenging in areas in which the immigration court where detained respondents must appear is in a different state than the multiple, scattered detention facilities and jails where many of them are detained.

• Where universal representation is not yet feasible, other, less comprehensive programs should be considered. Suggestions included “LOP Plus,” i.e., creating a representation program connected with a local Legal Orientation Program to provide representation to cases on a prioritization basis;86 a “hub-and-spoke” structure, in which an experienced attorney is hired to support less-experienced attorneys who work for local nonprofits, who could then provide increased representation; or an AmeriCorps-type program, affiliated with a local nonprofit, with staff located near a remote detention center, such as the Stewart Detention Center in Lumpkin, Georgia, or the Oakdale Federal Detention Center in Louisiana. The goals would be to build capacity for representation at local nonprofits, train younger lawyers, and develop a more solid immigration bar that would be willing to take the cases of people who are in detention.

• As an intermediate step, it may be necessary to establish programs that focus only on reducing bonds so that detained immigrants have a realistic chance of being released from detention while they seek immigration relief. Overall, however,
  
  » [such a] program should be used as a window for the legal community to fight for the right to counsel for everyone. Don’t lose sight of that larger goal.87
HOW TO GET FROM HERE TO THERE:

WHAT DO ADVOCATES SEE AS ESSENTIAL STEPS TOWARDS BUILDING A GOOD REPRESENTATION PROGRAM?

The practitioners and experts we interviewed—whether they were involved in existing programs or hoped to be involved in the development of new representation programs—shared useful and creative ideas for how those programs could be formed.

PURSUE PRIVATE AND PUBLIC FUNDING

• Begin looking for funding early in the process.
  
  » This would include early outreach to private foundations to have exploratory conversations regarding seed money for pilots, as well as conversations with officials in progressive municipalities to understand what their interests are and how they could intersect with a funded project.88

• Understand how the local, county, and state budget processes work, to identify the most appropriate public funding streams.

• While preserving the ultimate goal of the program being publicly funded, recognize that waiting for a conservative local legislature to embrace access to counsel for immigrants might mean that a program never gets off the ground. Be willing to improvise in the short and medium terms to combine funds from public and private sources to build a program that constituents—and the political actors accountable to them—will have an investment in preserving.
CREATE A WORKING GROUP

• Create a working group to gather data about the need; to create political support among elected officials, local foundations, and other government officials; and to develop a plan tailored to the locality. Take the time at the beginning to establish ground rules and intentions.

  » We don’t do that enough in coalitions. This helps head off [negative] dynamics that can arise and can save misunderstanding and heartache later.89

• Consider creating, initially, a smaller group within the larger working group that focuses on determining what model of service-provision would best fit the local setting, identifying potential funding sources, and developing a political strategy.

• The role of the larger working group can include gathering data about the need within the community for community members in immigration proceedings to have access to legal representation, and about gaps in the existing representation system; mapping out shared objectives and goals; doing an analysis of entities and individuals within the community who have the power to realize a representation project; dividing up the work to build shared ownership of the working group’s tasks and successes; and identifying and building relationships with allies who would provide ongoing support to a project once it is established and funded.

• Build the political will for a program. Work with potential allies to talk with city, state, and private funders to see who is persuadable.

• Try to get a prominent local figure—someone with strong leadership skills who has passion for the issue and credibility in the community—involves in the project.

  » It does not have to be a judge, as long as it is someone who is well-known in that community who can serve as the chair of the group. The chair should have a prominent regional profile, be well-liked and trusted, and be able to serve as a neutral leader to focus the group’s efforts.90

COLLECT DATA

• Collect and have on hand local statistics that show how constituents in the city, county, or state will be affected. These can be obtained via narrowly tailored Freedom of Information Act requests to EOIR to supplement the findings of major studies. An initial step is to document who is in immigration detention in the area.
• Make use of the excellent research and findings available in published reports, such as the reports published by organizations in New York and Northern California.

• Prepare a set of shorter briefing papers that present different aspects of the case for establishing a representation program, e.g., relevant data, stories of impacted individuals, and the results of a survey of local nonprofit capacity.

**BROADEN THE WORKING GROUP TO A COALITION**

• Hire or otherwise engage a coalition facilitator, someone who can act as the glue behind the scenes to move the process along and bring key people together on a consistent basis. At later stages, it is ideal to hire or otherwise engage a lobbyist who can help navigate the political system being petitioned for funding.

• Ensure that immigrants, their families, and advocates play a key role in the coalition. The involvement of community organizations is particularly important to legitimize the campaign and highlight the perspective of the directly affected population.

• Involve other critical stakeholders in the coalition, such as leaders from the legal community, including the federal judiciary, AILA, the state and local bar, federal public defenders, people with political access and understanding of local politics, as well as representatives of the community; and allies, such as other groups also affected by deportation, including LGBTQ and domestic violence organizations, unions, the private bar, academics, human rights groups, criminal justice organizations and judges, and faith-based networks.

• Keep the invitation to participate in the coalition open to all organizations and entities that are involved in the issue, to encourage people to rise above any competition or “turf” issues that can arise while making sure that the decision-makers from the core groups are in the room; for example, this could include executive directors or managing attorneys from local nonprofit service-providers, the state bar president, and pro bono coordinators from private law firms.

• Involve people with a broad knowledge of the legal landscape but without direct stakes in any future funding—e.g., law school clinical staff, state bar or local AILA representatives—as core participants to help reduce tensions.
ORGANIZE A CONVENING

- Consider organizing a convening of stakeholders for a structured discussion about right to counsel in immigration proceedings and to galvanize support for the effort.

LIFT UP THE STORIES OF DIRECTLY IMPACTED PEOPLE

- Don’t forget to share the stories of people directly affected by the immigration detention and court process and how representation has made a difference in their lives.
  
  » *It is important to value the power of stories and clients. While you need to do lots of data analysis, people’s stories are critical.* \(^91\)

- Train people who’ve been helped by the representation program to do advocacy and media work. This is absolutely central to the process. NYIFUP worked with individuals and their families to help them share their own experiences with removal proceedings and the impact of having legal counsel—and to advocate for program funding.

- Learn from and build on the strategies and successes of advocates who have been able to focus the media’s attention on “family detention”—the practice of locking up family groups, particularly mothers and their children.

MAINTAIN AN ONGOING MEDIA STRATEGY

- Continue to engage the media throughout the campaign. Media coverage is crucial to influencing policymakers, promoting the program to the public, and demonstrating its benefits to the community. Individual stories are critical.

  » *When advocating at the local level, you have to have a human story be part of it.* \(^92\)

- The human stories should be part of a broader advocacy and media strategy.

- Craft messages that will influence the key decision-makers. The messages should clearly identify how lack of legal representation in immigration proceedings impacts particular local stakeholders and a broad range of stakeholders.
» The number one message that advocates pulled out of the New York Representation Study was that detained immigrants with attorneys were a thousand times more likely to win their cases, and as a result New York City was deporting tens of thousands of people with the legal right to stay in this country but for the fact that they could not afford an attorney. Distilling the report down to this core injustice was very effective in making the case for representation. We then worked to develop media coverage that highlighted this message.93

DEVELOP A MULTIFACETED ADVOCACY STRATEGY

• Develop a multifaceted advocacy strategy that continues throughout the campaign. Identify all relevant stakeholders: members of the city, county, and state administrations; faith influencers; members of the business community; union and community leaders.

• Be prepared to apply pressure from all directions. You never know what combination of pressure points is going to be most effective.

• Create a step-by-step educational plan to introduce stakeholders to the immigration detention and court system and highlight the impact of the process on immigrants, their families, and their communities. Continue to educate stakeholders and build relationships throughout the process, e.g., by meeting regularly with legislators’ new staffers to educate them about the program and to update longstanding allies. It is vital to ensure that legislators’ investment in the representation program be maintained and renewed in each legislative session.
CONCLUSION

No immigrant should face the might of the U.S. government and the very real possibility of exile and separation from family and loved ones without a fair chance to defend their case for relief in immigration court. Our ultimate goal should be for all immigrants facing deportation to have access to competent legal representation.

The effort to expand immigrant respondents’ access to legal representation can start with efforts that specifically benefit detained immigrants, who face the most challenging barriers to securing an attorney. In an ever-increasing number of cities, a range of stakeholders—including lawyers, community advocates, organizers, politicians, judges, and immigrants themselves—have begun to strategize about how they can establish a right to counsel in their communities.

The fight for a right to representation is part of a larger movement to obtain justice and fairness for immigrants and an even larger movement for greater fairness and justice across a spectrum of areas—the criminal justice system, access to health care and housing, and employment.

