

February 21, 2020

The Honorable Helene E. Weinstein
Chair, Standing Committee on Ways and Means
LOB923, Capitol Building
Albany, NY 12248
wamchair@nyassembly.gov

The Honorable Liz Krueger
Chair, Standing Finance Committee
Room 416, CAP, Capitol Building
Albany, NY 12247
financechair@nyenate.gov

**Testimony of the Vera Institute of Justice in
Support of the New York Immigrant Family Unity Project (NYIFUP)**

Submitted to the Legislative Budget Hearing on Local Government

Dear Chairperson Weinstein and Chairperson Krueger,

On behalf of the Vera Institute of Justice (Vera), we write to urge you to include in the FY21 New York State Budget renewed and increased funding for the New York Immigrant Family Unity Project (NYIFUP) and immigrant legal services funded under the Liberty Defense Project (LDP). **To meet the growing and immediate need for such services and to keep NYIFUP strong, we specifically urge you to fund immigrant legal services under LDP at \$15.3 million, which would allow \$6.5 million to be allocated to NYIFUP in FY21.** Such sustained and increased funding for these critical services will ensure that no detained person facing deportation in New York is forced to navigate immigration court without an attorney simply because they cannot afford one.

As you may know, the mission of Vera is to drive change and to build and improve justice systems that ensure fairness, promote safety, and strengthen communities. Since its inception in 2005, Vera's Center on Immigration and Justice has focused on increasing access to legal representation and information for low income immigrants facing deportation, who are among our society's most vulnerable and marginalized people. Among those facing deportation, individuals who are detained are especially vulnerable and marginalized as a result of isolation, the inaccessibility of witnesses, documents, and other evidence, and lack of translation and interpretation options.

NYIFUP is the country's first and only statewide public defender system for detained immigrants facing deportation. The program began in 2013 as a response to a study organized by then-Judge, and current Chief Judge Robert Katzmann of the U.S. Court of Appeals for the Second Circuit. The Study Group on Immigrant Representation convened by Chief Judge Katzmann discovered 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. The NYIFUP New York City pilot program, administered by Vera and funded by the New York City Council, pioneered universal representation for detained indigent immigrants who were unrepresented at their initial deportation hearings at the Varick Street Immigration Court.

Based on the initial success of the project and increased need, NYIFUP expanded to full scale across all of New York State in 2017 through the state’s Liberty Defense Project (LDP). LDP ensures critical legal services for immigrants facing deportation. By funding NYIFUP, New York State has made representation accessible for anyone across the state who is detained, facing deportation, and unable to afford an attorney. With the expansion of statewide NYIFUP services, Vera administers representation for detained people in immigration proceedings in upstate New York and for those whose cases are transferred from an Upstate immigration court to New York City.

New York’s historic and bold leadership in funding deportation defense has inspired a nationwide movement of publicly funded deportation defense programs. New York State’s NYIFUP program has catalyzed a movement that has been especially crucial over the past few years, as the federal government subjects immigrants, their families, and their communities to relentless attacks. The arrest and detention of immigrants has soared, families have been systemically separated, and noncitizens are more vulnerable than ever to deportation. New York State is home to two million non-citizen immigrants who, due to the nature of immigration law, must live with the possibility that they may be found deportable by ICE – even if they currently possess lawful immigration status. More people are being held in detention facilities than ever before, costing the federal government an average of \$8.43 million per day.¹ Nationwide, approximately half a million people were booked into detention in FY19 – a 58% increase from FY17.² New York State remains a target of federal immigration enforcement. Deportations by the ICE office responsible for the Hudson Valley, New York City, and Long Island increased by 150 percent between 2016 and 2019.³ An alarming 1,700% increase in ICE courthouse arrests across the state between 2016 and 2018 disrupted the administration of justice, decreased public safety, and eroded trust in the justice system.⁴

Deportation can result in physical exile from home, separation from family, loss of employment, and even violence or death in a country of origin. One study found that detained individuals in New York State must endure deplorable conditions, including dangerously spoiled food, scarcity of potable water, verbal and psychological abuse by detention staff, lack of access to health care, and solitary confinement.⁵ Yet, people in immigration court face a broken and biased system described by one federal judge as akin to hearing “death penalty cases in a traffic court setting.”⁶ In detention, people face inhumane conditions, loss of liberty, lasting trauma, and significant barriers to accessing counsel.

