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DEPORTATION WITHOUT REPRESENTATION

THE ACCESS-TO-JUSTICE CRISIS FACING NEW JERSEY'S IMMIGRANT FAMILIES

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Working Group on Immigrant Representation in New Jersey

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Acknowledgements

The Working Group on Immigrant Representation in New Jersey

The Working Group on Immigrant Representation in New Jersey (“Working Group”), assembled and chaired by Judge Michael Chagares of the Third Circuit Court of Appeals, brings together judges, legal service providers, law school clinics, law firms, and bar association representatives to increase access to quality free and low-cost immigration legal services in the state of New Jersey. Entities represented in the Working Group currently include the United States Department of Justice Executive Office for Immigration Review, American Friends Service Committee, Casa Esperanza, Catholic Charities of the Archdiocese of New Jersey, Kids in Need of Defense, Gibbons, Harvard Immigration and Refugee Clinical Program, Human Rights First, Law Offices of Daniel L. Weiss, Law Office of Thomas E. Mosley, Legal Services of New Jersey, Lowenstein Sandler, Make the Road New Jersey, McCarter & English, Rutgers University--Camden Immigrant Justice Clinic, Rutgers University-Newark Immigrant Rights Clinic, the Immigrants’ Rights/International Human Rights Clinic at Seton Hall University School of Law Center for Social Justice, and the Young Center for Immigrant Children’s Rights.

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Introduction

The state of New Jersey, like the United States as a whole, has drawn strength and character from generations of immigrants. One in five New Jersey residents is an immigrant, and about half are naturalized citizens.² The federal government forcibly removes hundreds of thousands of immigrants from the United States each year, and thus many of New Jersey’s immigrant residents must navigate complex immigration court proceedings that will determine whether they will be expelled from the United States or permitted to remain. These individuals include men, women, and children. They include longtime lawful permanent residents, many of whom have U.S. citizen children or other family members in the United States, as well as asylum seekers and survivors of human trafficking and torture.

Many people in removal proceedings have no access to legal representation.³ Although the landmark case of *Gideon v. Wainwright*⁴ requires state courts to provide counsel in criminal cases for defendants who cannot afford lawyers, courts have not recognized this right to appointed counsel in immigration proceedings.⁵ Individuals in removal proceedings are allowed to hire counsel at their own expense if there is no delay to the government, but many cannot afford representation. Thus, both children and adults find themselves facing trained government counsel in immigration court without a lawyer to speak on their behalf, gather evidence, or analyze the exceedingly complex laws that govern their cases.

This study analyzes newly available empirical data on access to representation for individuals in removal proceedings in New Jersey’s immigration courts. The first part of the study examines data obtained pursuant to a Freedom of Information Act request from the Executive Office for Immigration Review (EOIR) to analyze the relationship between representation and removal proceeding outcomes in the New Jersey immigration courts. This study shows that – in New Jersey, as in other states – having a lawyer during removal proceedings correlates with success in

² See American Immigration Council, *New Americans in New Jersey: The Political and Economic Power of Immigrants, Latinos, and Asians in the Garden State* 1 (2013), available at www.immigrationpolicy.org/sites/default/files/docs/new_americans_in_new_jersey_2013_2.pdf.

³ Jayashri Srikantiah, David Hausman, and Lisa Weissman-Ward, Access to Justice for Immigrant Families and Communities: A Study of Legal Representation of Detained Immigrants in Northern California, 11 *Stan. J. Civ. Rts. & Civ. Liberties* 207 (2015); Northern California Collaborative for Immigrant Justice, *Access to Justice for Immigrant Families and Communities: Study of Legal Representation of Detained Immigrants in Northern California*, (October 2014), available at <https://media.law.stanford.edu/organizations/clinics/immigrant-rights-clinic/11-4-14-Access-to-Justice-Report-FINAL.pdf> [hereinafter Northern California Report].

⁴ See generally 372 U.S. 335 (1963).

⁵ See 8 U.S.C. § 1229a(b)(4)(A) (providing that immigrants have a right to representation “at no expense to the Government”); but see Executive Office for Immigration Review, *Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions*, THE DEPARTMENT OF JUSTICE (Apr. 22, 2013), (providing for a limited exception, and appointed counsel, in the case of immigrants with mental health conditions rendering them incompetent to represent themselves), available at www.justice.gov/eoir/press/2013/SafeguardsUnrepresentedImmigrationDetainees.html.

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defending against deportation. Fourteen percent of people in removal proceedings who did not have counsel prevailed in avoiding removal from the United States, compared to forty-nine percent of those who had legal counsel.

The second part of the study describes the results of a new survey of nonprofit organizations that provided low- or no-cost representation to individuals in removal proceedings before the New Jersey immigration courts in 2013 and 2014. The survey results show that nonprofits have been offering valuable services, but that their capacity is limited and that most organizations represent few or no people in detention. As a result of its very limited number of *pro bono* or low-cost legal service providers and their limited funding, and despite several very promising new developments discussed below, New Jersey lacks sufficient capacity to meet the legal services needs of adults, children, and families in removal proceedings.

Key Findings

- ✓ **Represented individuals (detained and non-detained) appearing in New Jersey immigration courts were more likely to prevail in seeking relief from removal than those who were not represented.**

Within each detention category, individuals who had legal representation were at least three times more likely to obtain a successful outcome than those who were unrepresented.⁶ This disparity was even more pronounced for individuals in detention during their removal proceedings.

- ✓ **Represented immigrants were more likely to file for relief from removal than unrepresented individuals.**

Among the group of people who were detained throughout their proceedings, those who were represented were more than four times as likely to apply for relief as those who were not represented. Among those not detained at any time, represented individuals were nearly eight times as likely as unrepresented individuals to apply for relief. Among those who were detained but later released during the course of proceedings, represented individuals were more than five times as likely as unrepresented individuals to apply for relief.

- ✓ **Detained individuals in removal proceedings before the New Jersey immigration courts were far less likely to be represented by counsel than non-detained individuals.**

Approximately two-thirds of individuals detained throughout their proceedings had no legal representation at any point in their removal proceedings.

- ✓ **Nonprofit organizations with New Jersey clients represented significantly fewer detained than non-detained clients, regardless of their overall caseload.**

Even organizations with a relatively high volume of cases reported extremely low numbers of detained clients during the study period. Two of the organizations surveyed reported that they did not represent any detained clients in 2013 or 2014 and an additional two organizations reported that they did not represent any detained clients in 2013.

⁶ For the purposes of this study, “successful outcome” is defined as any outcome that did not result in the immigrant (1) being ordered removed from the country; or (2) accepting voluntary departure. Please see Appendix A, ¶¶ 4-5.

Background

Individual Consequences of Deportation and Access to Counsel

Immigration judges are charged with deciding whether to order the deportation (currently known as “removal” for immigration law purposes) of individual immigrants. Such proceedings have extremely high stakes. Removal proceedings often result in permanent banishment from the United States and the separation of families across borders, leading to extreme financial and emotional hardship.⁷ Moreover, many people facing removal are seeking asylum or protection under the Convention Against Torture (CAT) and can face great personal danger or death if deported.

Despite these grave consequences, removal proceedings are technically civil, not criminal, in nature. The judges hearing these proceedings oversee extremely overloaded dockets, and removal proceedings do not afford individuals many of the procedural protections that are well-settled in other contexts. Perhaps most notably, whereas well-established Sixth Amendment precedent requires government-appointed counsel for indigent defendants in most criminal proceedings, the courts have not yet recognized a parallel right in immigration proceedings.⁸ This means that adults and even unaccompanied children who cannot afford to hire counsel must argue on their own against trained government prosecutors.

Litigating a removal case typically presents challenges for even highly educated attorneys. It requires significant factual investigation and documentary evidence, and analysis of a complex web of federal and state laws that affect removal decisions.

Considering the potentially life-threatening consequences of a removal order and the very limited process available in immigration court, experts have likened removal proceedings to trying “death penalty cases in traffic court.”⁹

How Deportations Affect New Jersey

New Jersey is a state of vibrant immigrant communities, and deportation orders have reverberating effects on these communities, their families, and the state economy.

⁷ *Padilla v. Kentucky*, 559 U.S. 356 (2010).

⁸ *Gideon v. Wainwright*, 372 U.S. 335 (1963); Kate M. Manuel, *Aliens’ Right to Counsel in Removal Proceedings: In Brief*, CRS R43613, <http://fas.org/sgp/crs/homsec/R43613.pdf>.

⁹ *E.g.*, Eli Saslow, *In a crowded immigration court, seven minutes to decide a family’s future*, WASH. POST, Feb 2, 2014, www.washingtonpost.com/national/in-a-crowded-immigration-court-seven-minutes-to-decide-a-familys-future/2014/02/02/518c3e3e-8798-11e3-a5bd-844629433ba3_story.html (quoting congressional testimony from an immigration judge).

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Over 21 percent of New Jersey residents are immigrants, compared to just 12.9 percent of all U.S. residents.¹⁰ More than half of New Jersey's immigrant residents are naturalized United States citizens, meaning they are eligible to vote.¹¹ Immigrants and the children of immigrants account for 18.8 percent of New Jersey voters.¹²

Accordingly, immigrant residents drive New Jersey's economy, creating jobs and technological innovations that spark economic growth.¹³ In 2011, 29 percent of business owners in New Jersey were foreign-born immigrants.¹⁴ Immigrant workers contributed at least \$47 billion to the gross state product in 2006.¹⁵ Immigration to New Jersey increased the wages of native-born workers without a high school diploma by 3 percent between 1990 and 2000.¹⁶ Moreover, a recent report estimated that the two new Deferred Action programs contained in President Obama's Executive Order of November 20, 2014, but not implemented as of this writing, could create 1,500 new jobs in New Jersey each year and boost New Jersey's economy by \$11.9 billion over the next decade.¹⁷

Deportations also affect the well-being of New Jersey's communities because the families of those deported often lose their primary breadwinner or caregiver. Although specific figures are not yet available for New Jersey, one-third of all U.S. citizens with immigrant parents live with at least one undocumented family member.¹⁸ If a parent is deported, his or her children often enter the child welfare system.¹⁹ This results in lasting psychological harm and social and economic costs. The Applied Research Center has estimated that from 2011 to 2016, at least 15,000 additional

¹⁰ The Foreign-Born Population in the United States: 2010, American Community Service Reports 4 (2012), available at <https://www.census.gov/prod/2012pubs/acs-19.pdf>; American Immigration Council, *supra* note 2.