NYIFUP’s success in New York came after years of organizing on immigration enforcement–related issues that directly impact the city’s immigrant communities and of establishing relationships within those communities, as well as within the halls of power. The lesson learned is that it is crucial to find common cause with others in the community and to make the fight a collective effort. The most appropriate approach will differ from place to place, but advocates can support each other in these efforts by sharing what they’ve learned and accomplished.
MR. T

Mr. T is from Burkina Faso, where he worked as a radio host. Upon his arrival at JFK Airport in May 2015, he expressed fear of returning home and was taken to the Elizabeth Detention Center in New Jersey. Represented by FRINJ attorney Amelia Wilson, he was granted asylum on September 9, 2015, based on his having been involved politically with the former ruling party in Burkina Faso. Mr. T was released on October 7, 2015, after having spent five months in detention.

I was really scared; it was my first time in detention. I had no idea about the process or what to do. I thought I could only have a lawyer if I paid. I didn’t know the FRINJ attorney would represent me for free.

She did great work for me. She asked me to provide a complete history of what happened in my country. She asked for documents to show I was in the CDP political party and my role as a radio host. She asked witnesses in Burkina Faso to write statements about what had happened to me. I could not have gotten the statements without her. She presented human rights reports and newspaper articles in court. I would not have had access to all that. She clarified everything. She listened to everything about my case and tried to understand my current situation.

She made all the difference because I was afraid. This was the first time I had been before a judge, and she prepared me for all that. Without her, I would not have gotten asylum. In detention without a lawyer, it’s impossible to win. It’s a really complicated process. I saw a detainee go before a judge without a lawyer, and he lost. I don’t think he understood the process and how to present your case.

“ONCE I HAD A LAWYER, SHE HELPED ME UNDERSTAND WHAT I HAD TO DO. THAT GAVE ME COURAGE. I HAD THE FAITH AND COURAGE SHE WOULD DO EVERYTHING TO HELP ME. THOSE WHO DIDN’T HAVE A LAWYER WERE AFRAID. THEY DIDN’T KNOW WHAT TO DO; THEY WERE LOST.”
I know detainees who tried to get lawyer but couldn’t. People spend months in detention without a lawyer. If everybody could have a free lawyer, that would be good. Having a lawyer gives you courage and hope.

**PAUL WILLIAMS**

Paul Williams came to the U.S. from Jamaica as a lawful permanent resident in 1980, when he was 10 years old. His mother, two daughters, grandchild (plus another grandchild on the way), and past and current girlfriends are all U.S. citizens. He applied for U.S. citizenship, but on September 30, 2104, ICE took him into custody and charged him with being deportable for two misdemeanor drug convictions (one in 1999, the other in 2005) for which he’d been sentenced to probation or drug rehabilitation.

Represented by Jackie Pearce and her team at the Bronx Defenders, he was granted cancellation of removal and released from detention in New Jersey in May 2015.

I had been detained for about one-and-a-half months in New Jersey when I met Jackie and her team at one of my court appearances. She worked with a social worker and a paralegal. I called them my angels. It was a godsend they showed up. My family and I definitely couldn’t afford an attorney to go through the long, arduous court process. I knew from my mom and others in detention that an attorney would cost thousands, maybe tens of thousands.

I’ve been depressed in my life, but at the point when ICE arrested me I had been in a long grace period. I was working and enrolled in a program to be trained as a drug counselor. Things were starting to look up. Then ICE took me into custody. Depression crept back in when I was detained.

I was so depressed at one point in detention, I didn’t know what would happen. Having a lawyer made all the difference in the world. You go from feeling hopeless, with no say in what’s happening to you, to knowing you have someone fighting for you on the outside.

Jackie and her team went out in the field, investigated for character references, got in touch with my family and my girlfriend, and explained everything to them about what the process would be. They put together documents such as my work record, court records, tax records—everything they could find.

I had been living paycheck to paycheck before I was detained and so didn’t have any money after ICE arrested me. I only had money to buy a $30 phone card if my mom put money in my jail account.
You need a phone card to reach out to a lawyer or loved ones. Phone cards don’t last that long. So if you have no money coming in to your account, you don’t have a way to get in touch with anybody. Some people couldn’t afford to reach out to anyone because they didn’t have anyone to put money in their accounts. They would borrow from another detainee’s phone card for a few minutes of time to try to reach someone.

"YOU HAVE A SENSE OF HOPELESSNESS IF YOU DON’T HAVE A LAWYER TO REPRESENT YOU. A LOT OF PEOPLE JUST SIGNED PAPERS TO LEAVE BECAUSE THEY DIDN’T THINK THEY COULD SUCCESSFULLY FIGHT WITHOUT A LAWYER."

At the initial point of contact with Immigration, you feel pretty hopeless. You should have a lawyer right from the beginning, so you can know what you are facing and have a ray of hope.

**SANTOS CID RODRIGUEZ**

Santos Cid Rodriguez came to the U.S. as a lawful permanent resident in 1992. Living in New York, he operated a bodega and worked most recently as a medical equipment deliveryman until he suffered a debilitating back injury on the job. As a permanent resident, he was able to travel back and forth to the Dominican Republic and to bring his wife and children here as permanent residents.

But in March 2014, ICE officers arrested him based on a 1999 misdemeanor conviction for possession of a controlled substance, for which he had received no jail time, only a one-year conditional discharge. Detained in the Hudson County Jail in Kearny, New Jersey, he faced deportation from the U.S. and separation from his wife and four children.

Represented by Ruben Loyo of Brooklyn Defender Services as part of the NYIFUP pilot project, he was granted cancellation of removal in July 2014 while still in detention.

Mr. Rodriguez, with the help of his NYIFUP team, then applied for U.S. citizenship. His application was approved and, on August 19, 2015, he was sworn in as a U.S. citizen at the U.S. District Court for the Eastern District of New York, becoming the first client in Brooklyn Defender Services’ pilot project to obtain U.S. citizenship after winning
his deportation case. Because he has one son under 18 years of age, his son is now a derivative U.S. citizen as well.

I thought I could only get a lawyer if I paid, and I couldn’t afford one. Without Brooklyn Defender Services, I would be in the Dominican Republic. You’re lost without a lawyer. I would not have known what I needed to do. I thought I had no chance to stay in spite of my many years in this country and all my family here.

Ruben was always there. He explained the process, what witnesses I would need, and the consequences. He interviewed all my family, put together documents, and presented witnesses.

“IN THE DETENTION CENTER, IF YOU DON’T HAVE A LAWYER, NOBODY HELPS YOU. I WASN’T GETTING THE RIGHT MEDICATION FOR PAIN, AND THEY DIDN’T LISTEN TO ME. OFFICERS IGNORE YOU. MY LAWYER COMPLAINED, AND EVERYTHING CHANGED.

It’s terrible if you don’t have a lawyer. When you are inside, you have nowhere to go for help. People lose their cases. Officers tell people they will be detained for a long time and so should sign and go back to their country, so they don’t have to be detained. People are separated from families and are afraid to stay in immigration jail, where they are treated like a dog, so they give up and agree to leave.

Money is the biggest obstacle to representation. Private lawyers charge too much money. Lawyers ask for $10,000 to $20,000. If you can’t afford to hire a lawyer, you are lost. It doesn’t matter how good your case is.

Everyone should have a lawyer. When you have good representation, you feel a sense of hope. You feel you have more power, we’re going to fight, my case has a chance. Many people feel lost and won’t even talk. Then when they get a lawyer, you see them smile and talk. They change when they have a lawyer.
Ms. XE

Ms XE (a pseudonym) is a 40-year-old survivor of domestic violence from the Dominican Republic. She suffered decades of psychological, physical, and sexual abuse at the hands of her husband. She is the mother of four children, all of whom suffered psychological abuse as witnesses to the abuse their mother endured.

Upon arriving in the U.S. with a visa, Ms. XE expressed fear of returning to the Dominican Republic and was detained in Delaney Hall for four months. Denied parole, she experienced depression and post-traumatic stress disorder.

Represented by FRINJ attorney Michelle Gonzalez, she was granted asylum in July 2015. With FRINJ’s help, she has since obtained work authorization, asylum benefits, and counseling and has petitioned for her four children to join her in the U.S.

My attorney, Michelle, was the light at the end of the tunnel for me with the hope that she gave me and the ability to remain alive and free. I don’t know what would have happened in the Dominican Republic—maybe I would have ended up dead.

“MY ATTORNEY CONTACTED PEOPLE IN THE DOMINICAN REPUBLIC, MADE CALLS, PUT TOGETHER COUNTRY CONDITION DOCUMENTATION, AND GATHERED EVIDENCE, INCLUDING LETTERS FROM MY FAMILY MEMBERS, POLICE REPORTS, AND PROTECTION ORDERS. SHE HELPED ME WITH MY PERSONAL STATEMENT. ALL OF THIS WOULD HAVE BEEN DIFFICULT TO DO FROM JAIL.”