¹ Laurence Benson, “The Math of Immigration Detention, 2018 Update: Costs Continue to Multiply,” National Immigration Forum (May 9, 2018), available at <https://immigrationforum.org/article/math-immigration-detention-2018-update-costs-continue-multiply/>.

² U.S. Immigration and Customs Enforcement, “U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report” (2019), available at <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

³ “Comptroller Stringer Investigation Reveals Huge Increases in ICE Enforcement in NYC, Leaving Families in Fear” (Feb. 21, 2019) available at https://comptroller.nyc.gov/wp-content/uploads/documents/Demographics_of_Detention_022019.pdf, (citing U.S. Immigration and Customs Enforcement, “FY19 End of Year Rollout,” ERO-LESA Statistical Tracking Unit available at <https://www.ice.gov/sites/default/files/documents/Report/2018/ero-fy18-localstatistics.pdf>).

⁴ Immigrant Defense Project, “Denied, Disappeared and Deported: The Toll of ICE Operations at New York’s Courts in 2019” (Jan. 2020), 1-3, available at <https://www.immigrantdefenseproject.org/wp-content/uploads/Denied-Disappeared-Deported-FINAL.pdf> /

⁵ Immigrant Advocates Response Collaborative, “Behind Bars in the Empire State: An Assessment of the Immigration Detention of New Yorkers,” New York Immigration Coalition (Mar. 11, 2019) available at <https://www.nycic.org/2019/03/new-report-lawyers-assess-impact-immigration-detention-new-yorkers/>.

⁶ The Honorable Mark A. Dummond, “Death Penalty Cases in a Traffic Court Setting?: Lessons from the Front Lines of Today’s Immigration Courts,” American Bar Association (January 15, 2019), available at <https://perma.cc/G5UB-VBKE>.

Despite the high stakes, immigrants facing deportation do not have the right to a public defender if they cannot afford a lawyer. As a result, most people fighting for their families and their lives in immigration court – including 70 percent of people in detention nationwide – navigate the complexities of immigration law alone.⁷ The obstacles facing unrepresented immigrants in general, and detained immigrants in particular, are substantial. According to the American Bar Association, it is an “understatement” to describe the field of immigration law as “vast and complex,” and immigrants who do not speak English face even more insurmountable barriers to understanding their legal rights and options.⁸ The severe disadvantage immigrants face fighting deportation is compounded by a constantly shifting immigration landscape, in which the U.S. Attorney General and the Board of Immigration Appeals under the current presidential administration regularly issue new decisions that foreclose previously viable claims to immigration relief. Without representation, successfully navigating this system is nearly impossible. Represented immigrants are up to ten times more likely to establish a right to remain in the United States.⁹

NYIFUP helps to advance fairness and dignity in a system that otherwise sets immigrants up to fail. The program seeks to level the playing field so everyone has equal access to justice. Clients of universal representation programs report that their attorneys treat them with respect and dignity, help them regain trust in public institutions, and restore fairness to an inhumane and unjust system.¹⁰

NYIFUP also keeps families together and stabilizes New York communities in the face of increasing threats to the safety and cohesion of immigrant communities, and communities at large. Immigrants account for one-fifth of the state’s total population and make up 25 percent of its labor force. People facing deportation are our neighbors, family members, and colleagues. They are deeply entrenched members of our workplaces and communities, who contribute to the economic vitality and stability of New York. They own businesses, support and care for families, and keep cities and neighborhoods safe.¹¹ Tearing them away from their children and families causes long-lasting trauma and harm that radiates through our communities and economy. An early evaluation of the NYIFUP pilot in New York City revealed that clients served through the program had lived an average of 16 years in the United States and were projected to contribute \$2.7 million in state, local, and federal tax revenue each year. With the number of immigrants in detention ballooning and with continuous changes in federal policy that undermine due process protections for immigrants, NYIFUP is needed now more than ever.