¹¹ U.S. Census Bureau, *State & County Quick Facts: New Jersey* (2015), available at <http://quickfacts.census.gov/qfd/states/34000.html>; American Immigration Council, *supra* note 2

¹² American Immigration Council, *supra* note 2.

¹³ *Id.*

¹⁴ MAP THE IMPACT OF IMMIGRATION ACROSS THE NATION, www.maptheimpact.org/state/new-jersey (last visited June 5, 2015).

¹⁵ American Immigration Council, *supra* n. 2.

¹⁶ American Immigration Council, *supra* n. 2 at 1; Ira N. Gang and Anne Morrison Piehl, *Destination, New Jersey: How Immigrants Benefit the State Economy*, Rutgers University Eagleton Institute of Politics (Dec. 2008), at 16-17.

¹⁷ Erika J. Nava, *Federal Immigration Reform Would Help New Jersey's Striving Immigrants and Boost State Economy*, NJ Policy Perspectives (Jan. 23, 2014), available at <http://www.njpp.org/reports/federal-immigration-reform-would-help-new-jerseys-striving-immigrants-and-boost-the-states-economy>.

¹⁸ Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View From the Ground*, Center for American Progress (Aug. 2012) ("A total of 16.6 million people currently live in mixed-status families – with at least one unauthorized immigrant – and a third of U.S. citizen children of immigrants live in mixed-status families.") (citing national research and discussing case examples based on extensive qualitative interviews in New Jersey and Ohio).

¹⁹ See generally PBS, *5,100 Kids in Foster Care After Parents Deported*, FRONTLINE (Nov. 3, 2011), available at <http://www.pbs.org/wgbh/frontline/article/study-5100-kids-in-foster-care-after-parents-deported/>

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children will face threats to reunification due to the detention or deportation of parents, leaving them to be placed in foster care.²⁰ Deportation of immigrants also has far-reaching demographic and economic consequences that cannot be easily quantified, but an analysis by the Bipartisan Policy Center estimated that removing all immigrants from the United States would reduce the labor force by 6.4 percent, resulting in a decrease of approximately 11 million workers by 2034.²¹

Breaking up families through deportation has serious non-economic consequences as well. Immigrant parents of citizen children risk being detained, in some cases indefinitely, and thus lose the ability to spend time with or otherwise care for their children.²² Watching a parent undergo removal proceedings is often highly traumatic to a child.²³ In addition, in situations in which one parent has been deported and the other remains in the United States, some families reunify in their native country even if the children are U.S. citizens; such an abrupt and drastic lifestyle change can cause irreparable harm to children.²⁴ Furthermore, the forced separation of parents can lead to the dissolution of marriages and to long-term family separation.²⁵

²⁰ Applied Research Center, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, CONSORTIUM FOR LATINO IMMIGRATION STUDIES (Nov. 2011), available at www.sph.sc.edu/cli/word_pdf/ARC_Report_Nov2011.pdf (estimating conservatively that 5,100 children in foster care in November 2011 had parents who were either detained or deported, and that in the following five years, 15,000 children would face similar threats to reunification due to detained or deported parents).

²¹ Ben Gitis and Laura Collins, The American Action Forum, *The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies* (Mar. 6, 2015), available at <http://www.americanactionforum.org/research/the-budgetary-and-economic-costs-of-addressing-unauthorized-immigration-alt/>

²² Eli Saslow, *In a crowded immigration court, seven minutes to decide a family's future*, WASH. POST, Feb. 2, 2014.

²³ See National Association of Immigration Judges, *Special Concerns Relating to Juveniles in Immigration Court* (July 22, 2014), available at www.immigrantjustice.org/sites/immigrantjustice.org/files/NAIJ_Senate_Ltr_ensuring_fairness_to_juveniles_2014_07_22.pdf.

²⁴ Joanna Dreby, *How Today's Immigration Enforcement Policies Impact Children, Families, and Communities: A View From the Ground*, CENTER FOR AMERICAN PROGRESS, Aug. 20, 2012.

²⁵ *Id.*

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Immigration Court Backlogs and Efficiency

Lack of representation also negatively influences the court system and adjudication process.²⁶ Because data from the Department of Justice shows that many of the delays in immigration court arise when unrepresented individuals ask for more time to seek counsel or to prepare their cases, providing representation for immigrants can significantly reduce the delays and associated costs of the adjudication process.²⁷ The National Association of Immigration Judges has noted that providing guaranteed representation would help lower court costs, lessen backlogs in the legal system, and prevent miscarriages of justice by protecting people from deportation who have a right to stay in the country.²⁸

New Jersey has only two immigration courts: one in Elizabeth that hears almost entirely detained cases and another in Newark that hears non-detained cases (and during the time period covered by this study, heard both detained and non-detained cases).²⁹ Like other immigration courts around the country, the New Jersey immigration courts are currently expediting detained cases and the cases of recently arrived families and unaccompanied children.³⁰ Other non-detained cases are

²⁶ “Non-represented cases are more difficult to conduct. They require far more effort on the part of the judge.” Charles H. Kuck, *Legal Assistance for Asylum Seekers in Expedited Removal: A Survey of Alternative Practices* (Dec. 2004), 8, available at www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/legalAssist.pdf.

²⁷ John D. Montgomery, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings* 11-12 (2014), available at www.nera.com/content/dam/nera/publications/archive2/NERA_Immigration_Report_5.28.2014.pdf; see also Ingrid V. Eagly and Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 59-75 (2015) (finding that counsel increases immigration court efficiency and also increases the likelihood of release for those who are detained, and appearance rates once released).

²⁸ National Association of Immigration Judges, *Special Concerns Relating to Juveniles in Immigration Court* (July 22, 2014), available at www.immigrantjustice.org/sites/immigrantjustice.org/files/NAIJ_Senate_Ltr_ensuring_fairness_to_juveniles_2014_07_22.pdf.

²⁹ United States Department of Justice, *EOIR Immigration Court Listing*, Nov. 2015, available at www.justice.gov/eoir/sibpages/ICadr.htm#NJ. (Seven Immigration Judges hear cases in Newark, NJ, and two regularly hear cases in Elizabeth, NJ. During the time period covered by this study, several fewer judges sat at the Newark court. By comparison, New York has six courts and thirty-eight judges).

³⁰ The Obama Administration began expediting the cases of recently-arrived children and families in summer 2014. Susan K. Livio, N.J. *Immigration court fast-tracking cases on whether recent Central American arrivals can stay*, NJ.COM, Aug. 17, 2014, <http://s.nj.com/qt0MnnL>. The most recent statement of EOIR docketing priorities reaffirms this policy, while additionally prioritizing individuals who received a bond hearing in the Ninth Circuit due to their prolonged mandatory detention. Memorandum from Print Maggard, Chief Immigration Judge (Acting), Revised Docketing Practices Relating to Certain EOIR Priority Cases, Feb. 3, 2016, <https://www.justice.gov/eoir/file/819736/download>.

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likely to take years to be completed due to tremendous court backlogs.³¹ As of fiscal year 2015, the average time an immigrant in New Jersey had to wait before his or her first removal hearing was 721 days, or about two years, significantly longer than any other year recorded in the same study, and this wait time appears to be increasing.³² Moreover, whereas both Newark and Elizabeth Immigration Courts previously heard detained cases, in recent months the Elizabeth Immigration Court has absorbed all of the Newark court's detained cases. Although comprehensive data is not yet available, advocates and unrepresented detained immigrants in removal proceedings at Elizabeth Immigration Court at the time of this writing report that court delays have increased significantly for people in detention in New Jersey following this docket change.³³

Increased court delays also significantly increase agency detention costs.³⁴ Those appearing in court without a lawyer often need continuances to seek counsel, prepare applications, and/or determine whether they have any viable means of challenging removal.³⁵

Immigration Detention

More than 60 percent of immigrants in removal proceedings in New Jersey will spend at least part of those proceedings in detention.³⁶ Although the law formally labels such detention as civil, U.S. Immigration and Customs Enforcement typically detains people in facilities that “were originally built, and currently operate, as jails and prisons to confine pre-trial and sentenced felons.”³⁷ Detained immigrants are often forced to wear prison uniforms, locked in concrete and barbed-wire enclosures, held in remote areas, subjected to correctional disciplinary rules, and allowed very limited contact with family members or others in the community.³⁸ Detention continues for an

³¹ HUMAN RIGHTS FIRST, *IN THE BALANCE: BACKLOGS DELAY PROTECTION IN THE U.S. ASYLUM AND IMMIGRATION COURT SYSTEMS* ii (2016) (“On average, people whose cases are before the immigration courts can expect to wait over three years. In many courts, the wait time can be much longer, five or six years.”).

³² TRAC Immigration, *Immigration Court Backlog Tool*, http://trac.syr.edu/phptools/immigration/court_backlog/ (tracking wait times since fiscal year 1998; the average number of days has increased dramatically from 278 days in 2009 to 721 days in 2015).

³³ *E.g.*, Email from Amelia Wilson, Detention Attorney, American Friends Service Committee, to Danielle King, Seton Hall University School of Law Student (Mar. 23, 2016, 14:29 EST) (on file with authors); Interview by Farrin Anello of unrepresented man at Delaney Hall Detention Center (Apr. 22, 2016) (final hearing in asylum case scheduled to take place 7 months after initial detention).

³⁴ Montgomery, *supra* note 28, at 13-17.

³⁵ *Id.*

³⁶ See EOIR data analysis *infra*.