You need money in your account to make calls. I couldn’t have made the calls to the Dominican Republic or gathered the documents. My attorney got my medical records from the jail. I didn’t know I had the right to them. Also, the court won’t accept documents that aren’t translated and certified. My family couldn’t have done that.

After the asylum case, I spoke to FRINJ’s social worker and learned about access to asylum benefits. I wouldn’t have known about the time limit. Michelle told me about my right to petition for my kids.

Without an attorney I would have lost the case. I couldn’t have done what Michelle did. I felt awful, desperate. I didn’t know anyone would help. I didn’t think I could fight my case. Without the help of FRINJ, so many people would be without hope or opportunity for their families.
Mostly poor people are coming, and they are trapped in detention. They don’t have the money to pay. You need at least $6,000 for a lawyer. So they have to navigate the system alone. It’s marvelous that the FRINJ program exists. They didn’t just represent us, they let us know what our rights were and treated us like human beings.

It is an awful experience to be detained after what I had gone through. I am so grateful that I can start here, have my children here with me, and provide for them.

MRS. PEARSON

Mrs. Pearson (a pseudonym) is a 42-year-old survivor of domestic violence from a Caribbean country. She suffered years of psychological, physical, and sexual abuse at the hands of her ex-common-law spouse in her country. Her two children suffered psychological abuse as witnesses to the abuse their mother endured. Her son is now deceased.

Mrs. Pearson sought help from authorities in her country, but they never took any meaningful action to protect her. Finally, she fled to the U.S. to seek help and safety.

FRINJ counsel Lloyd Munjack secured her a grant of asylum in immigration court in July 2015 after she had been detained at Delaney Hall for five months. With her attorney’s help, she has since procured work authorization, asylum benefits, and counseling. She has petitioned for her daughter to join her in the U.S., and that petition is currently pending.

The most important thing my attorney did for me, in addition to preparing my legal case, was to provide support. Had I not been represented, I don’t think I would have been able to win my case.

“IT IS IMPORTANT TO HAVE ONE PERSON YOU FEEL YOU CAN TRUST, TO WHOM YOU CAN OPEN UP. YOU GO THROUGH CERTAIN THINGS IN THE PAST; YOU ARE ASHAMED AND DON’T WANT TO SPEAK ABOUT IT; IT’S YOUR WAY OF PROTECTING YOURSELF. IT IS OFTEN THE MOST USEFUL INFORMATION TO WIN YOUR CASE, SO IF YOU DON’T SHARE THIS INFORMATION THERE IS A HUGE POSSIBILITY YOU MAY LOSE YOUR CASE.”

I saw cases where people may have lost because they did not put out the most crucial information.
I would have been really lost without an attorney because I had never been in this situation; I did not have any background, education, or training to deal with this. You may try to get correct information, but you are still going in blind.

You hear that most people without an attorney lose their cases; those who win had representation.

I knew everything was in the attorney’s hands. What I had to do was keep myself sane and peaceful enough to go through the process. I tried to console girls who had no representation. It was really hard for them. I would see them doing so much work, writing, going to use the computer, calling their family back in their home countries to get information. I would see them really stressing out. They were constantly asking questions. It is a whole lot easier with an attorney to do the work. All you have to do is speak up and tell the truth.

It is imperative that every single immigrant seeking assistance, especially in detention, have an attorney, regardless of the type of case. Every single person should get a fair chance at winning their case.
NOTES

1 The government has relied on Immigration and Nationality Act (INA) § 292 and 8 USC § 1362 in support of that view. See Memorandum from David Martin, General Counsel, to T. Alexander Aleinikoff, Executive Associate Commissioner, Programs, Subject: Funding of a Pilot Project for the Representation of Aliens in Immigration Proceedings (Dec. 21, 1995). More recently, however, DHS, in an opinion written by the very same author as the 1995 memo, revised its interpretation, concluding that there is no general statutory prohibition on spending federal funds for representation of noncitizens in removal proceedings. See Letter from David Martin, Principal Deputy General Counsel, U.S. Department of Homeland Security, to the Honorable Thomas J. Perrelli, Associate Attorney General, U.S. Department of Justice (Dec. 10, 2010).

2 8 USC 1362. Of course, the federal government could choose to recognize the right to appointed counsel and, as described in this report, can be compelled to recognize it as a matter of due process of law.

3 Banking on Detention: Local Lockup Quotas & the Immigrant Dragnet (Detention Watch Network, 2015), www.detentionwatchnetwork.org/sites/default/files/Banking_on_Detention_DWN.pdf.


7 Id., p. 36.

8 Id., pp. 35–36.

9 Id., p. 34.

10 Interview with Edna Yang, Director of Legal Programs, American Gateways, conducted by telephone, June 30, 2015.

11 Interview with Mekela Goehring, Executive Director, RMIAN, conducted by telephone, July 13, 2015 (hereinafter “Mekela Goehring interview”). “AILA” is the acronym for American Immigration Lawyers Association, the national organization for attorneys who practice and teach immigration law.

12 In June 2014, ICE began detaining Central American women, first in Artesia, NM, and then in for-profit jails in Karnes County and Dilley, TX, arguing that detention was warranted in order to discourage future migrants. Locking Up Family Values, supra note 5. That argument was rejected in Feb. 2015 in AILA v. Johnson, 80 F. Supp. 3d 164 (D.C. Cir. 2015).

13 Interview with a staff attorney at a Miami, Florida–based nonprofit, conducted by telephone, July 15, 2015.
14 Interview with Iris Gomez, Senior Immigration Staff Attorney, Massachusetts Law Reform Institute, conducted by telephone, July 13, 2015.


16 National Study of Access to Counsel, supra note 6, p. 7.

17 Interview with Julie Pasch, Managing Attorney, ProBAR, conducted by telephone, July 7, 2015.

18 Interview with Victoria Lopez, Legal Director, ACLU of Arizona, conducted by telephone, July 10, 2015 (hereinafter “Victoria Lopez interview”).


21 National Study of Access to Counsel, supra note 6, p. 8.


27 Id., p. 35.


29 Id., p. 3.

30 National Study of Access to Counsel, supra note 6, p. 2.

31 TRAC Immigration Court Backlog Tool (TRAC Immigration, last visited Jan. 5, 2016), http://trac.syr.edu/phptools/immigration/court_backlog/.


35 Interview with Andrea Saenz, Clinical Teaching Fellow, Cardozo Law School, conducted by telephone, July 7, 2015 (hereinafter “Andrea Saenz interview”).

36 Northern California study, supra note 23, p.13.

37 Interview with Anton Flores-Maisonet, conducted by telephone, July 13, 2015 (hereinafter “Anton Flores-Maisonet interview”).

38 Interview with Raha Jorjani, Immigration Public Defender, Alameda County Public Defender, conducted by telephone, July 9, 2015 (hereinafter “Raha Jorjani interview”).

39 Interview with Carlos Garcia, Puente Movement, conducted by telephone, Aug. 6, 2015.


41 Gideon v. Wainwright, 372 U.S. 335. Before the Supreme Court took a categorical approach to the right to counsel in all criminal cases that could result in incarceration as punishment, “Gradually, the Court recognized such circumstances in a variety of settings, including where complex legal issues were presented, or where the defendant was mentally disabled, particularly young, uneducated, or unable to understand English.” Individual Rights and Responsibilities, supra note 20.

42 Franco-Gonzalez v. Holder, No. 90-345, slip op (C.D. Cal. April 23, 2013). The class action lawsuit was filed on behalf of hundreds of immigration detainees in California, Arizona, and Washington. The judge ordered the government to implement a comprehensive system for identifying and protecting individuals with serious mental disorders in immigration detention centers in those states.

43 With NQRP, EOIR contracted with the Vera Institute of Justice to set up services for this population primarily through a network of nonprofit organizations. See the description of the National Qualified Representative Program on the Vera Institute of Justice’s website, www.vera.org/project/national-qualified-representative-program (last visited Nov. 18, 2015). One the largest programs in the country that provides legal representation for immigrant detainees who have been found to be mentally incompetent and who are entitled to appointment of a qualified representative in their removal proceedings pursuant to Franco v. Holder (www.aclusocal.org/franco/). [Their] services include not only zealous advocacy on behalf of [their] clients while they are detained in San Bernardino or Orange County facilities, but also once they are released to our communities.” About Us” (Immigrant Defenders Law Center), www.immdef.org/#about_us/cjg9 (last visited Nov. 18, 2015).
This program, justice AmeriCorps [sic], is administered by Equal Justice Works. For more information, see justice AmeriCorps: FAQ (justice AmeriCorps, last visited Nov. 18, 2015), http://joinjusticemericorps.org/faq/. The justice AmeriCorps is funded by a federal grant from the strategic partnership between the Corporation for National and Community Service (which operates the AmeriCorps program) and the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR), in addition to private contributions. The majority of the federal funding allocated for the project—$1.2 million—was awarded to a partnership led by Equal Justice Works, which includes the Catholic Legal Immigration Network (CLINIC), Kids In Need of Defense (KIND), and the U.S. Committee for Refugees and Immigrants (USCRI). This partnership program is an initiative of justice AmeriCorps” (answer to question, “What is the initiative administered by Equal Justice Works?”; hyperlinks omitted).