The experiences of NYIFUP clients illustrate the difference representation can make in immigrant New Yorkers’ lives. One NYIFUP client worked with her attorney to gain freedom from immigration detention after enduring an abusive marriage. While she seeks protection under the Violence Against Women Act, she has found safety and stability in a new home as she continues to partner with her attorney. Another

⁷ The representation rate in immigration court fluctuates slightly over time. Historically, 81 percent of detained immigrants have lacked representation— between October 2000 and November 2019, 81 percent of all people in detention had never been represented (1,237,252 of 1,526,419 cases). The rate has improved slightly over the past two decades, with approximately 70 percent unrepresented in recent years—between October 2012 and November 2019, 70 percent of all people in detention had never been represented (327,828 of 466,756 cases), with the exact percentage varying slightly from year to year. See Transactional Records Access Clearinghouse (TRAC), “Details on Deportation Proceedings in Immigration Court,” accessed January 13, 2020, <https://trac.syr.edu/phptools/immigration/nta/>.

⁸ Mirriam Seddiq, “Immigration Law : A Primer,” American Bar Association (Apr. 3, 2019), *available at* https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2011/april_may/immigration_law_aprimer/.

⁹ Eagly et al, “A National Study of Access to Counsel in Immigration Court,” University of Pennsylvania Law Review, 164, no. 1 (2015), 1-91, <https://perma.cc/82F5-WE2D>.

¹⁰ Nina Siule & Karen Berberich, “A Year of Being SAFE: Insights from the SAFE Network’s First Year,” Vera Institute of Justice (Nov. 2018) *available at* <https://www.vera.org/downloads/publications/a-year-of-being-safe.pdf>.

¹¹ See Appendix B, “Profile of the foreign-born population in the State of New York,” Vera Institute of Justice.

NYIFUP client worked with his attorney to secure release from detention after his boss had reported him to ICE in order to avoid paying wages that he was owed. Release from detention has enabled him to continue to present his claim to remain lawfully in the United States while back home in his New York community. Both of these cases demonstrate the promise of NYIFUP to prevent prolonged and inhumane detention, to ensure that people can navigate their immigration proceedings with hope and dignity, and to stand up to hostile federal enforcement.

Since NYIFUP was implemented, more than 35 jurisdictions in 18 states have followed the New York's lead and are currently funding deportation defense programs, with state funding devoted to deportation defense programs in four states. While other states continue in New York's footsteps, NYIFUP remains the only removal defense program in which protections for immigrants are state-wide, ensuring that no detained person in New York State is forced to face the threat of deportation without a lawyer simply because they can't afford one.

New York should continue its national leadership role in serving all of those in need and standing with immigrants, especially during an unprecedented crisis in which our core values of due process are under attack. For the past two years, New York State has allocated \$4.25 million annually for NYIFUP to serve detained people facing deportation at upstate immigration courts. Meanwhile in FY20, New York City is devoting \$16.6 million, a \$5 million increase from the previous year, of funding for NYIFUP to serve detained people facing deportation in downstate immigration courts. Last year, the state's NYIFUP funding provided representation to over 1,000 people. In FY21, more than 1,400 people are expected to need representation. Due to multiplying procedural roadblocks and increasing detention rates, cases are lasting longer than ever – often for several years. Meanwhile, immigration attorneys must constantly adapt their strategy and update their understanding of the law, as the federal government's routine changes to immigration policy create increasingly hostile conditions in immigration court and diminishing options for relief.

Additional funding of \$15.3 million of immigrant legal services, including \$6.5 million for NYIFUP is urgently needed to ensure legal services to all who need them. Such funding will also ensure that NYIFUP legal service providers have sufficient staff, supervisors, training, infrastructure, and resources to zealously represent all eligible clients and to meet new challenges in immigration court as they arise.

By ensuring NYIFUP and LDP programs remained funded, New York will continue to stand with immigrants in the face of cruel federal attacks against those who are an essential part of the fabric of New York. For additional information or resources, please see the appendices on universal representation and NYIFUP and feel free to reach out to Shayna Kessler at skessler@vera.org or (917) 828-1753.

Thank you for your consideration.

Sincerely,

Shayna Kessler
Senior Planner
Center on Immigration and Justice
Vera Institute of Justice

Appendix A

FY21 Budget: Support the New York Immigrant Family Unity Project (NYIFUP)

What is NYIFUP?