³⁷ U.S. Immigration and Customs Enforcement, *NJ Detention Facilities*, www.ice.gov/detention-facilities?state=NJ&title=; See also Dora Schriro, *Immigration Detention Overview and Recommendations* (Oct. 6, 2009), available at <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

³⁸ Andrea Guttin and Katharina Obser, *Access to Quality Immigration Representation in New Jersey* (Jan. 2013), available at www.humanrightsfirst.org/wp-content/uploads/NJ-Immigration-Representation-Background-Jan-2013.pdf; Schriro, *supra* note 36; NJ Advocates for Immigrant Detainees, *23 Hours in the Box* (June 2015),

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indeterminate length of time, pending the conclusion of removal proceedings or removal from the United States. As this study and the prior studies in New York and Northern California suggest, detention also serves as a formidable practical barrier to obtaining counsel or challenging deportation, both because the prospect of further detention coerces people into abandoning viable challenges and because detention makes it difficult for people to find counsel or otherwise support their claims.³⁹

Removal Proceedings

Without representation, immigrants are left to navigate a web of immigration laws that have been described as “second only to the Internal Revenue Code in complexity” and as comparable to “King Minos’s labyrinth in ancient Crete.”⁴⁰ After being served with a Notice to Appear (NTA),⁴¹ an individual respondent begins removal proceedings with a master calendar hearing, which can be similar to an arraignment, before an immigration judge. Some individuals are detained at the time of this hearing, while others are not. The prosecuting agency (U.S. Immigration and Customs Enforcement, or ICE) typically makes a discretionary decision as to whether to detain an individual in removal proceedings.⁴² However, some individuals, including those with virtually any past convictions, are subject to mandatory custody.⁴³ If the judge determines the person is not subject to mandatory detention,⁴⁴ the individual may ask the immigration judge to grant release on bond of no less than \$1500, or on their own recognizance (“conditional release”).⁴⁵

In the removal proceedings themselves, which are formally separate from the bond hearing, the individual can then either contest or concede the Department of Homeland Security’s assertion

available at https://afsc.org/sites/afsc.civicaactions.net/files/documents/23%20Hours%20in%20the%20Box_2.pdf (reporting on use of solitary confinement to punish people in immigration detention).

³⁹ See Srikantiah et al., *supra* note 4; see also, e.g., NATIONAL IMMIGRATION LAW CENTER, BLAZING A TRAIL: THE FIGHT FOR RIGHT TO COUNSEL IN DETENTION AND BEYOND 4 (2016) (web version), available at www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf; Inter-American Comm’n on Human Rights, Immigration in the United States: Detention and Due Process Part IV, OEA/Ser.L/V/II., Doc. 78/10 (Dec. 30, 2010).

⁴⁰ *Chan v. Reno*, 1997 U.S. Dist. Lexis 3016, *5 (S.D.N.Y. 1997).

⁴¹ 8 C.F.R. § 1239.1.

⁴² 8 U.S.C. § 1226.

⁴³ See 8 U.S.C. § 1226(c) (mandatory custody for people removable on specified grounds relating to convictions or national security).

⁴⁴ This determination is sometimes made in a separate proceeding called a “Joseph hearing” after *Matter of Joseph I*, 22 I&N Dec. 660 (BIA 1999), clarified in *Matter of Joseph II*, 22 I. & N. Dec 799 (BIA 1999). See also *Demore v. Kim*, 538 U.S. 510, 514 note3 (2003).

⁴⁵ 8 U.S.C. § 1226(a) ; *Rivera v. Holder*, 307 F.R.D. 539 (D. W.D.WA 2015) (held that under 8 U.S.C. § 1226(a), an immigration judge is allowed to release immigrants on conditions other than monetary bond and can grant immigrants release based on a “conditional parole” or monetary bond.)

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that s/he is removable or inadmissible. The noncitizen may then ask for a form of discretionary relief. The burden is on the immigrant to establish her/his eligibility for the form of relief s/he seeks. Each piece of the immigrant's legal case must be supported by substantial factual evidence, some of which must come from the country of origin. Compiling this evidence is particularly difficult when the immigrant is detained. If s/he does not succeed before an immigration judge, s/he can appeal to the Board of Immigration Appeals (BIA).⁴⁶ Appeals are usually conducted solely in writing, with no opportunity to speak to the decision-makers. Failing there, an immigrant may be able to pursue judicial review in the corresponding federal circuit court, but only if s/he can overcome highly technical statutory bars to judicial review.⁴⁷

Recent Studies in Other Regions

Recent studies from New York and Northern California and a recent nationwide study have documented positive correlations between representation and the likelihood of success in removal proceedings, as well as a disproportionate lack of representation and much higher rates of removal for people who are detained during these proceedings.⁴⁸

Based on two reports by a study group led by Second Circuit Judge Robert Katzmann,⁴⁹ the New York City Council funded a program that now provides attorneys for every indigent New York City resident who is detained while in removal proceedings, as well as a fellowship program that now places highly qualified new attorneys at immigration legal services organizations throughout New York City and neighboring areas, now including New Jersey.⁵⁰

⁴⁶ 8 C.F.R. § 1003.38.

⁴⁷ 8 U.S.C. § 1252.

⁴⁸ See Eagly and Shafer, *supra* n. 27 at 30-36, 49-57; Srikantiah et al., *supra* note 4; Northern California Report, *supra* note 4; New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt.1), 33 CARDOZO L. REV. 357 (Dec. 2011) [hereinafter New York Report I]; New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt.2), available at www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf [hereinafter New York Report II]; ANDREW I. SCHOENHOLTZ, PHILIP G. SCHRAG, AND JAYA RAMJI-NOGALES, LIVES IN THE BALANCE: ASYLUM ADJUDICATION BY THE DEPARTMENT OF HOMELAND SECURITY (JAN. 2014); David Hausman, *The Failure of Immigration Appeals* (July 28, 2015, 2015), 164 U. Pa. L. Rev., Forthcoming, available at SSRN: <http://ssrn.com/abstract=2568960>.

⁴⁹ New York Immigrant Representation Study Report, *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings* (pt. 1), 33 Cardozo L. Rev. 357 (Dec. 2011); New York Immigrant Representation Study Report, *Accessing Justice II: A Model for Providing Counsel to New York Immigrants In Removal Proceedings*, available at www.cardozolawreview.com/content/denovo/NYIRS_ReportII.pdf.

⁵⁰ Vera Institute of Justice, *Local and National Groups Announce Launch of First-In-The-Nation Public Defender System for New York's Immigrant Families*, (November 7, 2013), available at www.vera.org/news/launch-new-york-immigrant-family-unity-project-nyifup.

Methodology

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) DATA SET

This study uses data obtained from the EOIR through a Freedom of Information Act (FOIA) request covering all removal cases in which an immigration judge made a final decision at the Newark or Elizabeth Immigration Courts between February 1, 2014 and January 31, 2015.⁵¹ Researcher David Hausman, a Ph.D. candidate at Stanford University, obtained this data and collaborated with Seton Hall University School of Law on its analysis. The section of the present study that analyzes data from the immigration courts employs methodology based upon that used in the Northern California report, which analyzed data from an earlier response to the same FOIA request. Appendices A and B accordingly draw from the comparable appendices found in the Northern California reports.

This study analyzes historical EOIR data. Because it is not a randomized experiment, it does not aim to provide specific evidence of causation, but merely associations or correlations. This study also does not account for other factors (such as the strength of individual cases) that have a causal effect on case outcomes. The EOIR data also relies on the immigration court's definition of "represented": the court marks cases as "represented" as long as a representative puts in at least one appearance, even if the individual immigrant appeared in immigration court at other times without counsel.⁵² As a result, this study (along with any other study relying on information from the immigration court) may overestimate the number of clients who receive "true" representation (in other words, in which an attorney is present for all critical stages of litigation).

NONPROFIT SURVEY DATA SET

The data on the representation of immigrants in removal defense cases by nonprofit organizations is based upon information voluntarily reported by these organizations in response to a survey authored by Seton Hall University School of Law Immigrants' Rights/International Human Rights Clinic, with guidance from Professor Brian Sheppard, modeled in part on the survey created by the New York Study Group on Immigrant Representation. The survey was designed to solicit information that would provide a comprehensive picture of each organization's capacity to provide legal services for New Jersey immigrants in removal defense proceedings. Participants were asked about the number of removal defense cases handled by their organization in 2013 and 2014. They were also asked to indicate the number of detained cases, the number of juvenile cases, and the

⁵¹ This study also gathered EOIR data from the time period of March 1, 2013 through February 28, 2014 to compare 2013 and 2014 data. [hereinafter EOIR 2013 Data].

⁵² See Appendices A and B *infra* for detailed information.

Methodology

types of relief sought. The respondents were then asked to provide information on funding: how much they receive, the sources that provide it, and how it is allocated for different types of cases. Organizations were then asked about any selection criteria used to assess clients. Finally, the survey solicited information about the staff who worked on the organization's cases and how they apportioned their time.

The organizations from which this survey solicited information provided low or no-cost legal services to immigrant clients in New Jersey in 2013 and 2014. Most of these organizations have offices in New Jersey, and a few have offices in New York and not in New Jersey. The survey requested information only about legal services provided in New Jersey, even if the organizations also provided services in other regions. The responses were received between December 2014 and May 2015.⁵³

⁵³ See Appendices D and E *infra* for detailed information.

Analysis

EOIR DATA

This study examines the EOIR data for the most recent year in the data set to determine how many individuals in New Jersey are able to obtain representation – either by paying for representation or finding a nonprofit or *pro bono* provider – and the success rate of those with and without counsel.

The EOIR data set consists of 3,868 cases and includes all removal cases in which an Immigration Judge (IJ) made a final case-related decision in the New Jersey Immigration Courts (Elizabeth and Newark) between February 1, 2014 and January 31, 2015.⁵⁴ This data set includes only cases resolved in New Jersey and not cases that were transferred to other jurisdictions.