47 Padilla v. Kentucky, 559 U.S. 356 (2010). As legal scholar Joanna Rosenberg describes the Court’s ruling,

First, although deportation proceedings are civil in nature, deportation is a “particularly severe ‘penalty’” with a nearly automatic result. Further, the deportation penalty is so intimately related to the criminal conviction that it is “difficult” to divorce the penalty from the conviction in the deportation context.” Finally, the Court noted the particular severity of deportation. Based on these factors, the Supreme Court concluded that “advice regarding deportation is not categorically removed from the ambit of the Sixth Amendment right to counsel.” [Citations omitted.]


48 The California legislature also passed AB 1343, which requires criminal defense attorneys to provide accurate and affirmative information about immigration consequences of a proposed disposition and to defend against the consequences and requires prosecutors to consider adverse immigration consequences in plea negotiations. The text of AB 1343 is available at https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160AB1343.

49 In addition, in the wake of the Padilla decision, advocates in New York State are working to create a holistic right to counsel—that includes immigrants—through the implementation of programs that support legal counsel in areas where it is already provided and available even if not yet a right, e.g., in housing, health, education, employment, criminal justice, parental rights. As one step, in July 2015 the state Office of Indigent Legal Services awarded $8.1 million in grants over a three-year period for six Regional Immigration Assistance Centers to “ensure that every client who receives legally mandated representation in the state of New York receives accurate and comprehensive advice with respect to the immigration consequences of their case.” ILS Awards Grants for Regional Immigration Assistance Centers (New York Office of Indigent Legal Services, July 6, 2015), https://www.ils.ny.gov/files/Regional%20Immigration%20Assistance%20Centers%20Announcement%20070615.pdf. Center staff will provide immigration legal support, assistance, training and education to attorneys assigned to represent people in criminal and family court proceedings and also do outreach and referral to pro bono lawyers for related immigration cases. This type of program, along with other initiatives, aims to introduce and reinforce the right to counsel in overlapping areas of law. As Joanne Macri from the NYS OILS said, “We continue to forget there are these universal rights. We lose the debate because we forget that it is not about immigrants, it is about preserving already established constitutional rights.” Interview with Joanne Macri, Director of Regional Initiatives, New York State Office of Indigent Legal Services, conducted by telephone, July 15, 2015.

51 Id.

52 Andrea Saenz interview, supra note 35.

53 New York Immigrant Family Unity Project, an undated, one-page flyer describing NYIFUP (sections include “NYIFUP Protects New York Families,” “The Record of Success,” “The National Model,” “The Continuing Need”). The contact person listed on the flyer, for more information, is Andrea Saenz (see supra note 35).

54 Statistics provided by Oren Root, Director, Center on Immigration and Justice (a project of the Vera Institute of Justice), via email messages, November 5, 2015, and January 11, 2016.


58 Interview with Oren Root, Director, Center on Immigration and Justice (a project of the Vera Institute of Justice), conducted by telephone, July 17, 2015 (hereinafter “Oren Root interview”).


61 Interviews with Peter Markowitz (infra note 79), Oren Root (supra note 58), Angela Fernandez (infra note 89), and Andrea Saenz (supra note 35).

62 The New York Immigrant Family Unity Project, supra note 40.

63 Oren Root interview, supra note 58.


65 Interview with Sophie Feal, Supervising Immigration Attorney, Volunteer Lawyers Project, conducted by telephone, July 8, 2015. According to Feal, the representation goal in the renewal grant was lowered from 55 to 50 cases because staff found that the caseload in the initial pilot had a high concentration of asylum cases, which are more time-consuming.

66 Interview with Amy Gottlieb, Program Director, American Friends Service Committee, conducted by telephone, July 6, 2015.
67 In October, EOIR announced the combining of the Newark and Elizabeth dockets into one court in Elizabeth, NJ. FRINJ staff will be monitoring the impact that the changes in the court docket will have on the detained immigrants it represents and the program.

68 Interview with Jennifer Rizzo, Pro Bono Promotion Counsel, Human Rights First, conducted by telephone, Aug. 27, 2015 (hereinafter “Jennifer Rizzo interview”).

69 Id.

70 Is Chicago Ready for Change? Exploring New Models for Immigration Court and Access to Counsel for Immigrants, a symposium sponsored by the Chicago Immigration Court Working Group, Chicago, IL, Nov. 3, 2014. In addition to Judge Katzmann, panel participants included the ICE chief counsel in Chicago, the director of EOIR, and Judges Ann Williams and Richard Posner of the U.S. Court of Appeals for the Seventh Circuit.

71 Northern California study; and Legal Representation of Detained Immigrants in Chicago; supra note 23.

72 Northern California study, supra note 23.

73 Legal Representation of Detained Immigrants in Chicago, supra note 23.


75 Special Immigrant Juvenile Status (SIJS) allows undocumented youth who have been abandoned or neglected by one or both parents to obtain lawful permanent residence in the U.S. See Special Immigrant Juveniles (SIJ) Status (U.S. Citizenship and Immigration Services, last updated June 15, 2015), https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status.

76 Raha Jorjani interview, supra note 38.


79 Interview with Peter Markowitz, Associate Clinical Professor, Cardozo Law School, conducted by telephone, Aug. 28, 2015.

80 Interview with Abraham Paulos, Executive Director, Families for Freedom, conducted by telephone, Sept. 3, 2015 (hereinafter “Abraham Paulos interview”).

81 Anton Flores-Maisonet interview, supra note 37; echoed by others.

82 Victoria Lopez interview, supra note 18.

83 Mekela Goehring interview, supra note 11.

84 Interview with Jonathan Ryan, Executive Director, RAICES, conducted by telephone, July 28, 2015.

85 Interview with Lauren Dasse, Executive Director, Florence Immigrant and Refugee Rights Project, conducted by telephone, July 16, 2015.

86 EOIR’s Legal Orientation Program is discussed above. See the text accompanying note 28.

87 Abraham Paulos interview, supra note 80.
88 Interview with Jayashri Srikantiah, Founder and Director, Stanford Immigrant’s Rights Clinic, conducted by telephone, Aug. 13, 2015.

89 Interview with Angela Fernandez, Executive Director, Northern Manhattan Coalition for Immigrants’ Rights, conducted by telephone, Oct. 9, 2015 (hereinafter “Angela Fernandez interview”).

90 Jennifer Rizzo interview, supra note 68.

91 Andrea Saenz interview, supra note 35.

92 Angela Fernandez interview, supra note 89.

93 Id.
Evaluation of the New York Immigrant Family Unity Project:
Assessing the Impact of Legal Representation on Family and Community Unity

Jennifer Stave, Peter Markowitz, Karen Berberich, Tammy Cho, Danny Dubbaneh, Laura Simich, Nina Siulc, and Noelle Smart
Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity

Deportation cases are the only legal proceedings in the United States in which people are routinely detained by the federal government and are required to litigate for their liberty against trained government attorneys without the assistance of counsel. Yet without an attorney, individuals are rarely able to effectively navigate the immigration legal system. The New York Immigrant Family Unity Project (NYIFUP), a program funded by the New York City Council, is the nation’s first public defender system for immigrants facing deportation. Since November 2013, NYIFUP has pioneered universal representation for detained indigent immigrants in deportation proceedings at the Varick Street Immigration Court in New York City who were unrepresented at their initial hearing.

Employing quantitative analyses of administrative and program data, the Vera Institute of Justice (Vera) studied the impact of NYIFUP on case outcomes by comparing NYIFUP cases to similarly situated cases. Drawing also on extensive stakeholder and client interviews, this report outlines Vera’s key evaluation findings, which include the following:

› **NYIFUP clients have strong ties to New York and the United States.** On average, NYIFUP clients had been living in the United States for 16 years at the start of deportation proceedings. NYIFUP clients were the parents to 1,859 children living in the United States, 86 percent with legal status, mainly citizenship. Forty-one percent of NYIFUP clients entered or resided in the United States legally; 30 percent as lawful permanent residents. These strong ties demonstrate the community’s stake in these proceedings and impact immigration court outcomes.

