

# DETAINED IMMIGRANTS AND ACCESS TO COUNSEL IN PENNSYLVANIA

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**PennState Law**

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## Acknowledgments

This report was prepared by Penn State Law Center for Immigrants' Rights Clinic (CIRC) students Yousra Chatti ('19) and Sara Firestone ('19) under the supervision of Professor Shoba Sivaprasad Wadhia and with contributions from Shanjida Chowdhury ('20), Chase Crowley ('19), and Ellen Findley ('19). Feedback was provided throughout by members of the CIRC and also by three members of the Pennsylvania Immigrant Family Unity Project (PAIFUP): HIAS Pennsylvania, Nationalities Service Center, and Pennsylvania Immigration Resource Center. Assistance in contextualizing data was made possible by a number of professors from Penn State University including Dr. Jennifer Lynne Van Hook. Data analysis was performed by Kelsey Cundiff, a fifth-year doctoral student of criminology at Penn State University. We are grateful for the time she invested in reviewing the data and creating graphs for this report. Finally, we thank every attorney who spoke to us about immigration detention in Pennsylvania.

*\*Institutional affiliation for faculty and students in the Penn State Law Center for Immigrants' Rights Clinic is provided for identification purposes only and does not represent the views of the institution.*

## Executive Summary

When an immigrant is in removal proceedings in U.S. immigration courts, they are legally allowed to be represented by counsel, but only if they can access and pay for the service themselves. However, there are several barriers that prevent a detained immigrant from being able to access counsel, including, of course, their ability to afford representation and the nature of detention itself. Without representation, these individuals are forced to navigate the complex immigration system alone, a feat that is made even more difficult by language barriers, cultural obstacles, financial limitations, education level, and access to evidence and witnesses outside of the detention facility.

PAIFUP is a coalition of non-profit organizations serving immigrants in Pennsylvania.<sup>1</sup> Penn State Law Center for Immigrants' Rights Clinic (CIRC) is a nationally recognized in-house clinic focused on immigration and directed by its founder, Professor Shoba Sivaprasad Wadhia. The CIRC provides law students with hands-on clinical training in immigration law through three pillars: community outreach and education, pro bono legal support, and policy work. On behalf of three PAIFUP members: HIAS Pennsylvania, Nationalities Service Center, and Pennsylvania Immigration Resource Center, CIRC assisted with gathering data and drafting this report.

This report examines the issue of detained immigrants' ability to access to counsel in the Commonwealth of Pennsylvania to underscore the importance of providing counsel to improve immigrants' due process rights. This report illustrates that access to representation is limited for detained immigrants. It shows how detained immigrants who have representation have more opportunities to apply for relief from removal, be released on bond, and file successful claims. Through a combined analysis of numerical data from the Executive Office for Immigration Review (EOIR) and interviews with immigration lawyers in Pennsylvania, this report will show that, without representation, an immigrant is unlikely to request or obtain relief. Data obtained from EOIR through the Freedom of Information Act (FOIA) reveals that of 3,615 detained immigrants, 2,798 or 77% did not have representation. The data further reveals that of the 2,006 cases with representation, 789 or 39.3% filed an application for relief as opposed to 246 or 11.8% cases without representation which filed for relief. This data supports the hypothesis that individuals are much more likely to file a claim for relief when represented by counsel.

With the success of the New York Immigrant Family Unity Project and other privately funded programs, non-profit organizations and local governments are recognizing the importance of providing detained immigrants access to counsel free of charge. These programs, akin to public defenders for immigrants, do not just improve an immigrant's chance of success in court but impact the opportunity for immigrants to present evidence in their cases or file applications for relief about which they otherwise would have no knowledge. This report will detail how the current representation system places detained immigrants at such a disadvantage in the immigration court system that their due process rights are not being met. The report hypothesizes that detained individuals without representation pursue fewer valid claims and that the outcomes of their cases suffer accordingly.

This report recommends that Pennsylvania should fund and implement a public defender-style program for detained immigrants in removal proceedings to improve fairness and due process.

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## **I. Introduction**

This report examines the issue of access to counsel for detained immigrants in the Commonwealth of Pennsylvania. In fiscal year 2016, more than \$3 billion was allocated by Congress to Immigration and Customs Enforcement (ICE) for detention, and that number rose to over \$4 billion in fiscal year 2018 with an additional \$10 million in funding diverted to ICE in September 2018.<sup>2</sup> Meanwhile, the number of detained immigrants facing removal from the United States unable to obtain or afford representation has been on the rise.<sup>3</sup> ICE's detention budget is likely to increase concurrently with the rising numbers of detained immigrants swept into detention under the government's expansion of immigration enforcement beginning in January 2017.<sup>4</sup> In September of 2018, 42,105 immigrants on average were detained each day across the United States, but that number rose to 48,747 people by the end of January 2019.<sup>5</sup> The current administration's decision to prioritize detention through the enactment of policies that promote and encourage detention of removable immigrants,<sup>6</sup> ICE's elimination of the Family Case Management Program,<sup>7</sup> and rescission of a prior Department of Homeland Security (DHS) Memoranda on enforcement priorities<sup>8</sup> has resulted in the dramatic upsurge in immigrants in detention and consequent increase in detention costs.