The cases in this time period can be broken into three categories.⁵⁵

Cases in which individuals were...

Never detained in their removal proceedings	Initially detained but later released during proceedings	Detained throughout their proceedings
1441	853	1574

⁵⁴ Reinstatement of removal cases, in which DHS alleges that an immigrant is subject to a prior order of removal, are only in the data set if the immigrant contends that he or she has a reasonable fear of persecution if returned to his or her home country. See 8 U.S.C. § 1231(a)(5) (governing reinstatement generally); 8 C.F.R. § 1208.31 (governing reasonable fear determinations). When the immigrant is able to convince a DHS official that her fear is reasonable, or where the immigrant challenges the official’s decision that it is not, an immigration judge has jurisdiction over the immigrant’s case. 8 C.F.R. § 1208.31. Such cases appear in EOIR’s database as “Reasonable Fear” or “Withholding Only” cases.

⁵⁵ Since most denials are not appealed, this study does not examine representation or outcomes when the immigrant or DHS appealed an immigration judge’s decision to the Board of Immigration Appeals (BIA), or when the immigrant subsequently petitioned for review of the BIA decision.

Analysis

DETAINED IMMIGRANTS WERE LESS LIKELY TO HAVE REPRESENTATION THAN NON-DETAINED IMMIGRANTS

As of January 2015, approximately 33 percent of those individuals detained throughout their proceedings had representation at some point in their cases, while 79 percent of individuals who were not detained at any point during proceedings had attorneys at some point in their cases. Thus, detention is negatively correlated with representation.

Figure 1:

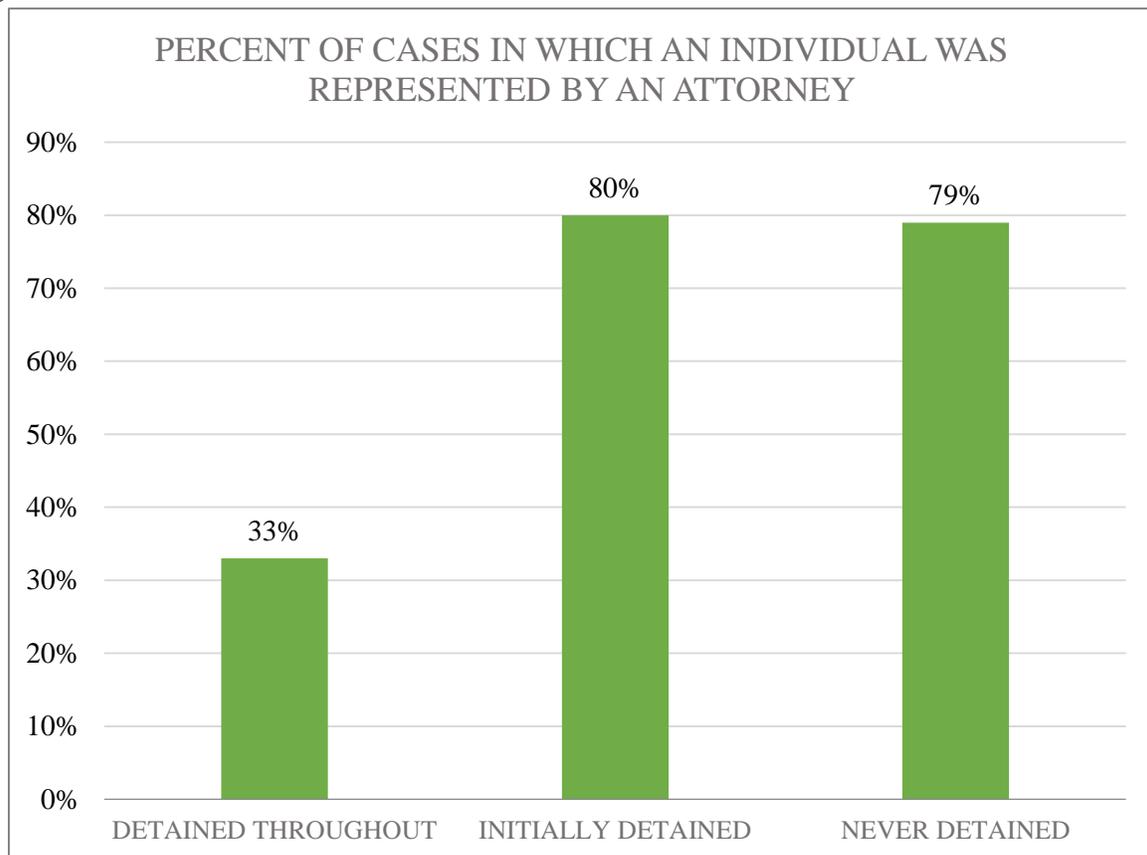


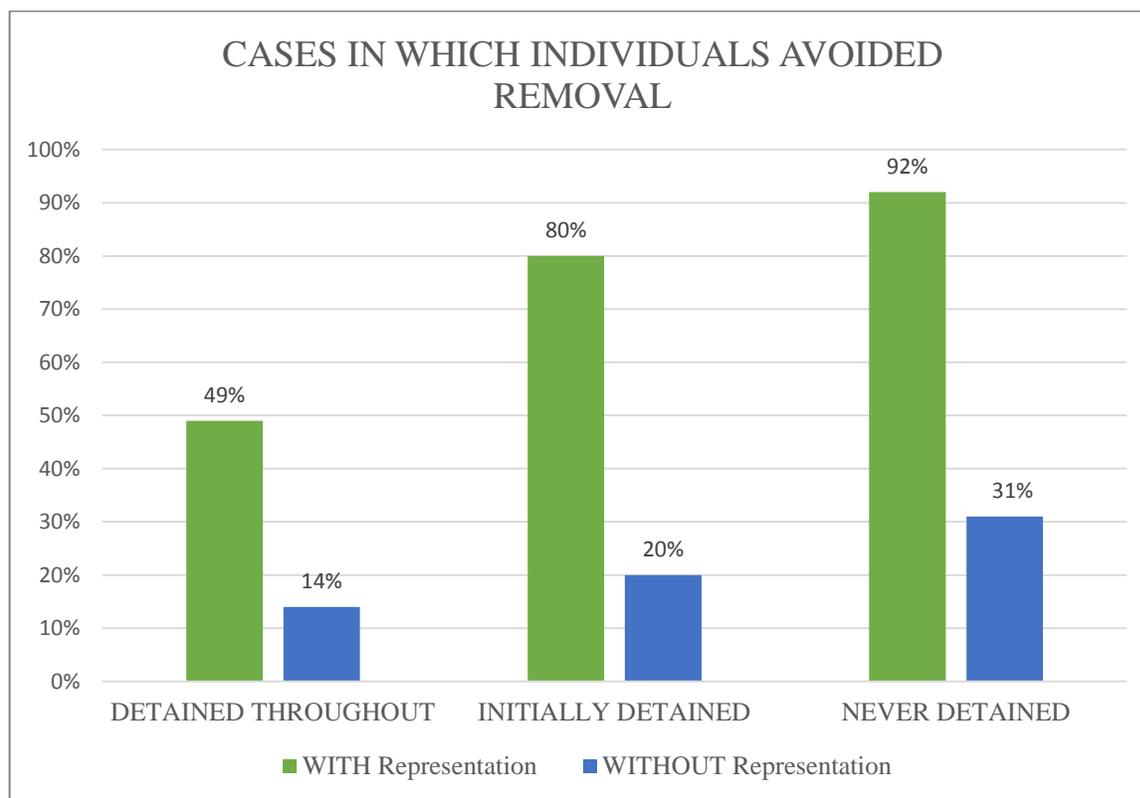
Figure 1 shows the percentage of cases in which immigrants in removal proceedings had representation, within each of the following categories: those detained throughout their proceedings, those detained but later released, and those never detained.

Analysis

DETAINED INDIVIDUALS WITH REPRESENTATION WERE THREE TIMES MORE LIKELY TO PREVAIL IN THEIR REMOVAL CASES THAN THOSE WITHOUT REPRESENTATION

Within each of the three groups identified in **Figure 1**, those with legal representation were far more likely to prevail in their cases.⁵⁶ Among people who were detained throughout their proceedings, those with counsel avoided deportation 49 percent of the time, whereas those who were unrepresented avoided removal only 14 percent of the time (more than a three-fold difference). This disparity paralleled that found in the Northern California Report.⁵⁷

Figure 2:



⁵⁶ As detailed in Appendices A and B, these results reflect immigrants who avoided removal in some way, not solely those who won asylum or other forms of relief.

⁵⁷ The Northern California Report found a 22-percentage-point increase (from 11 to 33 percent) in successful outcomes. See Northern California Report, *supra* note 4, at 18 Fig. 2.

Analysis

Figure 2 compares the outcomes of cases in which individuals were represented by counsel at least at some point in the proceedings with those who were never represented by counsel.

The results also show that both detention and lack of representation are associated with a higher probability of removal at the end of an individual's proceedings. As **Figure 2** shows, 92 percent of represented, never-detained individuals avoided removal. By contrast, never-detained individuals who were unrepresented succeeded only 31 percent of the time. Those who were represented but detained at the time of case completion had only a 49 percent chance of prevailing. The combination of not having representation and being detained at the time of case completion drove the success rate down to about 14 percent.⁵⁸

Thus, people who were represented and never detained were:

- Almost twice as likely to obtain a successful outcome as those who were represented but detained throughout;
- Three times as likely to obtain a successful outcome as those who were never detained but also never represented;
- Nearly seven times as likely to obtain a successful outcome as those who were unrepresented and detained throughout their proceedings.

Therefore, lack of representation and detained status are strongly associated with removal.⁵⁹

IMMIGRANTS WHO HAVE LAWYERS ARE MORE LIKELY TO FILE APPLICATIONS FOR RELIEF THAT COULD ALLOW THEM TO STAY IN THE UNITED STATES, AS COMPARED TO THOSE WHO DO NOT HAVE LAWYERS

Immigrants who would otherwise be “removable” from the United States can sometimes file applications for forms of relief that would allow them to stay in the United States, whether with a permanent status such as asylum or a green card, or a potentially temporary “withholding” or “deferral” of removal. For example, some immigrants argue that the immigration court should let them stay because they require government protection from persecution or torture abroad.