› **NYIFUP has dramatically improved the chances that non-citizens unable to afford private counsel will receive successful immigration court outcomes permitting them to remain in the United States legally.** Analyzing the cases already completed and using advanced statistical modeling that indicates the likely outcomes of pending cases, Vera has projected that 48 percent of cases will end successfully for NYIFUP clients. This is a 1,100 percent increase from the 4 percent success rate for unrepresented cases at Varick Street before NYIFUP.

› **NYIFUP has met its goal of preserving family unity.** In addition to helping more immigrants win favorable outcomes that allow them to remain in the United States, NYIFUP clients obtain bond and are released from detention at close to double the rate of similarly situated unrepresented individuals at comparable courts (49 percent for NYIFUP versus 25 percent for unrepresented individuals at similar courts). NYIFUP has reunified more than 750 individuals with their families.

› **Universal representation through the NYIFUP model improves fairness and the administration of justice.** The high rates of successful outcomes and releases into the community resulted, at least in part, from high levels of activity by the NYIFUP legal teams in immigration court, on appeal, and in collateral proceedings. While it took, on average, longer for NYIFUP cases to achieve successful outcomes than was true for unrepresented cases, the Varick Street court ran more smoothly and efficiently with lawyers present for virtually all non-citizens facing deportation.

› **The success rate of NYIFUP cases has helped hundreds of New Yorkers gain or maintain legal work authorization, thus contributing to federal, state, and local tax revenue.** NYIFUP is estimated to have helped more than 400 New Yorkers gain or maintain work authorization by winning
For more information

To read the full report, visit www.vera.org/nyifup-evaluation and, to review the quantitative and qualitative methodological appendices, visit www.vera.org/nyifup-evaluation-methodology. For more information about this report, contact Oren Root, director of Vera’s Center on Immigration and Justice.

The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely upon for safety and justice, and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America’s increasingly diverse communities. For more information, visit www.vera.org.

© 2017 Vera Institute of Justice. All rights reserved.

their immigration cases. Overall, these successful outcomes are projected to produce tax revenue from this cohort of NYIFUP clients of $2.7 million each and every year, for years to come. The annual increase in tax revenue will be compounded significantly with the addition of each new cohort of NYIFUP clients.
A New York courtroom gave every detained immigrant a lawyer. The results were staggering. And now a dozen more cities are getting on board.

By Dara Lind | dara@vox.com | Nov 9, 2017, 9:10am EST

Omar Siagha has been in the US for 52 years. He’s a legal permanent resident with three children. He’d never been to prison, he says, before he was taken into Immigration and
Customs Enforcement detention — faced with the loss of his green card for a misdemeanor.

His brother tried to seek out lawyers who could help Siagha, but all they offered, in his words, were “high numbers and no hope” — no guarantee, in other words, that they’d be able to get him out of detention for all the money they were charging.

Then he met lawyers from Brooklyn Defender Services — part of the New York Immigrant Family Unity Project, an effort to guarantee legal representation for detained immigrants. They demanded only one thing of him, he recalls: “Omar, you’ve got to tell us the truth.”

But Siagha’s access to a lawyer in immigration court is the exception.

There’s no right to counsel in immigration court, which is part of the executive branch rather than the judiciary. Often, an immigrant’s only shot at legal assistance before they’re marched in front of a judge is the pro bono or legal aid clinic that happens to have attorneys at that courthouse. Those clinics have such limited resources that they try to select only the cases they think have the best shot of winning — which can be extremely difficult to ascertain in a 15-minute interview.

But advocates and local governments are trying to make cases like Siagha’s the rule, not the exception. Soon, every eligible immigrant who gets detained in **one of a dozen cities** — including New York, Chicago, Oakland, California, and Atlanta — will have access to a lawyer to help fight their immigration court case.

The change started at Varick Street. The New York Immigrant Family Unity Project started in New York City in 2013, guaranteeing access to counsel for detained immigrants.

According to a **study released Thursday by the Vera Institute for Justice** (which is now helping fund the representation efforts in the other cities, under the auspices of the Safe Cities Network), the results were stunning. With guaranteed legal
A New York courtroom gave every detained immigrant a lawyer. The results were staggering. - Vox

representation, up to 12 times as many immigrants have been able to win their cases: either able to get legal relief from deportation or at least able to persuade ICE to drop the attempt to deport them this time.

So far, cities have been trying to protect their immigrant populations through inaction — refusing to help with certain federal requests. Giving immigrants lawyers, on the other hand, seemingly makes the system work better. And if it works, it could leave the Trump administration — which is already upset with the amount of time it takes to resolve an immigration court case — very frustrated indeed. (The Department of Justice, which runs immigration courts, didn’t respond to a request for comment.)

**Immigration court is supposed to give immigrants a chance for relief. In reality ... it depends.**

As federal immigration enforcement has ramped up over the past 15 years, nearly every component of it has gotten a sleek bureaucratic upgrade, a boatload of money, and heightened interest and oversight from Congress. But immigration court has been overlooked as everything else has been built up around it.

The reason is simple. Chronologically, most immigrants have to go through immigration court after being apprehended and before being deported. But bureaucratically, immigration courts are run by the Executive Office for Immigration Review, housed in the Justice Department instead of by the Department of Homeland Security. And when it comes to money and bureaucratic attention, that makes all the difference in the world.

From the outside, the striking thing about immigration court is how slow it is — lawyers already report that hearings for those apprehended today are scheduled in 2021. That’s also the Trump administration’s problem with it; the federal government is sweeping up more immigrants than it did in 2016 but deporting fewer of them.

But it doesn’t seem that way from the inside, to an immigrant who doesn’t have any idea what’s going on — especially one who’s being kept in detention.
This is the scene that Peter Markowitz accustomed himself to, as a young immigration lawyer at the Varick Street courtroom in New York: “People brought in, in shackles, with their feet and hands shackled to their waist, often not understanding the language of the proceedings, having no idea of the legal norms that were controlling their fate — being deported hand over fist.”

I know he’s not exaggerating; in my first morning watching immigration court proceedings in Minneapolis in 2008, I saw at least 10 detainees get issued deportation orders before lunch. Almost none had lawyers. Sometimes the judge would pause and explain to the detainee, in plain English, what was really going on — but she didn’t have to, and sometimes she wouldn’t bother.

In theory, there are two parts to an immigration court case. The prosecution (ICE attorneys) has to show that an immigrant is removable — that he either has no legal status in the US or that he’s done something that allows the government to strip his legal status from him — and that he doesn’t qualify for any form of “immigration relief,” which can mean formal legal status or another form of protection from deportation.

But without a lawyer, good luck figuring out what any of those forms of relief even mean — much less whether you qualify for them.

“The idea that somebody who is not trained in the law, who may or may not be trained in English, would have the capacity to assess whether they might be eligible for asylum, or withholding of removal, or protection under the Convention Against Torture, or the Violence Against Women Act, or Special Immigrant Juvenile Status—” Markowitz breaks off, having made his point. “There is virtually no layperson who would have the skills to make those assessments on their own.”

Even if the cases can be appealed, they may not really be reviewable. The Department of Justice has a board that’s supposed to consider immigration appeals, though since the Bush administration it’s often issued summary judgments rather than full reviews. Another appeal takes the case to the federal circuit court for that region — which can’t
rehear the case, and so has to rely on the findings in the original court proceeding.

A lot of federal judges are deeply concerned about the immigration court system, to say the least. In 2007, Judge Robert Katzmann of the Second Circuit Court of Appeals—which at the time was getting about 2,000 immigration appeals per year—delivered a lecture explaining that without effective counsel in immigration court, he and his judges weren’t getting a legal record they could rule on. “It was distorting the development of the doctrine,” Markowitz explains.

The biggest problem was representation for detainees who couldn’t afford lawyers. So New York, with some funding from Vera, stepped in: Starting in 2013, every client at the Varick Street immigration court had access to an NYIFUP attorney.

**When immigrants have time to build cases, they can actually qualify for relief**

Omar Siagha’s lawyer, Andrea Saenz, figured out quickly that Siagha qualified for cancellation of removal: He had been in the US for more than seven years, and being a green card holder meant his single misdemeanor wasn’t enough to disqualify him from relief. But it would still be up to the immigration judge to actually give it to him—and so Saenz and Siagha had to persuade the judge that Siagha’s case was so compelling, and his family’s need was so great, that he was worth an exercise of favorable discretion.

“Get all the records, talk to his family, get all the dates from his original visa,” Saenz recounts. Provide evidence of his life, his close relationship with his daughter (now 8), his efforts to help his elderly mother. Document his medical history: his severe brain injury, the medications he had to take while in detention. “Get every document from every year of your life,” Saenz says, “and show the judge that you deserve it.”

It took months, but they were finally able to present what Saenz describes as “a foot-tall stack of paper put in front of us” to the judge. The courtroom was packed (the local activist group Make the Road New York had taken up Siagha’s case). And he won.
“You feel so small in court, with all the things going on you don’t really understand,” says Siagha now. “It felt a little more strength when you see people there for you, to help you, because they know that you’re not going to mess up.”