The U.S. Constitution does not discriminate between U.S. citizens and immigrants, using the word "people" or "person" rather than "citizen".<sup>9</sup> Accordingly, many of the basic rights outlined in the Constitution, such as the right to due process,<sup>10</sup> apply to citizens and immigrants alike. However, the application of these rights is more complex.<sup>11</sup> The Sixth Amendment of the Constitution states that "In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense."<sup>12</sup> While some immigrants may be appointed counsel when charged

criminally for an immigration related offense, removal proceedings are wholly separate from the criminal process and operate in a civil system where there is currently no court appointed counsel.

The Fifth Amendment of the Constitution guarantees that “[n]o person shall be . . . deprived of life, liberty, or property without due process of law.”<sup>13</sup> The Supreme Court has stated that the removal process, while not a criminal proceeding, can cause great hardship for an individual and requires due process to avoid infringing on an individual’s liberty.<sup>14</sup> Additionally, the U.S. Court of Appeals for the Third Circuit has held that due process and the Fifth Amendment entitles immigrants to obtain counsel in immigration proceedings, stating that “the right to counsel is so fundamental to the proceeding’s fairness that a denial of that right could rise to a level of fundamental unfairness.”<sup>15</sup> Nevertheless, there is no legal obligation to provide counsel to those facing removal proceedings.<sup>16</sup> Detained immigrants, like criminal defendants, have their liberty at stake for as long as they remain in detention,<sup>17</sup> and the consequences are often disproportionate. The immigration system affords respondents less due process than the current criminal justice system, even though, arguably, the stakes in immigration proceedings (including lengthy detention, removal to a hostile country of origin which can result in death, etc.), in the words of one practitioner, “can be way higher.”<sup>18</sup>

Pennsylvania is home to two immigration courts: one in Philadelphia<sup>19</sup> that hears cases for non-detained immigrants and one in York<sup>20</sup> that hears cases for detained immigrants. As of 2017, York County Prison housed an average of approximately 750 detainees a day who were awaiting their immigration hearings,<sup>21</sup> making York one of the five most populous immigration detention facilities in the United States.<sup>22</sup> Additionally, immigrants are detained in prisons and jails across Pennsylvania where there are no immigration courts, including in a family detention center for

parents with their children in Leesport, PA. Those immigrants go through remote adjudication programs or the institutional hearing program.<sup>23</sup>

This report was created to illustrate the realities that unrepresented detained immigrants face in deportation (removal) proceedings.<sup>24</sup> In this report's investigation of all aspects of detention – the length of stay, the frequency of success in obtaining bond or relief from removal – representation makes a clear difference in a detainee's opportunity for relief from removal. Furthermore, the poor outcomes that are impacted by lack of representation – length of stay, lack of release on bond, and deportation – all, in and of themselves, increase the likelihood that a detained immigrant will ultimately lose their removal case, thus compounding the effect of the lack of representation at every stage.

Similar reports have been commissioned in other states, and come to similar conclusions. For example, New York's Study Group of Immigrant Representation, launched by Second Circuit Court of Appeals Chief Judge Katzmann, published "Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings" in December 2011 identifying "an acute shortage of competent attorneys willing and able to competently represent individuals in immigration removal proceedings."<sup>25</sup> The Katzmann group later created the New York Immigrant Family Unity Project (NYIFUP), a public-defender-style program providing removal defense for detained immigrants unable to afford private counsel.<sup>26</sup> The initial success of the NYIFUP program led New York City to greatly increase its funding and expand its reach to more immigrants facing adjudication.<sup>27</sup> Ultimately, the state of New York was persuaded that due process required access to counsel for all detained immigrants facing deportation and committed to funding immigration defense counsel for all detained immigrants who could not afford counsel as a result

of the initial Katzmann report.<sup>28</sup> More than \$10 million was committed by the government for the New York City program.<sup>29</sup>

Providing free legal representation for immigrants is not a new idea. The American Bar Association (ABA) has long supported providing free legal representation to indigent immigrants in immigration court proceedings.<sup>30</sup> In March 2019, the ABA published a report detailing the systemic dysfunction prevalent in immigration system.<sup>31</sup> The report states that almost no new immigration laws were enacted to address the concerns of the 2010 ABA report.<sup>32</sup> One of the recommendations championed in the 2010 ABA report was full access to counsel for indigent and vulnerable immigrants. The 2019 ABA report was critical about the fact that almost none of their previous recommendations were adopted.<sup>33</sup>

In a study conducted by the Migration Policy Institute in 2005 titled *Revisiting the Need for Appointed Counsel*, Donald Kerwin found that “[d]etainees face particular hurdles in attempting to secure counsel and represent themselves. In these proceedings, unrepresented immigrants generally fare far more poorly than do those with counsel.”<sup>34</sup> Further, the study found that “the lack of counsel has a pronounced negative impact on case outcomes.”<sup>35</sup>

Part II of this report briefly describes the steps of the hearing process, with a focus on detained immigrants. Part III analyzes data received from EOIR through a FOIA request and qualitative data gathered via interviews with immigration attorneys in Pennsylvania. This section will use that data to further illustrate the state of representation in Pennsylvania and the importance of providing counsel to detainees facing removal. Part IV describes the barriers that detained immigrants face while seeking an attorney, such as detention, income, and language. Part V discusses the effect that implementation of a universal representation program has on detained immigrants facing removal as well as the immigration court system. Finally, Part VI recommends



possible solutions that the Commonwealth of Pennsylvania can implement to provide detained immigrants due process under the law and the ability to navigate the complex field of immigration law.