⁵⁸ EOIR 2013 data comparison shows that non-detained individuals are 6% less likely to succeed. However, detained non-represented immigrants are more likely to succeed in 2014 (14% chance) as compared to 2013 (8% chance).

⁵⁹ Those who made no application for relief, 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 (U.S.C.I.S.). The EOIR database does not report on applications for benefits submitted to U.S.C.I.S. (e.g., U visas, T visas, or green card applications).

Analysis

Winning relief from removal typically requires not only completing an application form, but also providing extensive evidence and testimony, and often arguing complex questions of law.

This study reveals that immigrants with lawyers were dramatically more likely to file relief applications than those who did not have attorneys. Detained immigrants were more than four times as likely to request relief if represented; non-detained immigrants were almost eight times as likely to request relief if represented; and initially detained immigrants were more than five times as likely to request relief if represented.⁶⁰

For asylum seekers, the significance of deportation is severe: they may face persecution, torture, rape, and even death upon return to their countries of origin. A 2007 report on the immigration court system found that the most crucial factor affecting an asylum seeker's case is the availability of representation.⁶¹ Because of the complicated law governing asylum applications, attorneys are critical in helping immigrants file and support such applications.⁶²

From 2009 to 2014, more than 3119 asylum applications were filed with the New Jersey Immigration Courts.⁶³ Of these, fewer than fifty percent were granted (approximately 1461).⁶⁴

As Figures 3 and 4 below illustrate, in the data for the year ending in January 2015, a represented immigrant in any of the three detention categories was at least four times more likely to apply for one or more forms of immigration relief (and for asylum or other claims based on fear of persecution or torture) as compared to an unrepresented immigrant. Very few unrepresented individuals applied for asylum or any other form of relief. Although this study does not permit conclusions as to the precise reason for this severe disparity, lawyers play an undeniably important role in identifying potential avenues of relief and preparing the required applications, as well as advising clients on their best course of action.

⁶⁰ See Appendix B *infra* for a more detailed breakdown of these disparities by relief type.

⁶¹ Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295, 340 (2007).

⁶² See Srikantiah *et al.*, *supra* note 4; Northern California Report, *supra* note 4; BLAZING A TRAIL, *SUPRA* NOTE 41; York Immigrant Family Unity Project (2016) (on file with author).

⁶³ TRAC Immigration, *Judge-by-Judge Asylum Decisions in Immigration Court FY 2009–2014*, available at <http://trac.syr.edu/immigration/reports/361/include/denialrates.html>.

⁶⁴ *Id.*

Analysis

Figure 3: ⁶⁵

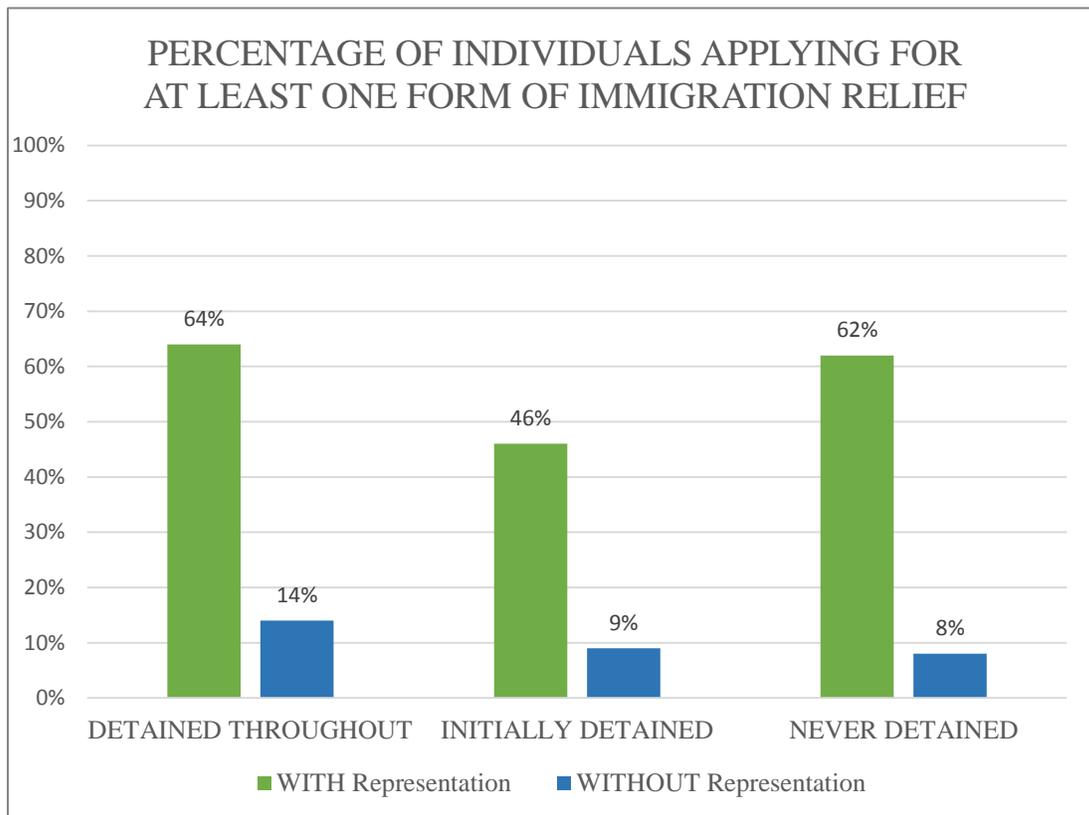


Figure 3 addresses the percentage of people who applied for at least one form of relief from removal, contrasting this figure among groups defined by detention status and representation.

⁶⁵ It is important to note that not all individuals who submit applications succeed in winning relief, and some are ultimately removed. Additionally, an individual may avoid removal (the metric used in Figure 1) even without filing an application – for example, if the immigration judge determines that they are not inadmissible or deportable and thus terminates the case, or if the case is terminated based upon prosecutorial discretion. *See also* App’x B. Therefore, the percentage of cases in which an individual avoided removal could potentially be greater than the percentage that applied for relief.

Analysis

Figure 4:

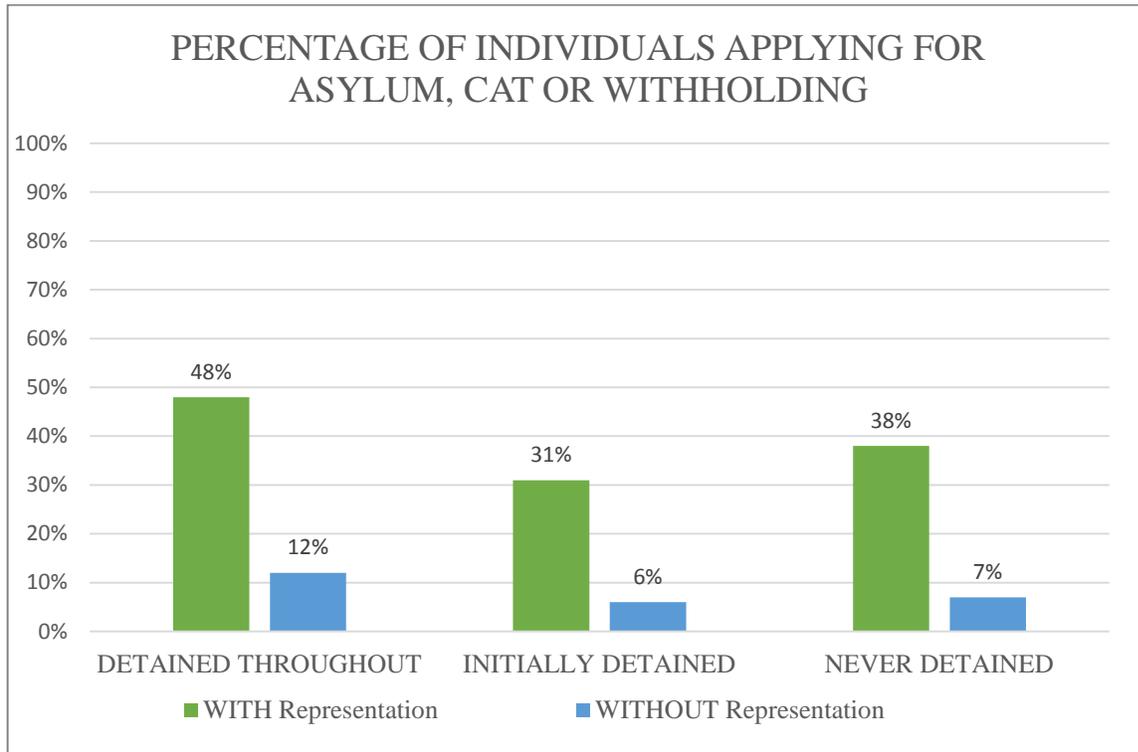


Figure 4 addresses the percentage of people who applied specifically for asylum, withholding of removal, or protection under the Convention Against Torture, contrasting this figure across groups defined by detention status and representation.

Analysis

NON-PROFIT DATA

This section contains the results of a survey of nonprofit organizations that provide low- or no-cost legal services to individuals facing removal proceedings in New Jersey. The numbers reflect data as self-reported by the organizations for cases handled in 2013 and 2014. The survey was sent to thirteen organizations. All responded, although some responded to only certain questions. Notably, four of these organizations are based in New York. Additionally, no organization provided responses to all of the questions. As a result, the data set discussed below is intended to broadly illustrate the current state of non-profit removal defense providers in New Jersey, rather than to provide a precise accounting of such services. For the purposes of the figures below, the organizations that replied to the survey are not referred to by name. Each organization is referred to by the same randomly assigned number (Org 1 through Org 13) throughout this discussion. An organization is represented in the figures below only if it provided a response to the specific information elicited for that inquiry.