- NYIFUP is the **first and only statewide public defender program in the country for immigrants facing deportation.**ⁱ
- With New York State's leadership, a 2013 New York City pilot program reached scale in upstate New York in 2017. NYIFUP has since ensured that every immigrant who is detained and unable to afford a lawyer is provided with one.
- **New York is the only state in the country to fund such comprehensive representation. As such, it is leading the way in showing states how to stand up to federal attacks on immigrants, safeguard due process, and restore fundamental fairness and dignity to people facing deportation.**
- New York City funds NYIFUP representation for detained people in downstate immigration courts. In FY20, in response to greater numbers of people needing services in an increasingly complex legal environment, the City increased its support for the program to \$16.6 million, an increase of \$5 million since FY19.
- In upstate New York more detained people than ever need immigration representation. **To meet the growing need and keep NYIFUP strong, New York state should allocate \$6.5 million for upstate NYIFUP in FY21.**

Why does New York's leadership on NYIFUP matter?

- Immigrants are under relentless attacks by our federal government. Threats of arrest and detention of immigrants have soared, families have been systematically separated, and noncitizens are more vulnerable than ever to deportation.
- In New York between 2016 and 2018 there was a 1,700% increase in ICE enforcement at state courthouses.ⁱⁱ Nationwide, approximately half a million people were detained in FY19, up 58% from FY17.ⁱⁱⁱ
- **Immigrants facing deportation do not have the right to a public defender if they can't afford a lawyer.** Yet the government trying to deport them always has counsel.

NYIFUP restores due process, defends family unity, and stabilizes our communities.

- **Dignity and Fairness:** Everyone at risk of deportation deserves a fair day in court even if they cannot afford a lawyer. NYIFUP advances bedrock values of due process and fairness, and restores dignity to people ensnared in a system that sets them up to fail.
- **Improved Outcomes:** Represented immigrants are up to ten times more likely to establish a right to remain in the United States.^{iv} Forty-three percent of detained clients represented across the country through programs modeled after NYIFUP in the Vera Institute's SAFE Network achieve release on bond or parole.^v
- **Stable families, communities, and economy:** Tearing people from their homes causes harm and insecurity that radiates throughout our communities. An evaluation of the NYIFUP Pilot in New York City revealed that clients served through the program had lived an average of 16 years in the United States and were projected to contribute \$2.7 million in tax revenue each year. Nearly half the clients were parents to thousands of U.S. children.^{vi}

Making an Impact in New York State

With New York State's support, NYIFUP represented over 1,000 clients in upstate New York last year. These are two of their stories:*

Humberto is a restaurant worker who stood up to his boss after discovering that he was not being paid all the wages he was owed. In retaliation, his employer reported him to Immigration and Customs Enforcement (ICE). ICE detained Humberto at the Buffalo Federal Detention Center, where he met his NYIFUP attorney. Together, they successfully advocated for Humberto's release and discovered that he had a strong claim to remain lawfully in the United States. He is now free from the immediate threat of deportation and continues to work with his NYIFUP and employment attorneys on his immigration case and to claim his unpaid wages.

Joan, a native of India, lived in New York with her abusive husband, a U.S. citizen. She attempted to escape from him by seeking refuge with a friend and reporting her husband to the police. Without an attorney, she struggled to understand her immigration options. Her husband soon found her and informed ICE of her location, leading to her detention at the Buffalo Federal Detention Center. There, Joan met her NYIFUP attorney, who helped her obtain release on bond, find stable housing in Western NY, and an attorney to represent her in her family court case against her husband. Free from detention and abuse, Joan and her attorney are working together to obtain immigration relief under the Violence Against Women Act, offering hope for a brighter future.

*Names and identifying details have been changed to protect anonymity.

A View of the Nation Shows New York's Catalyzing Leadership

A recent national poll conducted by Vera found an overwhelming 87 percent of people in the United States support government-funded lawyers for people in immigration court.

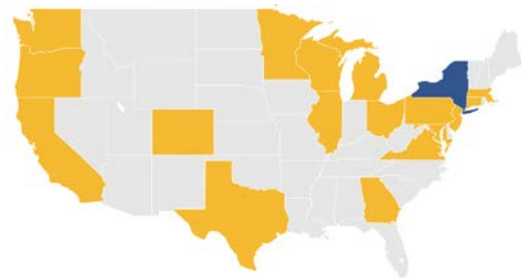
→ **2017: New York leads the country** by establishing the first and only statewide removal defense program for every detained income-eligible immigrant facing deportation.



→ **Today: 18 jurisdictions in 11 states** have piloted **NYIFUP replication programs** as a part of the Vera Institute's SAFE Network.