## **II. Background**

The Immigration and Nationality Act (INA) lays out the rules and procedures for “deporting” a non-citizen in Section 240 – known as removal proceedings.<sup>36</sup> There are several stages to 240 removal proceedings<sup>37</sup> before an immigration judge (IJ). Representation at any stage is beneficial for the immigrant (also known as the “respondent”). However, representation from the beginning or before the hearing process commences yields the best results for immigrants and is consistent with due process standards.<sup>38</sup>

According to Ingrid V. Eagly’s and Steven Shafer’s *A National Study of Access to Counsel in Immigration Court (National Study)*, there is a standard assumption nationwide that immigrants facing removal proceedings are increasingly represented by counsel because of the expansion of *pro bono* services and non-profits that specialize in providing legal aid for immigrants.<sup>39</sup> The data collected and analyzed in the *National Study* shows that this narrative is misleading and distracts from one of the main issues at hand: immigrants in adversarial hearings are not provided counsel if they cannot afford or access it.<sup>40</sup> The study further reveals that when an immigrant is identified as “represented” by EOIR it does not mean that the immigrant had representation at every stage of the immigration process, and critically, may not include representation at the final Merits Hearing when the judge makes a decision.<sup>41</sup> In the sample size used in the *National Study*, only 45% of immigrants counted as “represented” had representation by counsel at all court hearings: the remainder of immigrants had representation at only some hearings, illustrating that representation is not complete.<sup>42</sup> However, the annual reports published by EOIR<sup>43</sup> code a case as “represented”

so long as a *Notice of Entry of Appearance as Attorney or Representative* form (EOIR-28) is filed at some point during a case.<sup>44</sup> While having representation at any stage of a removal case can benefit an immigrant, representation for only part of an immigration proceeding is not as effective as receiving full-service representation at every hearing.<sup>45</sup>

An immigrant may be placed in many different types of proceedings before an immigration court. This report focuses on the proceedings available from the EOIR data set recovered through FOIA relating to Section 240 removal proceedings.<sup>46</sup> During these adversarial removal proceedings, ICE attorneys represent the federal government.<sup>47</sup> The following section describes the different stages of removal proceedings and illustrates the impact of lack of representation.

- **Notice to Appear**

Removal proceedings officially begin when DHS files a Notice to Appear (NTA) with an immigration court.<sup>48</sup> It is worth noting that while the Court has jurisdiction over proceedings, DHS still maintains custody of the detained immigrant and can still make decisions regarding detention.<sup>49</sup> The NTA is a charging document and provides notice to the immigrant about the charges against them and the following key information: (1) that removal proceedings have been commenced; (2) the alleged immigration law violations that are the foundation for the commencement of the removal proceedings; (3) the right of the immigrant to seek legal representation at their own expense; (4) the date, time and location of the first hearing; and (5) the consequences of failing to appear at scheduled hearings.<sup>50</sup> The NTA must be served on the immigrant that is the subject of the proceeding.<sup>51</sup> The NTA is normally accompanied with a list of attorneys and non-profit organizations available to represent the immigrant *pro bono* or at a lower or scaled cost.<sup>52</sup>

- **Detention and Bond**

An immigrant may be arrested, taken into custody, or questioned at any time before or during removal proceedings.<sup>53</sup> If the immigrant is arrested and detained, the law requires that a determination be made within 48 hours “except in the event of an emergency or other extraordinary circumstance in which case a determination will be made within an additional reasonable period of time”<sup>54</sup> as to whether the immigrant will be released on their own recognizance, will be released on bond, or will remain in detention or whether a Notice to Appear will be issued.<sup>55</sup> After DHS makes an initial detention decision, an immigrant may request an additional bond proceeding before being served an NTA and before, or during, their trial in order to change the set bond amount or petition to remove it completely.<sup>56</sup> These bond hearings are referred to as bond redetermination hearings.<sup>57</sup> During removal proceedings, some detainees are subject to mandatory detention during removal if they have committed certain crimes.<sup>58</sup> In these cases, securing a bond hearing is more difficult.

The lowest bond available from an immigration judge, aside from release on one’s own recognizance, is \$1,500.<sup>59</sup> There is no maximum.<sup>60</sup> Bond hearings are separate from removal proceedings, and the detainee may have representation at no expense to the government.<sup>61</sup> When asked about the importance of having representation during bond proceedings, Attorney C discussed the significance between represented detainees and those representing themselves *pro se*, stating that bond hearings are often the first major barrier to an immigrant’s ability to advocate for themselves and receive a positive outcome.<sup>62</sup>

Having representation at a bond hearing is critical for a detained immigrant as they have the burden of proving a negative - that they do not pose a threat to the community;<sup>63</sup> that they are not a flight risk;<sup>64</sup> and that they do not present a threat to national security.<sup>65</sup> Further, as discussed

in more detail below, if they do not receive bond or are given an amount so high that it is impossible to pay, they will remain in detention creating an additional barrier to accessing representation.