The expertise to figure out what relief an immigrant might qualify for, and the time to pull together the strongest case, is the point of guaranteed counsel. And it’s working in New York a staggering amount of the time.

Without representation, only 4 percent of immigrants had been able to win their cases at Varick. Of the cases that NYIFUP closed during its first three years, it won 24 percent of the time. And that number, as Markowitz points out, is deeply misleading, because the cases that succeed often take the longest to finish (and were therefore less likely to finish before the Vera study’s end date in June 2016).

When Vera researchers built a model of what made an immigrant most likely to prevail in court — either because he got relief or because the government essentially dropped its case against him — and then ran the pending cases through that model, they found that 77 percent of the pending cases were likely successes. (Markowitz confirms, anecdotally, that the results over the year since the study stopped recording data seem about as successful as they expected.)

If that projection is correct, NYIFUP cases result in immigrant victories 48 percent of the time. As Oren Root, director of the Vera Institute’s Center for Immigration and Justice, puts it, that means that of every 12 immigrants who are winning at Varick Street right now, 11 would have been deported without a lawyer.

That finding challenges a widely held assumption about immigration court: that most immigrants who go through it don’t qualify for the types of protection that Congress has laid out for particularly compelling cases. The Vera finding implies that, in fact, many immigrants do deserve relief as Congress and the executive branch have established it — but that hundreds of thousands of them have been deported without getting the chance to pursue those claims.
Taking representation national

Elizabeth C. Brown, a member of the Columbus City Council, found herself with a problem many local government officials have confronted in the Trump era. The city’s immigrant community was mired in fear and uncertainty over the president’s rhetoric and increased ICE activity. And city officials couldn’t actually tell them it was okay, because city officials couldn’t prevent deportations — to the contrary, ICE hyped raids in cities it considered “sanctuaries.”

“I am a local policymaker. I can’t actually change federal immigration law,” Brown says. “We were left to consider: what are the things that we can do to really help immigrant and refugee communities here in Columbus feel safer, feel more secure, feel like they’re truly able to thrive?”

Her research led her to the New York program — conveniently, at the same time the Vera Institute was offering grants to other cities who wanted to start funding immigrant representation. Columbus was one of the cities selected. So were Atlanta; Austin; Baltimore; Chicago; Dane County, Wisconsin; the city of Oakland and Alameda County in California; Prince George’s County, Maryland; Sacramento; and Santa Ana, California — 12 cities and counties (plus New York) in what Vera is calling the Safe Cities Network.

Those cities cover millions of immigrants: both unauthorized immigrants and legal immigrants who are at risk of losing their status. Not all of those immigrants will get detained or find themselves in need of lawyers. But the program’s supporters hope they’ll be reassured anyway: “I think part of the feeling of fear” in immigrant communities, Brown says, “is tied to the hopelessness of defense in court proceedings.”

If New York is any indication, the effects of legal representation will end up trickling down even to immigrants in cities that aren’t providing free lawyers — by creating precedents in federal court that are informed by what’s actually going on in immigration court.

In the Second Circuit, NYIFUP advocates have won rulings that require all immigrants to...
be eligible for bond after a certain amount of time in detention — and that require the
government to consider an immigrant’s ability to pay when setting bond. They’ve
appealed and won cases that made small violations of the Controlled Substances Act an
automatically deportable offense.

**A more just immigration court might not be a more efficient one. And Trump and Jeff Sessions are prizing efficiency above all.**

This is, according to Peter Markowitz and Judge Katzmann, exactly how the judicial
system is supposed to work. “We have a functioning justice system for the first time
ever in any immigration court in the country,” Katzmann says of New York.

The federal government does not agree. In a speech to immigration judges last month,
Jeff Sessions attacked “dirty immigration lawyers” who dragged out cases, and warned
that the immigration court backlog was unacceptable. Rumors persist that Sessions is
considering setting “performance metrics” that would evaluate immigration judges
based on how many cases they completed.

The quickest way to complete a case is to get the immigrant to agree to deportation; the
more immigrants seek relief, the longer cases are going to go. And NYIFUP’s data shows
that the Varick Street courthouse really is less efficient.

To NYIFUP lawyers and many judges, that’s not a problem: They don’t want to deport
people who are legally eligible for protection, even if that’s more “efficient” than giving
them a chance in court. They see efforts to speed up the court process for its own sake
as “undermining due process.” For immigration hawks, though, “due process” has
become a smokescreen for dragging out cases as long as possible, in hopes that the
government will give up.

The Trump administration has already directed ICE prosecutors, in New York and
everywhere else, to stop closing immigration court cases — to start fighting the hardest-
to-win cases every bit as hard as every other case. In the short term, this will make immigration court cases *longer*. Ultimately, the theory is, it will start convincing immigrants they don’t have any options, and taking the deportation option.

If the administration starts pressuring judges to move cases through more quickly, Safe Cities Network members insist that immigrants will still be in better shape if they have guaranteed access to lawyers. Without representation, Markowitz points out, “you would have those same pressures, and you would have even fewer chances to prevail.”

That could make life even tougher for immigrants who live in cities that aren’t funding lawyers in immigration court. But it could — if the programs in Columbus and elsewhere take off — persuade more cities that the best way to defend immigrants against Trump is to send someone to represent them in court.
Updated April 2018
<table>
<thead>
<tr>
<th>City</th>
<th>Provider(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Atlanta</strong></td>
<td>Provider TBD</td>
</tr>
<tr>
<td><strong>Austin</strong></td>
<td>American Gateways</td>
</tr>
<tr>
<td><strong>Baltimore</strong></td>
<td>Capital Area Immigrants’ Rights Coalition (CAIR)</td>
</tr>
<tr>
<td><strong>Chicago</strong></td>
<td>National Immigrant Justice Center (NIJC)</td>
</tr>
<tr>
<td><strong>Columbus</strong></td>
<td>Advocates for Basic Legal Equality (ABLE)</td>
</tr>
<tr>
<td><strong>Dane County</strong></td>
<td>Community Immigration Law Center (CILC)</td>
</tr>
<tr>
<td></td>
<td>University of Wisconsin Law School Immigration Justice Clinic (IJC)</td>
</tr>
<tr>
<td><strong>Denver</strong></td>
<td>Provider TBD</td>
</tr>
<tr>
<td><strong>Oakland/Alameda County</strong></td>
<td>Centro Legal de la Raza</td>
</tr>
<tr>
<td><strong>Prince George’s County</strong></td>
<td>Capital Area Immigrants’ Rights Coalition (CAIR)</td>
</tr>
<tr>
<td><strong>Sacramento</strong></td>
<td>California Rural Legal Assistance (CRLAF)</td>
</tr>
<tr>
<td><strong>Santa Ana</strong></td>
<td>Immigrant Defenders Law Center (ImmDef)</td>
</tr>
<tr>
<td><strong>San Antonio</strong></td>
<td>American Gateways</td>
</tr>
<tr>
<td></td>
<td>RAICES (Refugee and Immigrant Center for Education and Legal Services)</td>
</tr>
</tbody>
</table>
EXECUTIVE ORDER NO. 142

TO: All Agencies Under the Mayor
FROM: Mayor Michael B. Hancock
DATE August 31, 2017
SUBJECT: Standing with Immigrants and Refugees: A Safe and Welcoming City for All of Denver’s People

PURPOSE

Many immigrants and refugees have come to Denver because they faced extraordinary political and economic chaos in their home countries. They left their homes, extended family, friends and communities to escape violence and discrimination and have come here with the hope of a new life. Since its founding, immigrants and refugees have helped to make Denver a thriving economic and social standard-bearer. Today, Denver is home to nearly 100,000 immigrants and refugees.

In Denver, we stand for the ideals of inclusion, acceptance and opportunity. We accept all who are ready to work hard, raise families, and contribute to the fabric of a diverse and inclusive city. This Executive Order affirms Denver’s commitment to stand with immigrants and refugees and maintains Denver as a welcoming city where everyone can feel safe and thrive.

My vision to build a world class city where everyone matters has always been rooted in inclusion and opportunity. Growing up poor in one of Denver’s toughest neighborhoods, I know what it feels like to live in the margins of society and to work hard to take advantage of every opportunity this country offers.

My life experience has fueled my longstanding commitment to immigrants and refugees in Denver. As a City Councilman, I spearheaded the City’s efforts to thwart predatory practices against Denver’s immigrant and refugee communities. Upon becoming Mayor, I worked to elevate the voices of immigrants and refugees by creating the City’s first Immigrant and Refugee Commission and International Advisory Committee. I also strengthened the work of all City commissions that help government listen to its constituents. I have always advocated for students and young workers by supporting Colorado Advancing Students for a Stronger Economy Tomorrow Bill and Deferred Action for Childhood Arrivals.