→ **Growing Momentum:** More than 35 jurisdictions in 18 states have followed **New York's lead** and are currently funding deportation defense.



This year, 1,400 detained people in upstate New York are expected to need lawyers. New York state must continue to stand with immigrants in the face of federal attacks. Your support is needed to safeguard NYIFUP with \$6.5 million in FY21.

For additional information, contact Shayna Kessler of the Vera Institute of Justice at skessler@vera.org.

ⁱ NYIFUP is part of the Liberty Defense Project, which funds removal defense programs administered by New York State's Office for New Americans.

ⁱⁱ Immigrant Defense Project, "ICE Out of Courts," <https://www.immigrantdefenseproject.org/ice-courts/>.

ⁱⁱⁱ U.S. Immigration and Customs Enforcement, *Fiscal Year 2019 Enforcement and Removal Operations Report*, <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf>.

^{iv} I. Eagly et al, "A National Study of Access to Counsel in Immigration Court," *University of Pennsylvania Law Review*, 164, no. 1 (2015), 1-91, <https://perma.cc/82F5-WE2D>.

^v Vera Institute of Justice, *Due Process for All: Evidence from Year 2 of the SAFE Network* (New York: Vera Institute of Justice, 2019), <https://www.vera.org/downloads/publications/due-process-for-all-year-2-safe-network.pdf>.

^{vi} J. Stave et al, *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* (New York: Vera Institute of Justice, 2017), <https://www.vera.org/publications/new-york-immigrant-family-unity-project-evaluation>.

Appendix B

The State of New York

Immigrant population

The foreign-born population in the state of New York represents an important and diverse share of the state, many of whom live in mixed-status families.



20 million people reside in the state of New York.



4.5 million immigrants reside in the state of New York, or **23 percent** of the total state population.

Population at risk of deportation

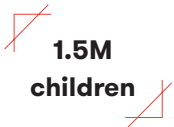
2M

2 million non-citizens residing in New York are potentially at **risk of deportation**.

2.5M

2.5 million of the **immigrants in New York** are **naturalized citizens** who are not at risk of deportation.

Children and families



There are **1.5 million children** in New York with at least one **immigrant parent**.



There are **1.3 million U.S. citizen children** with at least one **immigrant parent**.



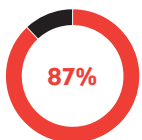
1 in 3

One in three children in New York has at least one **immigrant parent**.

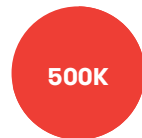


3 in 8

Three in eight children of immigrants have only **non-citizen immigrant parents**.



The **vast majority of children** in New York with at least one immigrant parent are **U.S. citizens**.



500,000 children in New York under the age of 6 have an immigrant parent.

Local community ties



3.8 million immigrants have lived in New York for **more than 15 years**.



71 percent of immigrants over the age of 25 living in New York are **high school graduates**.



770,000 immigrants in New York are **homeowners**.



50 percent of immigrants aged 25 or older have pursued **higher education**.

Economic and labor force contributions

Immigrants in the state of New York contribute critical tax dollars to the local economy and are indispensable members of the workforce.

\$169.4B immigrant-led households **earned \$169.4 billion.**

316K **316,000** immigrants in New York are **entrepreneurs.**

\$18.5B immigrants contributed **\$18.5 billion** in combined **state and local taxes.**

825K **825,000** people in New York are **employed by immigrant-owned firms.**

\$33.1B immigrants contributed **\$33.1 billion** in **federal taxes.**

28% **28 percent** of New York's workforce are immigrants.

\$117.8B This means immigrant-led households have an estimated **\$117.8 billion** in **spending power.**

\$135.1B Immigrant-owned firms **have yielded an estimated \$135.1 billion** in **total sales.**

Labor force participation

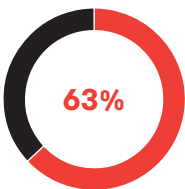
10M
workers

10 million workers comprise New York's labor force.

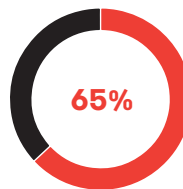


2.8 million immigrant workers comprise 28 percent of the state's labor force, or over **one in four.**

1 in 4



63 percent of the state's residents **participate in the labor force.**



65 percent of the state's immigrants **participate in the labor force**, higher than the share among the state's native-born population (63 percent).