- **Removal Proceedings**

Every immigrant's process through the immigration court system looks different factually and procedurally. This section describes the steps following the filing of an NTA and an initial bond hearing, when the most adversarial portion of the process commences.

An immigrant must first attend an Initial Master Calendar hearing (MCH), where an immigration judge (IJ) will verify that the NTA was appropriately served and that the respondent received a list of *pro bono* legal services.<sup>66</sup> Following this verification, the immigrant will be asked to plead to the charges listed in their NTA and/or identify what forms of relief for which they will apply.<sup>67</sup> Should they admit to the charges against them, the IJ will then move to a second phase in the hearing, where they may apply for one or more forms of relief.<sup>68</sup> According to the *National Study*, immigrants identified as "represented" in data obtained from EOIR from 2007-2012 only had attorneys present during their Initial Master Calendar hearings 54% of the time.<sup>69</sup> Immigrants often request continuances during these Initial Master Calendar hearings<sup>70</sup> in order to find and obtain counsel.<sup>71</sup> If the continuance is granted, the hearing will adjourn without any determinations made on the charges at hand.<sup>72</sup>

Following one or more MCHs, immigrants proceed to the Individual Calendar Hearing (ICH) before an IJ where they present their case.<sup>73</sup> Part of the defense process can include applications for relief against removal as well as the presentation of evidence or witnesses from both the respondent and the ICE attorney.<sup>74</sup> Procedurally, ICHs are similar to, but not the same as, a criminal trial.<sup>75</sup> During their ICHs, immigrants have the right to examine the evidence against them as well as present their own case and support applications for relief through the use of

evidence and witnesses.<sup>76</sup> One stark difference between these two adversarial processes, however, is the right to counsel: in criminal trials, defendants are given an attorney if they cannot afford one. As mentioned above, in immigration proceedings, access to representation is a right, but not a guarantee.<sup>77</sup> Following the end of the ICH process—which can be one or more hearings, depending on the evidence and witnesses available and the applications for relief filed—the IJ will determine whether the immigrant will be removed or deported.<sup>78</sup> The determination can be made by the IJ at the hearing or the determination will be sent to the parties by mail after the hearing.<sup>79</sup> If an IJ denies or grants relief, the decision can be appealed by ICE or the immigrants within 30 days of the IJ decision.<sup>80</sup> Alternatively, prior to, or at the completion of, their proceedings, some immigrants may request to be permitted to leave the United States on their own volition and at their own expense through a process known as Voluntary Departure.<sup>81</sup>

- **Immigration Judges**

The INA vests broad authority in the Attorney General to determine if a non-citizen may be removed. This authority is exercised through Immigration judges (IJs), housed in the Department of Justice in a unit known as the Executive Office for Immigration Review (EOIR).<sup>82</sup> IJs are responsible for determining if the immigrant has a valid application for relief, examining the written and testimonial evidence presented during an ICH, and deciding whether an immigrant will be permitted to stay in the United States.<sup>83</sup> Unlike judges that preside over criminal and civil cases whose power comes from Article III of the Constitution, or even Administrative Law Judges, whose authority is directly authorized by Congress, IJs are vested with the authority to adjudicate as delegates appointed by the Attorney General as authorized by the INA.<sup>84</sup> IJs enjoy less independence than federal judges and Administrative Law Judges.<sup>85</sup> IJs are attorneys who, after appointment, are “subject to such supervision and shall perform such duties as the Attorney

General shall prescribe.”<sup>86</sup> Immigrants may appeal IJ decisions to the Board of Immigration Appeals (BIA), an appellate board also appointed by the Attorney General.<sup>87</sup> In September 2018, former Attorney General Jeff Sessions announced that EOIR would be appointing 46 new IJs to help address the massive backlog of cases accruing in America’s immigration courts<sup>88</sup> in an effort to “improve immigration judge productivity and modernize our information technology systems” while growing the “immigration judge corps.”<sup>89</sup> Currently, more than 900,000 cases are pending in the nation’s immigration courts, even as the number of immigration judges appointed to serve grows.<sup>90</sup>

- **Institutional Hearing Program**

Following the passage of the Immigration Reform and Control Act<sup>91</sup> and the gradual increase of immigrants detained in federal detention centers, the Institutional Hearing Program (IHP) was created to identify and adjudicate the cases of immigrants facing Section 240 removal proceedings prior to their release from federal prison.<sup>92</sup> The program, a form of remote adjudication, is part of a partnership between EOIR, the federal Bureau of Prisons (BOP), and ICE that originally involved the transport of immigration judges from immigration court to federal prisons in order to “speed the process of deporting incarcerated criminal aliens and [ . . . ] reduce costs to taxpayers.”<sup>93</sup> Immigrants found removable at the conclusion the of IHP hearing will be sent back to their country of origin immediately upon the conclusion of their federal sentence.<sup>94</sup> Additionally, not all immigrants going through IHP proceedings face an IJ in a modified courtroom setting: IHPs are often facilitated though the use of tele-video to connect detained federal inmates to immigration court.<sup>95</sup> According to the DOJ, the goal of IHP is to “enhance the overall efficiency of the immigration system” while avoiding “releasing removable aliens into prolonged ICE

custody, or into the community.”<sup>96</sup> According to the EOIR Statistical Yearbook from fiscal year 2017, over 2,300 removal cases were completed through the use of IHP.<sup>97</sup>