While the organizations surveyed all offer low- or no- cost services, they otherwise vary widely in their size, structure, and scope of operations. Some of the organizations have initiatives on a broad range of legal and non-legal issues. Others dedicate their work to immigration, with several of the organizations focusing on particular groups such as refugee, Lesbian, Gay, Bisexual and Transgender (LGBT), or juvenile clients. The three largest organizations have offices throughout the U.S. and even other countries, while others work in only one geographic area. Four of the organizations are law school clinics.

This diversity among providers is reflected in the types of cases the organizations served, as well as their volume of cases. Certain organizations, such as law school clinics, which typically provide time-intensive *pro bono* representation in a setting that provides practical training to law students, handled a smaller number of removal defense cases, while most of the immigration legal services organizations represented between 13 and 114 removal defense clients during each of the years surveyed. Organization 13, an organization that provides low-cost legal services and currently has two attorneys, reported representing between 700 and 900 immigrants in removal proceedings in each of the years covered, a far higher number than any other organization.

Case numbers are self-reported and do not reflect uniform record-keeping systems or any qualitative assessment of the services provided. However, they provide a descriptive snapshot of the case volumes at different types of organizations.

Analysis

Figure 5:

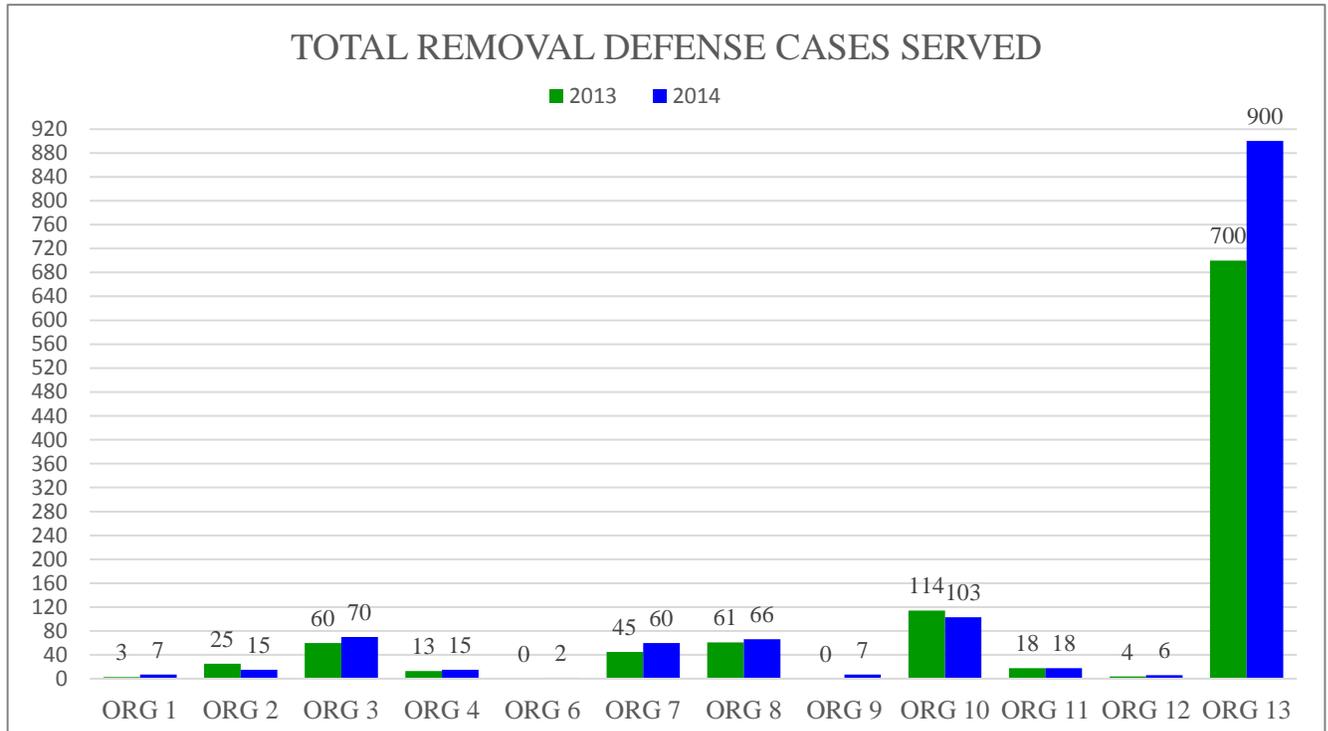


Figure 5 shows the total number of reported removal defense cases for each organization in the years 2013 and 2014.

REGARDLESS OF OVERALL CASELOAD, EVERY ORGANIZATION HANDLED A SIGNIFICANTLY SMALLER NUMBER OF DETAINED CASES THAN NON-DETAINED CASES

The total number of removal defense cases handled collectively by the organizations in 2013 in which the client was detained was 111. The number of detained removal defense cases handled in 2014 was 141. As with the total number of removal defense cases, there was a general increase in the number of detained cases between the two years. One organization handled the majority of all detained cases, although its share of these cases became smaller in 2014 as other organizations took on more cases.

Figure 6:

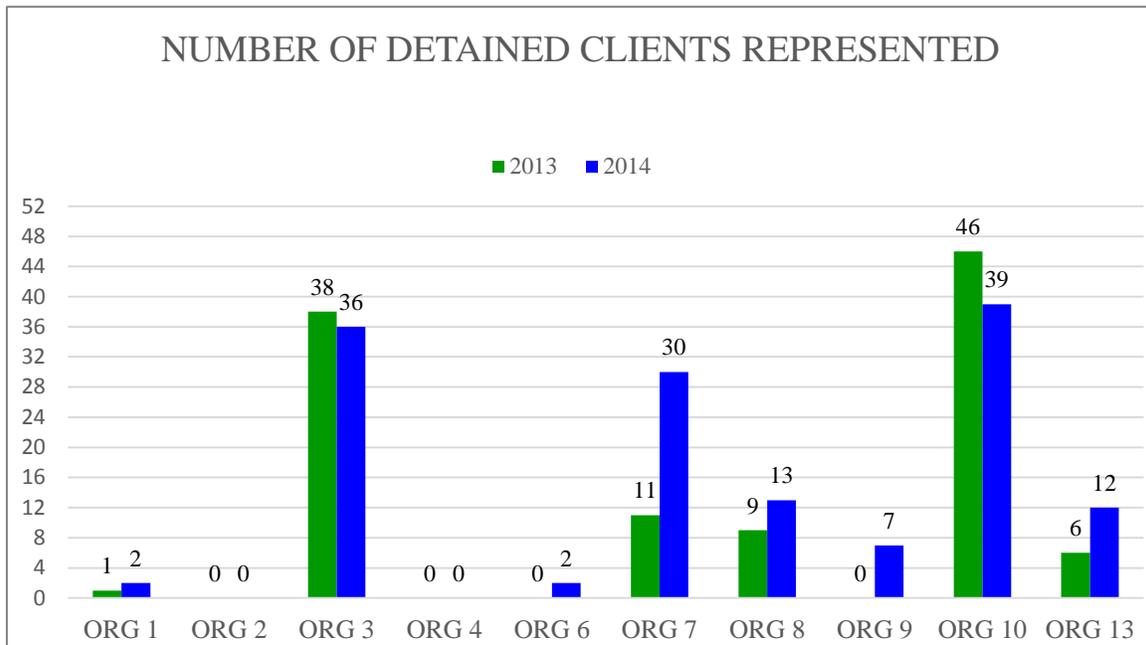


Figure 6 shows the number of reported removal defense cases for each organization in which the client was detained in the years 2013 and 2014.

FREE AND LOW-COST IMMIGRATION REPRESENTATION WAS CONCENTRATED IN A SMALL NUMBER OF COUNTIES IN NORTHERN NEW JERSEY

Almost all of the 13 legal service providers were located in either Northern New Jersey or New York City, revealing a dearth of legal services in Southern New Jersey.

More non-citizens live in the northeastern part of the state than in the other regions. Still, as figure 7b below illustrates, immigrant communities are also distributed throughout the southern and central parts of the state. This map tracks populations of immigrants, including those not in removal proceedings, so it provides only a very rough proxy for the need for removal defense representation. At the same time, it suggests a potential concern regarding severely limited legal services in South Jersey, particularly for immigrant residents in Burlington County and other localities with significant immigrant populations.

Analysis

Figure 7b:

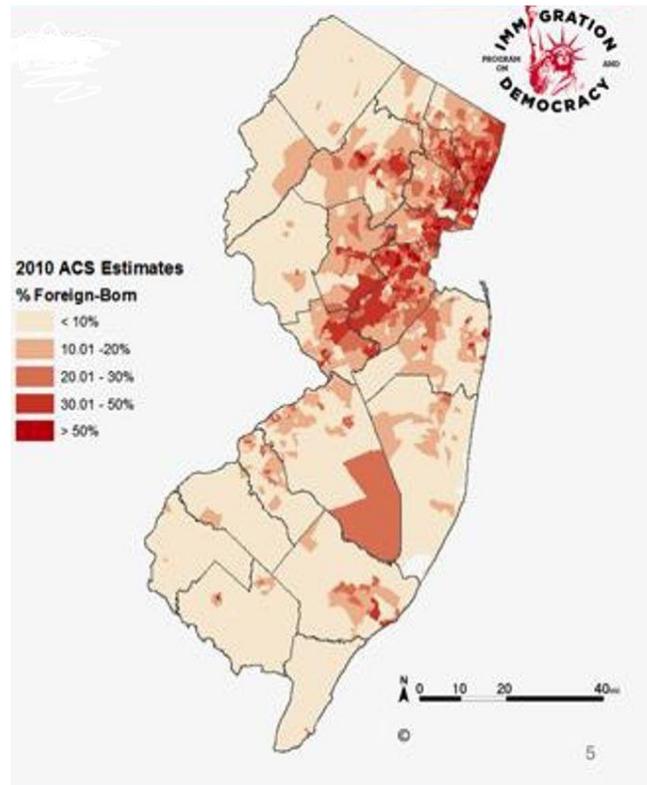


Figure 7b is provided courtesy of the Eagleton program on Immigration and Democracy at the Eagleton Institute of Politics, Rutgers University.⁶⁶

⁶⁶ *Meet the Neighbors Report*, available at <http://epid.rutgers.edu/eagleton-program-on-immigration-democracy/academics/reports-from-epid/meet-the-neighbors-organizational-and-spatial-dynamics-of-immigrant-new-jersey/>.