In the face of a significant change in the federal government’s enforcement of immigration laws, I led the City to take three significant steps to protect our immigrants and refugees. Denver created its first-ever hate crimes penalty to send a clear message that bias-driven violence will not be tolerated. The City also created a plea by mail system to encourage community members to comply with the law from the safety and security of their home. Finally, the City changed Denver’s sentencing laws to ensure that the penalty reflects the severity of the crime and to limit deportation consequences for low level offenses.

As Mayor, my most solemn responsibility is to keep all of Denver’s people safe. Local government’s ability to protect and serve all people is enhanced when community members feel safe coming forward as either a victim of or a witness to a crime, regardless of their legal status.
To that end, the purpose of this Executive Order is to establish Denver as a safe and welcoming city for all by:

- Promoting public safety through community trust by protecting all communities to offer the safest place for all of Denver’s people;
- Fostering respect and trust between community members and all City officials, including law enforcement, and enhancing communication and collaboration between community members and City officials;
- Ensuring all community members, the rights and liberties that are guaranteed to them by the constitutions of the United States of America and the State of Colorado; and
- Offering everyone the opportunity to enjoy Denver’s economic, cultural, political, and social life and providing the ability to succeed and thrive freely without fear.

This Executive Order augments City policies and applicable federal, state or City law or regulation limiting City funds or resources being directed in service of federal immigration enforcement and commands all departments, agencies, employees, officers, boards and commissions to support the success of all our people, to afford every person the privileges, rights and opportunities they earn through their hard work and contribution to our City, and to take the following actions:

1.0 **Applicable Authority:** The applicable authority relevant to the provisions and requirements of this Executive Order No. 142, are found in Section 2.2.1 of the Charter of the City and County of Denver, 2002 revised.

**Directing the establishment of a legal defense fund**

2.0 Access to legal representation for indigent individuals threatened with or in removal proceedings is an important tool to help the City build and sustain a diverse, equitable and economically successful community. Creating a legal defense fund furthers the City’s ability to meet a core mission: the preservation of families and protection of children residing in Denver. It also promotes due process and access to justice for vulnerable members of the Denver community by providing them with access to legal advice.

3.0 An executive committee comprised of the Chief of Staff, the City Attorney and a member of City Council will oversee the initial stages of the legal defense fund’s development until the legal defense fund is formed.

3.1 No later than December 31, 2017, the executive committee will make final recommendations to the Mayor as to how the City may partner through and/or with existing non-profit organizations and foundations to provide access to legal representation for indigent individuals threatened with or in removal proceedings through the legal defense fund.
3.2 The executive committee will oversee subcommittees comprised of subject matter experts, community representatives and City staff.

3.3 The subcommittees will advise the executive committee on the legal defense fund’s scope and type of services to be provided, governance structure, potential funding streams (including public and private sources), best practices and such other matters related to the formation of the legal defense fund that the executive committee members deem appropriate.

3.4 The City Attorney’s Office will provide legal support to the executive committee and its subcommittees.

4.0 Once the legal defense fund is formed:

4.1 The legal defense fund’s executive committee will be replaced by a governing body that will oversee its operations and administer grants awarded by the fund; and

4.2 The legal defense fund’s governing body will submit annual reports to the Mayor and City Council on all grants issued to the non-profit organizations and/or foundations that provide legal services.

5.0 At a minimum, the legal defense fund will operate through January 20, 2021.

**Ordering the Denver Sheriff Department to no longer seek federal funds that require the gathering and dissemination of information about the national origin, immigration or citizenship status of persons held in Denver jails**

6.0 Effective immediately, the Denver Sheriff Department will no longer seek reimbursements under the State Criminal Alien Assistance Program (SCAAP) by or through any existing contract of the City, and will refrain from seeking reimbursements in the future under SCAAP or any similar federal program, to the extent such programs require the gathering and dissemination of information about the national origin, immigration or citizenship status of persons held in Denver jails.

**Partnering with immigrant and refugee communities**

7.0 The City will establish a working group comprised of subject matter experts, community representatives and City staff to track new developments in immigration law, policy and enforcement and analyze data regarding the impact of Denver’s policies in the changing immigration environment.

7.1 The working group will develop a list of free immigration legal service providers to be available to individuals in the community, including those in the custody of the Denver Sheriff Department.
7.2 Members of the working group may be asked to advise on ongoing issues related to language access, prevention of discrimination, criminal justice reform, release notification trends and other policy matters.

Providing equal access to City services to all of Denver’s people

8.0 All departments, agencies, employees, officers, boards and commissions of the City will:

8.1 Ensure equal access to facilities, services and programs without regard to any person’s national origin, immigration or citizenship status to the maximum extent permitted by law;

8.2 Foster a welcoming atmosphere for all regardless of national origin, immigration or citizenship status;

8.3 No later than October 13, 2017, make available (in multiple languages) at recreation centers, libraries, department of motor vehicles, courthouses, jails, the City and County Building, the Wellington Webb Office Building, Denver Department of Human Services and Denver International Airport, a community resource guide (as may be updated from time to time) prepared by the Agency of Human Rights & Community Partnerships for Denver’s immigrant and refugee community;

8.4 Ensure that City websites and social media outlets link to such community resource guide;

8.5 Inform their staffs of the policies and practices outlined in this Executive Order and of the availability of such community resource guide; and

8.6 Encourage sharing of the information with internal and external stakeholders.

Protecting victims and witnesses of crime regardless of their national origin, immigration or citizenship status

9.0 To protect victims and witnesses of crime and hold violent offenders in our community accountable, the City will:

9.1 Continue to fully participate in the federal U-Visa program to ensure victims of crime are given the protection needed to effectively hold violent offenders accountable for their crimes;

9.2 Continue to partner, through the City Attorney’s Office, with the Rose Andom Center so victims and witnesses have a safe place to be while awaiting court appearances; and

9.3 Continue to seek enhanced sentences for individuals who commit municipal crimes of hate against members of the community pursuant to applicable federal, state or City law or regulation.
**Assisting children and families who become separated**

10.0 To serve families who become separated by a broken federal immigration system, and as a result, in need of the assistance of the Child Welfare Division through the Denver Department of Human Services, the City will:

10.1 Partner with foreign consulates located in Colorado to develop a plan to assist families who are impacted by threatened deportation proceedings with child placement;

10.2 Develop plans to assist children who are impacted by deportation proceedings in applying for Special Immigrant Juvenile Visas;

10.3 Assist children and families to access kinship placements, if appropriate, when the legal guardian or guardians are being subjected to deportation proceedings; and

10.4 Develop a plan to assist with visitation between a parent and child who is in the custody of the Denver Department of Human Services when the parent has been deported and the child remains in the United States.

**Protecting the rights and liberties of immigrants and refugees**

11.0 Continue to strongly advocate that areas around and inside of schools, hospitals, places of worship (including, buildings rented for the purpose of religious services), the site of a funeral, wedding or other public ceremony, a site during the occurrence of a public demonstration (including, marches, rallies and parades) and courthouses should be respected as “sensitive locations” to ensure the fair and effective administration of justice.

12.0 The Denver Police Department will continue to protect all people of Denver, and those traveling through Denver, regardless of their national origin, immigration or citizenship status.

13.0 The City will continue to evaluate, join, and/or lead amicus curiae, or “friend of the court,” briefs on a case-by-case basis where the outcome of the case may have a meaningful impact on the legal rights and/or remedies available to immigrants and refugees in Denver.

14.0 The City will work closely with other government agencies and its community partners to support the resettlement and long-term success of refugees (including, refugee eligible populations) in Denver through culturally appropriate programs and services, helping promote self-sufficiency through awareness, support, education and training.

15.0 The City believes that refugee admittance should be a non-discriminatory process ignoring religious or political affiliation and will strongly advocate for a fair and just refugee admittance policy.
Coordinating City actions for immigrants and refugees

16.0 As promptly as practicable, all executive directors or heads of departments/agencies/offices will designate an immigrant affairs liaison for their respective department/agency/office, notifying the Chief of Staff of that person’s name and contact information.

17.0 The immigrant affairs liaisons will work closely with the Chief of Staff, the City Attorney and the Agency of Human Rights & Community Partnerships to ensure departmental support in advancing and advocating for the full and active civic, social, political and economic participation of all of Denver’s people.