The use of IHP as an adjudicative tool became a prioritized form of adjudication when President Donald Trump signed Executive Order 13768 “Enhancing Public Safety in the Interior of the United States” on January 25, 2017.<sup>98</sup> Sections two and four of this executive order authorize agencies to “make use of all available system[s] and resources to ensure the efficient and faithful execution of the immigration laws of the United States . . . against all removable aliens.”<sup>99</sup> To implement the policy goals in this executive order, former Attorney General Jeff Sessions announced in March of 2017 that the IHP would be expanded to a total of twenty-one prisons—fourteen Bureau of Prison sites and seven private contractor sites with four locations in Pennsylvania<sup>100</sup>—in order to expedite the removal process.<sup>101</sup>

Immigrant inmates facing Section 240 removal proceedings through IHP are not automatically afforded counsel as they would be in a criminal trial. While they are allowed to have counsel should they be able to find and/or afford representation, only 9% of respondents facing removal proceedings through IHP were represented in their hearings between 2007 and 2012, according to the *National Study*.<sup>102</sup>

### **III. Detained Immigrants in Pennsylvania: Data and Findings**

This section addresses how representation affects the removal process for immigrants in Pennsylvania. The qualitative and quantitative data in this section supports the hypothesis that, without representation, detained individuals’ outcomes are significantly poorer and critically fewer valid claims are filed and pursued. Because the data obtained from EOIR does not list the outcome of any individual case, we based our analysis on how many opportunities an immigrant facing removal has to achieve a successful outcome.<sup>103</sup> The key document we received from EOIR was

an excel work book with five tabs describing the hearing proceeding for each individual case. Each tab responded to sets of data we had requested related to the two main immigration courts in Pennsylvania: York and Philadelphia. We defined the codes and terms contained in the differing tabs, identified our variables for the purpose of this project and finally, created specific questions for statistical analysis to test our hypotheses. We supplemented this analysis by interviewing Pennsylvania attorneys.<sup>104</sup> This section examines the current state of representation for detained immigrants in the York County Prison with a focus on the rate of representation and opportunity for success in their claims.

### **A. Representation**

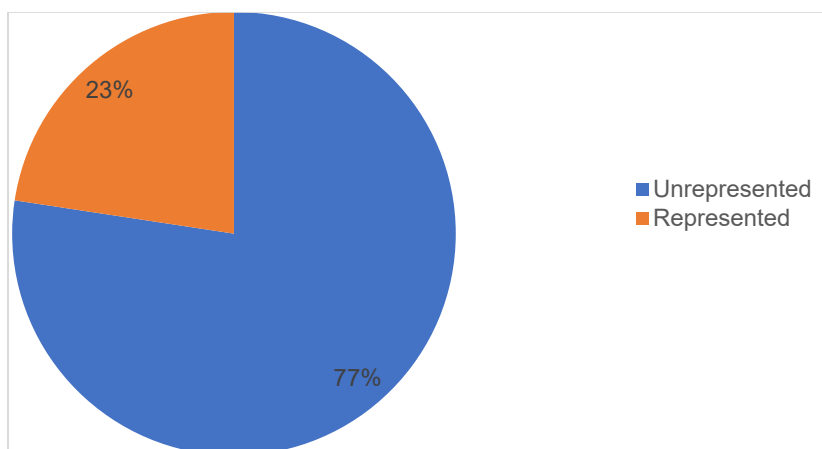
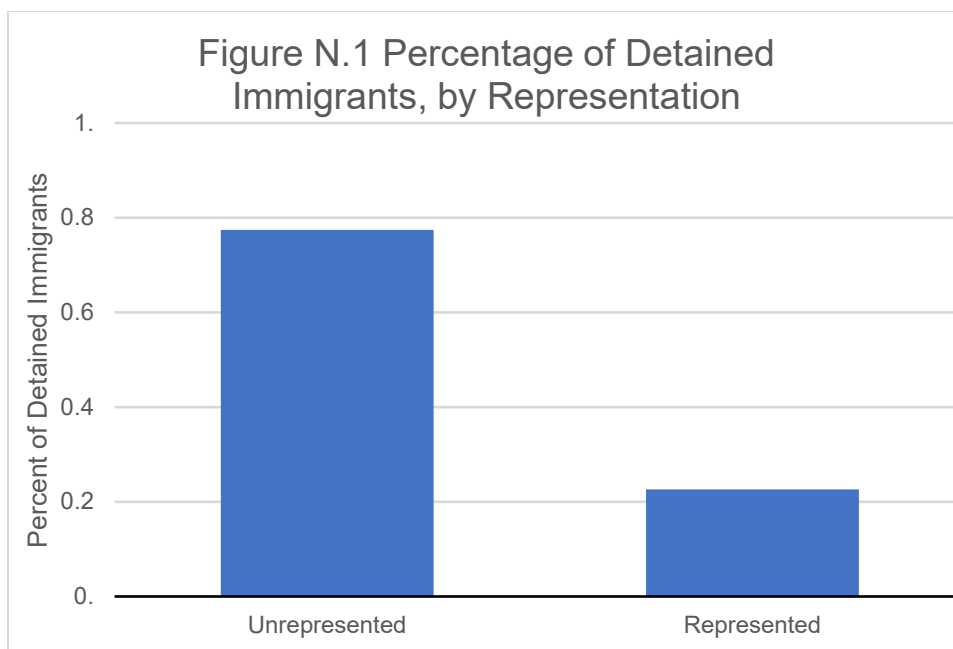
Our hypothesis is that lack of representation results in meritorious cases being denied or never raised in the first place. Our data shows divergent outcomes for the represented sample and unrepresented sample. This imbalance creates serious due process concerns.