Sources

U.S. Census Bureau:

"Age and Nativity of Own Children under 18 Years in Families and Subfamilies by Nativity of Parents," accessed July 24, 2019, 2017 American Community Survey (ACS) 1-Year Estimates, available through factfinder.census.gov.

"Selected Characteristics of the Foreign-Born Population by Period of Entry into the United States," accessed July 24, 2019, 2017 ACS 5-Year Estimates, available through factfinder.census.gov.

"Selected Characteristics of the Native and Foreign-Born Populations," accessed July 24, 2019, 2017 ACS 5-Year Estimates, available through factfinder.census.gov.

New American Economy (NAE):

"Immigrants and the Economy in . . .," by jurisdiction, in "Cities, States, and Districts," accessed July 24, 2019 available through <https://www.newamericaneconomy.org>.

Appendix C

Why Does Representation Matter?

The Impact of Legal Representation in Immigration Court

Karen Berberich and Nina Siule

Fact sheet
November 2018

Who gets an attorney in immigration court?

The U.S. Constitution's Sixth Amendment established the right to counsel as an essential American value, deemed by the Supreme Court as "necessary to insure fundamental human rights of life and liberty."¹ However, the right to appointed counsel has only been applied in *criminal* proceedings. Deportation cases are *civil* proceedings. Despite the high stakes involved in removal proceedings—including permanent separation from loved ones and, sometimes, life-threatening risks in their countries of origin—immigrants are entitled to representation paid for by the government only in extremely limited circumstances.² This means that while everyone is permitted to have a lawyer, only those able to secure an attorney are represented in court. Over the past several years, almost half of all immigration court cases have gone unrepresented.³

Who doesn't have an attorney? The lack of appointed counsel means that tens of thousands of people each year go unrepresented, including asylum seekers, longtime legal residents, immigrant parents or spouses of U.S. citizens, and even children. They are left to defend themselves in an adversarial and notoriously complex system against the United States government, which is always represented by counsel. Consistent with recent efforts by immigration advocates and federal, state, and local governments to expand access to counsel for immigrants, the federal Executive Office for Immigration Review (EOIR, the immigration court agency) reports a steady increase in the percentage of noncitizens who were able to secure counsel in their deportation proceedings over the last several years. While 50 percent of detained and non-detained immigrants combined were represented in fiscal year 2012, that rate rose to 61 percent in fiscal year 2016.⁴ Notwithstanding this improvement, the total number of unrepresented immigrants facing deportation in recent years is at historic highs. In fiscal year 2016, 73,524 cases that completed in immigration court lacked representation.⁵

The likelihood of securing representation is substantially lower for several subgroups of immigrants.

- > In recent years, representation rates for people in detention have hovered around 30 percent, leaving the remaining 70 percent without the benefit of counsel.⁶
- > In 2016, 70 percent of family units (adults and accompanying children with adjoined cases) were unrepresented at the time their cases closed.⁷
- > As of August 2018, slightly more than half of all pending children's cases were unrepresented.⁸

Representation increases due process in immigration court

Many people in deportation proceedings have valid legal claims to remain in the United States, but cannot possibly argue their cases effectively for themselves absent legal expertise. Representation allows people to make the appropriate decision about whether or not to fight their cases and to exercise and access the rights afforded to them under existing U.S. law.

Lawyers help immigrants access the defenses available to them under existing law

- > It is nearly impossible to win deportation cases without the assistance of counsel. Only 5 percent of cases that won between 2007 and 2012 did so without an attorney; 95 percent of successful cases were represented.⁹
- > This is not the result of lawyers choosing to represent stronger cases; the impact of representation is substantial even in cases that may initially appear weak. In other words, merits-blind universal representation also improves chances of a successful outcome. The New York Immigrant Family Unity Project (NYIFUP), the first publicly-funded universal representation program in the nation, demonstrated a significant, causal effect

of representation on case outcomes, independent of other factors. Under NYIFUP's universal representation model, detained immigrants in New York City saw the odds of winning their cases increase from 4 percent when unrepresented to a projected 48 percent with an attorney—a 1,100 percent increase.¹⁰

- > Representation makes a fourteen-fold difference in terms of case success for family cases defined as “women with children.”¹¹