Analysis

Figure 7a:

Our Survey Organization Locations by County

Organization Name	County, State
Rutgers-Camden Immigrant Justice Clinic	Camden County, New Jersey
American Friends Service Committee (AFSC)	Essex County, New Jersey
Catholic Charities Immigration Assistance Program	Essex County, New Jersey
Kids in Need of Defense (KIND)	Essex County, New Jersey
Rutgers-Newark Immigrant Rights Clinic	Essex County, New Jersey
Seton Hall University School of Law-Center for Social Justice	Essex County, New Jersey
Centro Comunitario CEUS	Hudson County, New Jersey
Legal Services of New Jersey	Middlesex County, New Jersey
Casa Esperanza	Somerset County, New Jersey
HIAS	New York, New York
Human Rights First	New York, New York
Immigration Equality	New York, New York
Morningside Heights Legal Services	New York, New York

THE ORGANIZATIONS REPORTED THAT A SMALL NUMBER OF STAFF HANDLED THEIR TOTAL VOLUME OF REMOVAL DEFENSE CASES

Seven organizations reported that they only had one or two staff members who worked on removal defense cases. The highest number of staff members working on removal defense cases reported by any organization was four. These staff members included full-time staff attorneys, volunteers, deferred associates, and legal assistants. Five out of seven organizations reported that they had only one full-time staff attorney with more than five years' experience working on removal defense cases.

Very few organizations provided information about the average number of hours devoted to each case. Therefore, it is difficult to draw conclusions. Moreover, the number of hours spent on a case is not necessarily a reliable indicator of the quality of representation when the advocates lack experience in the field. Both organizations with large caseloads, and organizations with small caseloads, had a small number of experienced attorneys working on cases.⁶⁷

FUNDING AND SUPPORT FOR SERVICES VARIED BY ORGANIZATION BUT WAS GENERALLY INSUFFICIENT

All seven organizations that responded to a survey question "Why were RDE cases declined for representation in 2014?" pointed to a lack of resources. This was the only reason for declining representation that applied to every responding organization.

Eight organizations provided responses on their sources of funding, and each had a unique configuration of funding from federal grants, state grants, donations from private individuals and foundations, fees, and other sources. While one organization anticipated a twenty percent increase in funding for the 2015 fiscal year, most organizations anticipated that their funding would stay the same, and one expected a substantial decrease due to a discontinuation of grant funding.

When asked about the uses to which they would put additional funding, the organizations universally preferred adding more full-time staff attorneys, followed by adding more part-time attorneys or other experienced staff. The next most common goal was adding language translation and interpreter support.

⁶⁷ Removal defense cases are typically very labor-intensive because they require detailed factual investigation and documentation in addition to legal research. See New York Report II, *supra* note 48, at 19.

Analysis

Figure 8:

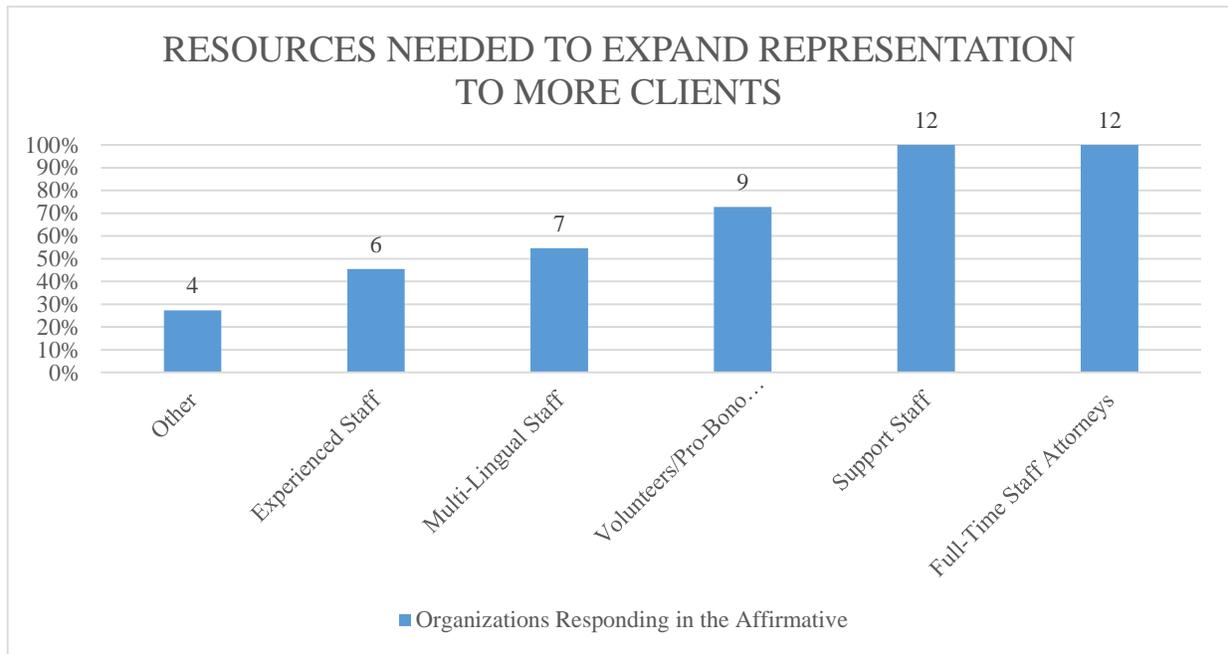


Figure 8, shows the categories of resources needed to increase representation. All twelve respondents indicated that they needed more full-time staff attorneys and more support staff.

This data suggests that while there are nonprofit organizations willing to fill the critical gap in representation for immigrant clients, they are unable to fulfill the total demand in New Jersey due to a lack of resources.

Conclusion

This study finds that immigrants who have legal representation in New Jersey are much more likely to file applications for relief, and ultimately to avoid removal. Additionally, it finds that people who are detained during removal proceedings had a particularly low probability of finding representation or avoiding removal. Finally, it finds that, despite its proximity to New York and its high percentage of foreign-born residents, New Jersey has a relatively low capacity to provide free and low-cost immigration legal services.

This data suggests that the need to expand access to free and low-cost legal services for low-income New Jersey residents is severe and acute, particularly considering the life-altering consequences of removal from the United States. The data described above bear strong similarities to data available for Northern California.

The findings of the present study are consistent with preliminary data from the New York Immigrant Family Unity Project (NYIFUP), which indicates that providing full access to high-quality, free legal representation can significantly improve case outcomes. As of August 2015, NYIFUP attorneys had won 71 percent of their trials, a remarkable contrast to the success rate for unrepresented and detained immigrants.⁶⁸

In 2015, following the period covered in this study, a prominent Newark-based legal services organization, American Friends Service Committee (AFSC), implemented the Friends Representation Initiative of New Jersey (FRINJ), a pilot universal representation program to represent people detained during New Jersey immigration removal proceedings. The program initially represented all detained individuals appearing in court for initial hearings on certain days of the week, and in its first three quarters it represented 232 people in detention.⁶⁹ The program currently represents clients detained in Elizabeth Detention Center, one of several facilities that U.S. Immigration and Customs Enforcement uses to detain people appearing before immigration courts in New Jersey.⁷⁰ When further data from that program is available, it may permit a deeper understanding of the impact of attorneys on case outcomes and application rates.⁷¹

⁶⁸ BLAZING A TRAIL, *supra* note 41, at 15.

⁶⁹ *Id.* at 19.

⁷⁰ The three primary detention centers housing people in removal proceedings in New Jersey are Delaney Hall Detention Center, Elizabeth Detention Center, and Essex County Jail.

⁷¹ In addition, several organizations working in New Jersey have received funding from the Immigrant Justice Corps and other donors to hire several new, typically entry-level attorneys, who may devote some or all of their time to removal defense.

Conclusion

These programs represent critical steps in increasing the representation of immigrants in removal proceedings in New Jersey. At the same time, New Jersey remains very far from the goal of universal representation. Notably, both NYIFUP and the FRINJ program appear to have been designed with careful attention to maximizing the quality of representation within the constraints of a public defender model. NYIFUP began with a pilot phase, and contracts for legal services were awarded to organizations that had prior experience in running public defender programs as well as in removal defense. FRINJ builds upon the model created by NYIFUP, although with more limited numbers of staff, and was also implemented by a respected organization with experienced immigration attorneys. Although an analysis of appropriate caseloads for future projects is beyond the scope of this study, the success of future projects will depend not only on maximizing the number of people served, but also on the quality of representation.