Based on the data received from EOIR, an individual is considered “represented” as long as the case has an “EOIR-28”<sup>105</sup> filing date at any point in the proceedings. Consequently, it is impossible to define at what stage in the proceedings an attorney has joined an individual case. The qualitative study attempts to fill the gaps in the data acquired from EOIR. To the question “at what stage in the hearing process do you most often start with the client?” Attorney A stated that:

It was pretty normal for a person to be *pro se* at their first hearing, but then get to us by the second hearing and we would come on fairly early in the process and then absolutely we would attend all hearings.<sup>106</sup>

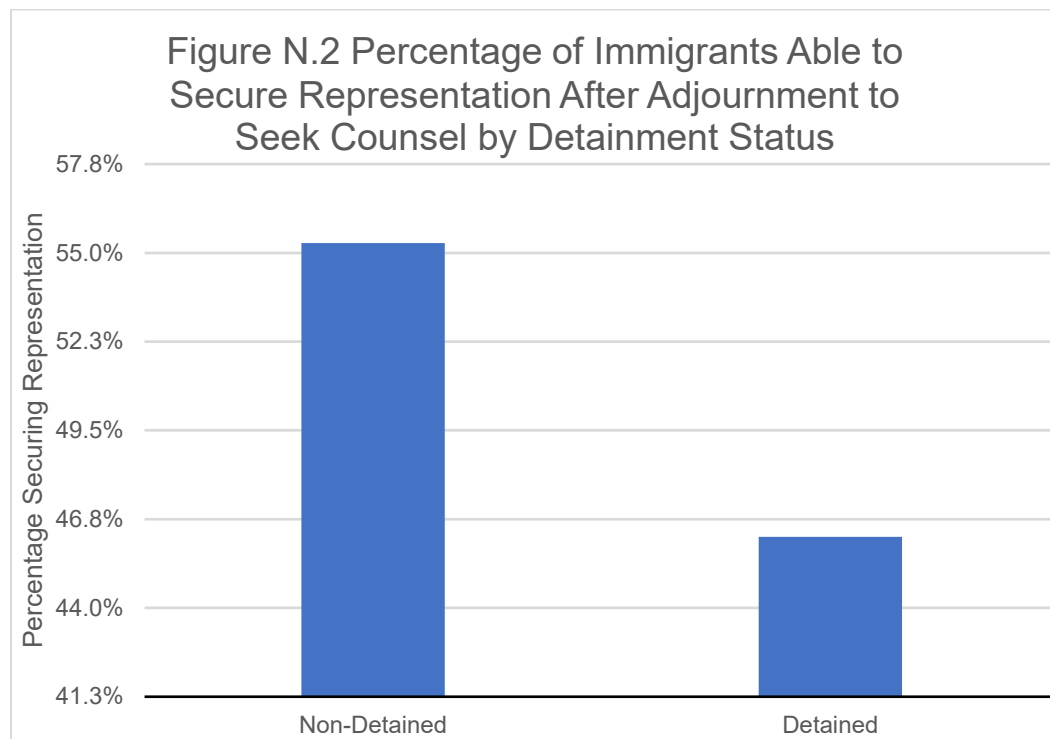
In analyzing the representation rate of detained immigrants, the data shows that of 3,615 detained immigrants, 2,798 (77%) did not have representation, indicating that an EOIR-28 form was never filed on behalf of those immigrants, while 817 detained immigrants (23%) did have representation. (See figure N.1).





The data shows that 955 total cases were adjourned in York and Philadelphia so immigrants could seek counsel.<sup>107</sup> Of non-detained immigrants, 334 (55.3%) of individual cases were able to secure representation after adjourning to seek counsel, and 162 (46.2%) of detained immigrants were able to secure representation after such adjournment.<sup>108</sup> (See figure N.2). This calculation is limited to those cases adjourned so a person could seek counsel, so the numbers might be higher than the overall percentage of those with representation at any point in the process, especially for

detained immigrants. One assumption made in looking at the data and creating Figure N.2 is that it does not include people who either A) had representation from the beginning; B) obtained representation without having to adjourn to seek counsel; and C) those who never got representation *and* did not adjourn to seek representation.