Ensuring compliance with this executive order and applicable federal, state or City law or regulation

18.0 To assist City employees in complying with applicable federal, state or City law (including, § 28-250(a)(1) of the Public Safety Enforcement Priorities Act) or regulation, the City Attorney’s Office will educate and train employees, starting with employees working in pretrial services and community corrections and uniformed members of the Denver Police Department and Denver Sheriff Department. Education and training will also be offered to County Court administrative and clerical employees, in partnership with the Denver County Court. The training will emphasize the limitations around collecting and sharing national origin, immigration and citizenship data, including sharing information pertaining to appointment times, dates or whereabouts of clients for such services with federal immigration enforcement officials from ICE, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services.

19.0 All executive directors or heads of departments/agencies/offices will report (as promptly as practicable) to the City Attorney any efforts made known to them by federal immigration enforcement officials from ICE, U.S. Customs and Border Protection, or U.S. Citizenship and Immigration Services to enforce civil immigration laws with the cooperation, support, or use of City resources.

20.0 Pursuant to Career Service Rule 16-21 Compliance with Code of Ethics and Executive Orders, and applicable City law and rules and regulations of the Denver Police Department and Denver Sheriff Department, any employee or officer who violates any provision of this Executive Order will be subject to discipline up to and including termination.
1. **What is the Denver Immigrant Legal Services Fund?**
The fund awards grants to nonprofit organizations to provide direct legal representation for qualified individuals threatened with or in removal proceedings or seeking affirmative relief (including DACA). The fund will also award grants to build capacity to expand the network of pro bono and “low-bono” attorneys serving Denver’s immigration clients, including law school clinics.

2. **Why do we need the Immigrant Legal Services Fund?**
Our democracy and the rule of law guarantee due process for everyone in this country. At its core, providing legal services to immigrants is not about who deserves to stay or be deported, it is about ensuring immigrants have access to legal representation to safeguard due process.

- Immigrants are over 10 times more likely to be able to stay in the country when they have representation
- Legal defense should not be for only those who can afford it
- Deportation proceedings are the only legal proceedings in the United States where people are detained without access to legal representation

3. **What’s at stake in Denver?**
Since its founding, immigrants and refugees have helped to make Denver a thriving economic and social standard bearer. Today, about 15% of Denver residents are foreign born which is approximately over 100,000 residents. (New American Economy)

The federal government’s latest immigration orders have created disruption in our community. Mass deportations cost our community valuable resources – we lose vital tax revenue, local industries are disrupted, schools become crisis centers and children who are separated from their parents end up in foster care.

In 2014, Immigrants paid $652.5 million in taxes in Denver and possessed $2.1 billion in purchasing power. (New American Economy)

4. **Who qualifies to receive legal defense services?**
Qualified individuals include those seeking direct legal services who are:

- Subject to actual or potential immigration removal proceedings and/or who are subject to a final order of removal; or
- Seeking affirmative relief including DACA or DREAM Act-related relief, Special Immigrant Juvenile Status (SIJS), asylum, U visas and T visas, Violence Against Women Act (VAWA), and naturalization.

Individuals eligible to receive services **must** present with viable claims for affirmative relief or defenses from removal, be Denver residents, and have a household income of 200% of the Federal Poverty Level.

5. **Who will select the nonprofits that will receive grants to perform this work?**
The Denver Foundation and an advisory committee will award grants to nonprofit organizations. The nonprofit grant recipients will provide direct services to individuals.

6. **Who is funding the initiative?**
Anyone can now donate to the fund, which will consist of both public and private dollars. The fund has received $385,000 in contributions from the City, the City of Denver Community Support Fund, the Vera Institute of Justice SAFE Cities Network, The Denver Foundation, and the Rose Community Foundation.

7. **What is the timeline for the fund?**
The fund has been established and contributions are being accepted now. Nonprofits will be able to apply for grants later this year. Individuals will apply to those nonprofit grant recipients for direct legal services.

8. **Why should the city use taxpayer money for this purpose?**
In Denver, we stand for the ideals of inclusion, acceptance and opportunity. Our community is safest when all our neighbors trust their officials and institutions and know they will be treated justly and with dignity.

Denver’s immigrants contribute greatly to the economic and cultural makeup of Denver’s community. Denver loses economic and cultural contributions when an immigrant is deported. Denver also bears the costs of social services that may be required to support the families of the deported individual. The fairest and most efficient way to bring order to these complex legal proceedings is to ensure legal representation for those whose future may well depend on it.

9. **Where can I find more information?**
   Please visit the Office of Immigrant & Refugee Affairs website at [www.denvergov.org/immigrantrefugeeaffairs](http://www.denvergov.org/immigrantrefugeeaffairs) and The Denver Foundation website at [http://www.denverfoundation.org/Nonprofits/Grants-What-We-Fund/Other-Grant-Programs/Immigrant-Legal-Services-Fund](http://www.denverfoundation.org/Nonprofits/Grants-What-We-Fund/Other-Grant-Programs/Immigrant-Legal-Services-Fund) for additional information. Dace West, Vice President of Community Impact at The Denver Foundation, is also available to answer questions and may be reached at [dwest@denverfoundation.org](mailto:dwest@denverfoundation.org). Please direct all media inquiries to Laura Bond, Senior Communication Officer at The Denver Foundation, [lbond@denverfoundation.org](mailto:lbond@denverfoundation.org).

10. **How can I contribute?**
    Donations of any amount are welcome. Please either visit The Denver Foundation web portal ([http://www.denverfoundation.org/Nonprofits/Grants-What-We-Fund/Other-Grant-Programs/Immigrant-Legal-Services-Fund](http://www.denverfoundation.org/Nonprofits/Grants-What-We-Fund/Other-Grant-Programs/Immigrant-Legal-Services-Fund)) or send a check made out to Denver Immigrant Legal Services Fund and mail to the following address:

    **The Denver Foundation**
    The Denver Foundation
    55 Madison St, 8th Floor
    Denver, CO 80206

087
Background:
Approximately 160,000 Hennepin County residents are foreign born. An estimated 90,000 remain non-citizens and approximately 35,000 lack immigration documentation. It is estimated that approximately twenty percent (20%) of undocumented immigrants have a legal defense to deportation. In 2016, numerous foreign born individuals were booked into the Hennepin County jail and many of these individuals were arrested by Immigration Customs Enforcement (“ICE”) agents when leaving the Hennepin County jail because of Hennepin County Sheriff’s Office (“HCSO”) voluntary coordination with ICE.

A vast majority of these cases result in dislocation of family, employment and school, and only 14% of detained individuals appear in immigration proceedings with an attorney. This amendment seeks to create legal counsel for individuals arrested by ICE agents when leaving the Hennepin County jail. This amendment requires County Administration, in consultation with the HCSO, to develop a Request for Information (“RFI”) or Request for Proposal (“RFP”) for legal services for individuals facing deportation proceedings after being booked and placed into custody in the Hennepin County jail.

BE IT RESOLVED, that by March 1, 2018, County Administration create an RFI or RFP for legal services for individuals Hennepin County residents facing deportation proceedings with prioritization of those facing deportation proceedings after being taken into custody at the Hennepin County jail.

BE IT FURTHER RESOLVED, that $250,000 in contingency be designated for implementation of this amendment and that any contract proposal for these legal services be presented to the County Board for approval.

BE IT FURTHER RESOLVED, that this contingency transfer serve as a pilot and that results be evaluated in 12 months pursuant to recommendations from the Center for Innovation and Excellence.
Background:
Approximately 160,000 Hennepin County residents are foreign born. An estimated 90,000 remain non-citizens and approximately 35,000 lack immigration documentation. It is estimated that approximately twenty percent (20%) of undocumented immigrants have a legal defense to deportation. In 2016, numerous foreign born residents were booked into the Hennepin County jail. Due to the Hennepin County Sheriff’s Office (“HCSO”) voluntary coordination with Immigration Customs Enforcement (“ICE”), most of these residents speak with an ICE agent without being advised of their rights related to their immigration status.

This amendment directs County Administration, in consultation with the HCSO, to create a protocol by which the HCSO hands paper materials, in multiple languages, to those being booked and placed into custody. These materials will provide an advisory to those being booked and placed into custody regarding their rights to, or rights not to, share place of birth and/or citizenship, and their rights to, or rights not to, speak with an ICE agent. It further requires that by March 1, 2018, County Administration must report back on a protocol that could be implemented and the costs associated with implementing such a protocol.

BE IT RESOLVED, that by March 1, 2018, County Administration, in consultation with the HCSO and the Hennepin County Attorney’s Office, develop a protocol (and associated costs) for providing foreign born residents being booked and placed into custody with information regarding their immigration rights during the booking process.

BE IT FURTHER RESOLVED, that $25,000 in contingency be designated for implementation of an immigration rights protocol, available in multiple languages, for foreign born residents being booked and placed into custody in the Hennepin County Jail.

<table>
<thead>
<tr>
<th>Fund</th>
<th>Department/ Dept. ID</th>
<th>Account/ Source</th>
<th>Amount</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenditures</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>