Appendix A

Assumptions in EOIR Data Analysis⁷²

1. The study used EOIR data from February 1, 2014 to January 31, 2015, the last available year covered by the Freedom of Information Act production analyzed in this report. Some proceedings are excluded because they lacked a final outcome during this time period. Therefore, the study slightly underestimates the total number of proceedings. The study may also slightly overestimate the number of cases listed as “detained throughout” as some of the detained immigrants might have been released after the data cut-off date.
2. For purposes of this study, cases were coded as “represented” if the immigration court data recorded a representative as being associated with the case at any time during the course of removal proceedings (including for any court hearing, change of venue, or other case event coded as a “proceeding” by the immigration court). For example, if a case had three hearings, and an attorney appeared at only one of the hearings, the case is treated as represented. Therefore, the study may overestimate the volume of representation in removal proceedings.
3. The EOIR data study did not distinguish between cases involving children and cases involving adults, or between dependent and non-dependent cases.
4. The category in the study entitled “not leading to deportation” contains all cases coded by EOIR as: ‘Alien Maintains Legal Status,’ ‘Case Terminated by IJ,’ ‘Conditional Grant,’ ‘Granted,’ ‘Relief or Rescinded,’ ‘Legally Admitted,’ ‘Prosecutorial Discretion – Terminated,’ ‘Failure to Prosecute (DHS Cases Only),’ ‘Haitian,’ ‘Temporary Protected Status,’ and ‘Prosecutorial Discretion - Admin Close.’
5. The study categorized cases as ‘Removal/VD’ if the EOIR data reported the outcome as any of the following: ‘Remove,’ ‘Voluntary Departure,’ ‘Excluded,’ or ‘Deported.’
6. The EOIR data set contained a small number of cases with unintelligible outcome codes. Given the overall number of cases, this does not affect the conclusions drawn.

⁷² Appendices A and B are modeled on, and reflect language from, similar appendices that David Hausman, the researcher who obtained the EOIR data discussed in this report, originally prepared for the Northern California Report. *Supra* note 4.

Appendix B

EOIR Data Analysis: Breakdown of Relief Applications by Type

The tables below illustrate how representation and detention status correlate with likelihood of applying for specified types of relief.

Table 1. Percentage of “never detained” cases in which individuals filed applications for relief or voluntary departure

Table 1	LPR-Related	Non-LPR-Related	Other	Persecution-Related	Voluntary Departure
Represented	3%	32%	5%	38%	21%
Unrepresented	0%	3%	0%	7%	3%

Table 2. Percentage of “initially detained” cases in which individuals filed applications for relief or voluntary departure

Table 2	LPR-Related	Non-LPR-Related	Other	Persecution-Related	Voluntary Departure
Represented	1%	16%	2%	31%	17%
Unrepresented	1%	4%	0%	6%	9%

Table 3. Percentage of “detained throughout” cases in which individuals filed applications for relief or voluntary departure

Table 3	LPR-Related	Non-LPR-Related	Other	Persecution-Related	Voluntary Departure
Represented	15%	7%	4%	48%	3%
Unrepresented	1%	2%	0%	12%	3%

The categories above are defined as follows:

- (1) “LPR-Related” refers to forms of relief requiring lawful permanent resident (LPR) status, namely, “cancellation of removal” for LPRs, 8 U.S.C. § 1229b(a), and a now-repealed waiver of inadmissibility, *id.* § 1182(c);
- (2) “Non-LPR-Related” refers to those forms of relief that are not related to LPR status, namely, non-LPR cancellation of removal, 8 U.S.C. § 1229b(b), and a form of adjustment of status, *id.* § 1255;

Appendix B

- (3) “Persecution-Related” includes asylum, withholding of removal, and Convention Against Torture relief;
- (4) “Other” includes other miscellaneous waivers of inadmissibility and forms of relief that can prevent removal;
- (5) “Voluntary Departure” avoids removal only in the sense that it permits an individual to leave the country without being formally removed and incurring a statutory bar to reentry.

Because a single case can involve applications for multiple forms of relief, any given case may be represented in more than one of the columns below. Therefore, the overall percentage of individuals who applied for relief of any type may be lower than the sum of the percentages for each of the relief categories below (i.e., the sum of a given row in the tables below). Figure 4 in the text above provides a more aggregated overview of this data, insofar as it depicts the percentage of people within each population subset (i.e., detention/representation group) who applied for any form of relief.

Appendix C

Non-Profit Survey Data Analysis: Assumptions and Clarifications

1. Because the time periods assessed by the EOIR data and the nonprofit survey data are not concurrent, and because the data was collected in very different ways, this study cannot draw inferences about the relationship between the findings from the two sets of data. Additionally, the survey data is wholly self-reported and may be affected by differences in the internal record-keeping procedures of each legal service provider.
2. As mentioned earlier, many of the organizations responding to the survey did not respond to every question, and several only responded to a few questions. The data reported above focuses on questions that were answered by a significant number of respondents. Nevertheless, this data is presented as a general snapshot and not a precise and complete accounting of all legal services provided in New Jersey.

Appendix D

Description of nonprofit legal service providers serving immigrants in New Jersey.

The organizations that participated in the survey include: American Friends Service Committee (Newark, NJ), Centro Comunitario CEUS (Union City, NJ), HIAS (New York, NY), Human Rights First (New York, NY), Immigration Equality (New York, NY), Kids in Need of Defense (Roseland, NJ), Legal Services of New Jersey (Edison, NJ), Morningside Heights Legal Services (New York, NY), Rutgers University-Camden Immigrant Justice Clinic (Camden, NJ), Rutgers University-Newark Immigrant Rights Clinic (Newark, NJ), Seton Hall Law School Center for Social Justice Immigrants' Rights Clinic (Newark, NJ).

AMERICAN FRIENDS SERVICE COMMITTEE (AFSC) www.afsc.org/office/newark-nj

The American Friends Service Committee Immigrant Rights Program integrates legal services, advocacy, and organizing, providing legal representation in challenging immigration cases and also ensuring that immigrant voices in New Jersey and beyond are heard in policy debates. Legal representation is provided to particularly vulnerable immigrants, with an emphasis on people in detention, children, survivors of domestic violence and other crimes, and those who are indigent.

CASA ESPERANZA www.casaesperanzanj.com

Casa Esperanza is a non-profit organization created to serve immigrants and refugees who need affordable legal, educational and social services, as well as a place to go when they need help. Casa Esperanza's goal is to help immigrants and refugees to understand how the legal system works in the United States and to avoid mistakes that can jeopardize their opportunity to have a better life.

CATHOLIC CHARITIES CHARITIES www.catholiccharitiesusa.org

Catholic Charities is a non-profit organization with agencies across the country that offers support to member agencies, provides disaster relief, and promotes poverty reduction through research and legislative reform. The Newark agency of Catholic Charities offers low-cost, fee-for-service legal assistance to non-citizens in need. The agency provides assistance in all phases of immigration proceedings, including deportation and exclusion proceedings before the Immigration Court.

CENTRO COMUNITARIO CEUS www.ceusnj.org

CEUS is a nonprofit, community-based agency that serves and organizes Hispanic non-citizens in northern New Jersey. The Center's programs include educational, community development, and cultural activities. CEUS also provides immigration legal services through a staff attorney and has for fifteen years organized the community to seek justice, legal status, and fairness for non-citizens.

HEBREW IMMIGRATION AID SOCIETY (HIAS) www.hias.org

Appendix D

HIAS is the oldest international migration and refugee resettlement agency in the United States. Based in New York City, HIAS works around the world to protect refugees who have been forced

to flee their homelands because of who they are, including ethnic, religious, and sexual minorities. For more than 130 years, HIAS has been helping refugees rebuild their lives in safety and dignity.

IMMIGRATION EQUALITY www.immigrationequality.org

Since 1994, Immigration Equality has been proud to support and represent LGBT and HIV-positive non-citizens seeking safety, fair treatment, and freedom. As the only LGBT organization with a staff of immigration attorneys, Immigration Equality impacts both the individuals they serve and the immigration system as a whole.

KIDS IN NEED OF DEFENSE (KIND) www.supportkind.org

KIND is a leading advocacy organization in the protection of unaccompanied children nationally and internationally. The New Jersey field office of KIND offers training and mentorship to *pro bono* attorneys handling non-citizen children's cases before the immigration court, immigration agencies, and state courts. KIND also provides direct representation to non-citizen children residing in or detained in Bergen, Essex, Hudson, Morris, Passaic, and Union counties.

LEGAL SERVICES OF NEW JERSEY (LSNJ) www.lsnj.org

The Immigration Representation Project ("IRP") of LSNJ provides free advice, counsel, and representation to low-income New Jersey residents in Immigration matters before USCIS and EOIR. The IRP also provides Legal Orientation Program Services to immigrant detainees at the Hudson, Essex, and Elizabeth detention facilities.

MORNINGSIDE HEIGHTS LEGAL SERVICES, COLUMBIA LAW SCHOOL

<http://web.law.columbia.edu/clinics/immigrants-rights-clinic>

With an emphasis on client-centered lawyering, clinic students work with clients from around the world. In the previous academic year, the clinic represented individuals detained at the Elizabeth Detention Center and Newark's Delaney Hall. In the 2014-2015 academic year, the clinic represented non-detained unaccompanied minors and worked with families detained near the southern border.

RUTGERS UNIVERSITY-CAMDEN IMMIGRANT JUSTICE CLINIC (IJC); CAMDEN, NJ

<https://camlaw.rutgers.edu/immigrant-justice-clinic>

The IJC is a student-staffed law office that represents non-citizens in matters at the intersection of federal immigration law and state law. In addition to providing legal representation, the IJC also hopes to increase understanding and awareness of non-citizen issues in the criminal justice, child welfare, and domestic violence systems through the development of workshops and practice guides.

Appendix D

RUTGERS UNIVERSITY-NEWARK IMMIGRANT RIGHTS CLINIC; NEWARK, NJ

<https://law.newark.rutgers.edu/clinics/immigrant-rights-clinic>

The Immigrant Rights Clinic serves the local and national non-citizen population through a combination of individual client representation and broader advocacy.

SETON HALL UNIVERSITY SCHOOL OF LAW CENTER FOR SOCIAL JUSTICE (CSJ), IMMIGRANTS' RIGHTS/INTERNATIONAL HUMAN RIGHTS CLINIC

<http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Immigration-and-Human-Rights-Clinic.cfm>

CSJ's Immigrants' Rights/International Human Rights Clinic represents non-citizens seeking protection from persecution, trafficking, and torture, as well as non-citizens who have survived domestic violence or other violent crimes in the United States. The Clinic also engages in human rights reporting, fact-finding, and advocacy. This hands-on program prepares law students to become strong advocates for their clients and to promote social justice throughout their careers.