This analysis illustrates that, in Pennsylvania, detained immigrants are less likely to be represented by an attorney. Attorney C commented on why so few detainees might be able to secure the assistance of counsel:

[I]n my experience, I've found that it can be more difficult for detained individuals to access counsel, simply because of the lack of contact with the outside world which comes [a] little more easily outside the detention center...Often times, legal resources that were provided may be either too expensive or individuals who were able to provide *pro bono* services might have not been able to take the case for one reason or another.<sup>109</sup>

Based upon the interviews conducted with practicing immigration attorneys in Pennsylvania, there are several ways an attorney can come into contact with an individual who requests representation. An attorney may receive direct communication from a detained individual, either by phone or by mail. An attorney may be approached about a potential client through family and friends of the detainee. Additionally, the attorney may be referred a potential client through either third-party agencies or organizations, or another attorney.<sup>110</sup>

The nature of detention itself makes it extremely difficult for attorneys to get information needed from their clients to effectively represent them. Attorney D considers the presence of a family member or friend as “the best situations:” “When you have a support of a family member or friend or the community, it makes it much easier to help someone because you're able to get information more quickly. You just know there are more resources and it's a smoother process given the nature of representing somebody who's detained.”<sup>111</sup> This same attorney described how responding to letters sent directly from detained individuals are more challenging because of the difficulty of effectively acquiring the necessary information about the individual to proceed.<sup>112</sup> Attorney D explained that in instances like this, all an attorney can do is send a message acknowledging the detainee's letter and asking questions in order to obtain as much information as possible to help the case or help the detainee secure other representation.<sup>113</sup>

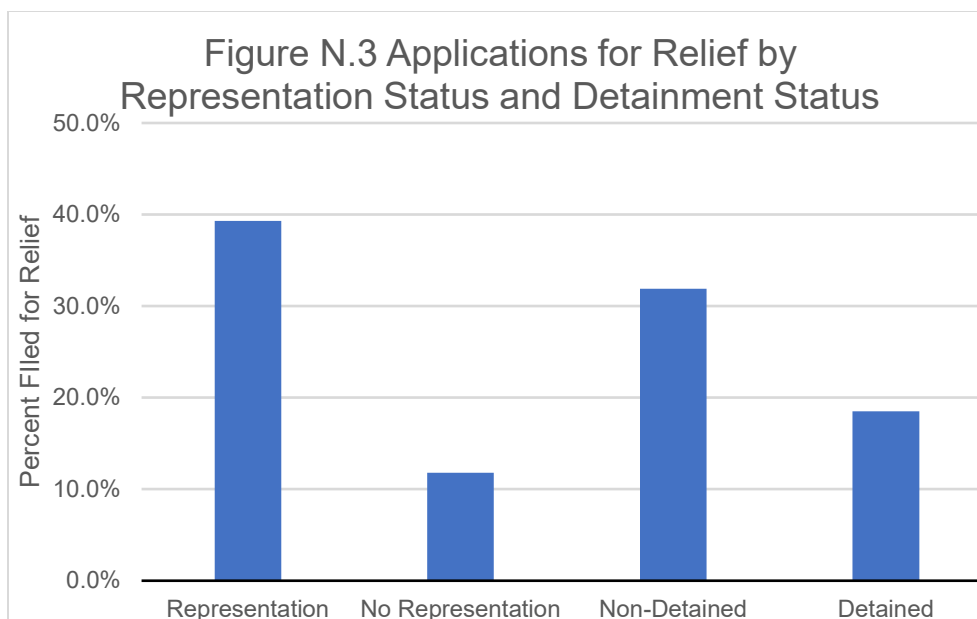
Even when counsel travel to meet their client at a detention center, it is still difficult to access the detainees. For instance, some attorneys described difficulties surrounding detention facilities' limitations on visiting hours.<sup>114</sup> One explanation for the barrier on visiting hours is the limited number of attorney-client rooms available at any given time.<sup>115</sup> In addition, Attorney C stated that “phone conversations were impossible. There was no way, essentially, for someone to get in contact by telephone with someone inside the facility. Often times, I relied on

correspondence by mail coming to the facility, and even then, sometimes it was difficult for the individual to get that mail.”<sup>116</sup>

## **B. Application for Relief**

The second hypothesis this report examines is whether unrepresented detained immigrants are less likely to file applications for relief, thus having fewer opportunities to succeed in their cases. The qualitative and quantitative data presented in the following section supports this hypothesis. The data reveals that of the 2,006 cases with representation, 789 or 39.3% filed an application for relief as opposed to 246 or 11.8% of cases without representation which filed for relief.<sup>117</sup> In the data set we received from EOIR, 31.91% of non-detained immigrants as opposed to only 18.51% of detained immigrants filed for relief (See Figure N.3). Furthermore, 25.4% of detained immigrants who were represented by counsel filed for relief as opposed to 13.8% of unrepresented detained immigrants who filed for relief.

The data received by EOIR does not determine whether unrepresented individuals with completed cases had viable claims for relief, since most did not even apply for any relief, nor does the data indicate whether this inability to apply for relief was due to the lack of a viable claim or lack of knowledge of immigration law. An analysis of the data does, however, indicate that individuals with representation are significantly more likely to file for an application for relief compared to those without representation.<sup>118</sup>



Consistent with this hypothesis, Attorney B argued that “just the fact that the applications themselves are not even available in other languages signals how little the government cares about meaningful due process. When you walk into immigration court, there are no signs explaining the process, no interpreters clearly available to answer questions. The entire system is designed to make it as difficult as possible for people to advocate for themselves.”<sup>119</sup>

#### **IV. Barriers to Representation**

There are many barriers that affect an immigrant’s ability to retain an attorney-- even before they arrive at a detention center. Some of the barriers include the location of the immigration court,<sup>120</sup> an immigrant’s financial limitations,<sup>121</sup> language barriers, and an immigrant’s lack of familiarity with the United States legal system. Of the barriers that affect an immigrant’s ability to access representation, the major barrier appears to be the detention itself. When an individual is detained, they cannot physically search for or easily contact an attorney to represent them. In the following sections, we will analyze the most relevant barriers to an immigrant’s ability to access representation including their detention status, financial limitations and language.