Lawyers are especially critical in detained cases

- > The physical constraints associated with detention mean unrepresented people face serious obstacles to obtaining even the most basic evidence and paperwork they need to substantiate their legal claims.¹²
- > Attorneys can make the greatest impacts in detained cases. When they are represented, detained immigrants are 10.5 times more likely to succeed in their legal cases than their unrepresented counterparts.¹³

Lawyers help vulnerable people achieve protections available under U.S. law

- > Asylum seekers are at least three times more likely to win relief when represented.¹⁴
- > Children with legal representation have obtained legal outcomes that allowed them to remain in the United States 70 percent of the time, compared to just 9 percent for children without representation.¹⁵

Representation increases the likelihood of release from detention

For many people, release from detention while their case is ongoing can be as critical as the case outcome. Release from detention allows people to return to their families, work in their communities while their case is pending, and prepare their affairs should the court ultimately order them to leave the country. In recent years, U.S. Immigration Customs and Enforcement (ICE) has declined to set bond amounts in most detained immigrants' cases, requiring them to seek custody hearings in front of an immigration judge.¹⁶ As with the legal case outcome itself, representation is critical to effectively demonstrate to a judge that the detained immigrant is an appropriate candidate for release. When represented, the odds of a person being granted bond, and therefore being eligible to be released from custody, are about three times as high, even while controlling for other factors.¹⁷

Representation increases court appearances

One of the primary justifications for immigration detention is that noncitizens need to be detained throughout the duration of immigration court proceedings to ensure that they appear in court for upcoming hearings.¹⁸ Immigrants who fail to appear in court may be ordered deported “*in absentia*”—a deportation order not based on the merits of the case, but for the sole reason that the respondent was not present for the hearing. Research shows that representation has a positive effect on a person's likelihood of appearing for subsequent court appearances. When people have lawyers, they show up in court.

- > The Appearance Assistance Program, a community supervision program that connected released clients to attorneys and other support services in New York City, yielded an impressive 91 percent appearance rate.¹⁹
- > One analysis showed that only 7 percent of non-detained, represented individuals were ordered removed in *absentia*, compared to 68 percent of unrepresented people.²⁰
- > Similar trends are observed for children. Only 5 percent of non-detained, represented children have been ordered removed in *absentia* for failure to appear in court, compared to 80 percent of unrepresented children.²¹
- > Outside of full representation, even mere interactions with an attorney—who can inform people about the importance of attending court and the consequences associated with failing to appear—have been shown to improve court appearance rates. Participants who attended a “Know Your Rights” orientation through Vera's Legal Orientation Program received 7 percent fewer in *absentia* orders than those who did not attend an orientation.²²

Conclusion

Representation before any court of law is a matter of fundamental fairness. The U.S. judicial system has recognized that the Sixth Amendment requires the government to provide counsel for indigent immigrants in criminal proceedings. Given the high and often severe stakes associated with immigration proceedings and the complexity of the law, these same principles ought to govern our nation's immigration courts.²³ The significant, proven impacts of representation on immigration cases demonstrate the necessity of attorneys in navigating that complicated web.

Endnotes

- 1 Johnson v. Zerbst, 304 U.S. 458 (1938).
- 2 Under a court order in the Ninth Circuit, certain detained immigrants who have been deemed mentally incompetent to represent themselves must be provided with counsel. See Franco-Gonzalez v. Holder, 10 CV 02211 DMG (C.D. CA August 2, 2010).
- 3 Between October 2000 and August 2018, 54 percent of all cases filed had never been represented (2,156,633 of 4,013,177 cases). See Transactional Records Access Clearinghouse (TRAC), “Details on Deportation Proceedings in Immigration Court,” accessed November 4, 2018, <http://trac.syr.edu/phptools/immigration/nta/>.
- 4 Executive Office for Immigration Review (EOIR), *FY 2016 Statistics Yearbook* (Falls Church, VA: EOIR, 2017), F1 and figure10, <https://perma.cc/H2S8-Q4DT>.
- 5 EOIR, *FY 2016 Statistics Yearbook*, 2017, F1.
- 6 TRAC, “Who Is Represented in Immigration Court?” October 16, 2017, <https://perma.cc/HPX7-GPF6>.
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For more information

For more information about this report, contact Nina Siulc, research director, Center on Immigration and Justice, at nsiulc@vera.org. The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire

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