## **A. The Detention Status**

One of the most important factors linked to an immigrant's ability to retain counsel is their detention status. Currently, the government relies heavily on detention, which makes the many barriers immigrants face to retain counsel especially troubling.<sup>122</sup> In 2018, the DHS transferred around \$169 million from other programs to ICE for immigrants' detention and removal.<sup>123</sup> This money was initially intended to go to 38,000 adult beds for 2018, but ICE later needed 2,000 additional beds, which cost an additional \$93 million.<sup>124</sup>

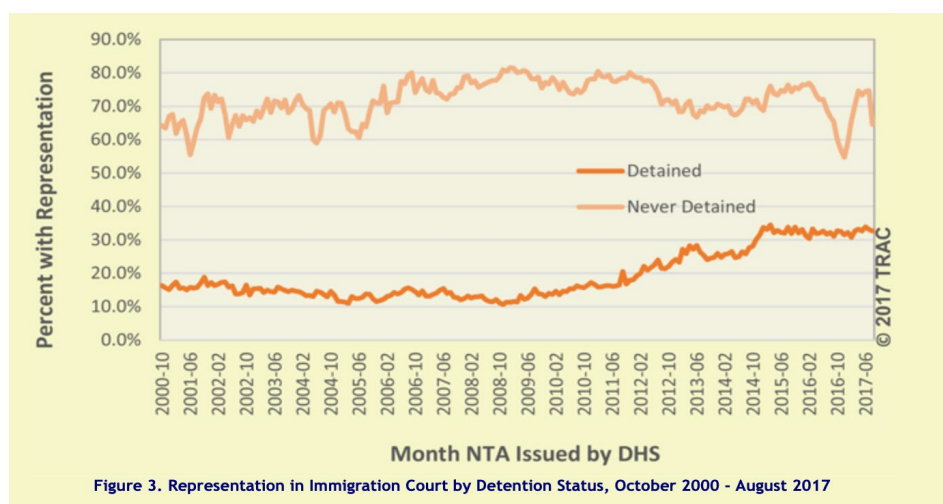
Attorneys face additional obstacles when attempting to access a client who has been placed in segregation,<sup>125</sup> transferred to other sections of the prison or transferred to a different facility in another state. When discussing the complicated nature of out-of-state transfers, Attorney A explained how such transfers affect a detainee's ability to find or continue representation; it may be prohibitively expensive or time intensive for an attorney to continue representation if they are required to travel out of state.<sup>126</sup> Other difficulties in representation of a client in immigration detention were shared by attorneys interviewed and described by Attorney A as:

There could be an issue with the power grid. There could be an issue with a measles outbreak. There could be an issue with a security concern. There could be an issue with staffing for the day and different wings of the prison would be shut down without access regularly. Not weekly, but regularly... And you would go to meet with a client and he's just not accessible that day. And then the entire prison is on lockdown sometimes, too and you can't see anyone that day.<sup>127</sup>

Representation rates are largely influenced by whether an immigrant is detained. Based on data provided by the Transactional Records Access Clearinghouse (TRAC) in 2017, fewer detained individuals are able to locate an attorney to represent them compared to individuals who were never detained. Data has shown that between 2000 and 2005, nationwide representation rates varied between 10% and 30%.<sup>128</sup> While these rates remained stable for a few years for detained

immigrants, the representation of detained individuals reached about 30% between 2015 and 2017.<sup>129</sup> In contrast, representation of individuals who were never detained ranged between 60% and 80% between 2000 and 2017.<sup>130</sup> (See Figure N.4).

**Figure N.4: Representation in Immigration Court by Detention Status, October 2000-August 2017<sup>131</sup>**



Beyond TRAC, reports also confirm that detained immigrants have a lower chance of being represented by an attorney compared to non-detained individuals, and are also less likely to be granted more time to find counsel.<sup>132</sup> Of detained immigrants, 14% were granted additional time to seek counsel compared to 29% of non-detained immigrants.<sup>133</sup> Moreover, even when detained immigrants are granted additional time, they are still less likely to find counsel than their non-detained counterparts.<sup>134</sup>

Compared to non-detained immigrants who may be able to travel to attorneys' offices, detainees must rely on the very limited resources provided to them—sometimes only the public phones available in the facilities.<sup>135</sup> Lawyers report prohibitive costs for detainees to make an outside call, ranging from 10 to 25 cents per minute.<sup>136</sup>

The disparity in representation rates between detained and non-detained immigrants may be explained by the difficulties attorneys face to access detention facilities. Many detention centers are located far away from city centers. For example, the Berks County Residential Center is located in Leesport, Pennsylvania (around 70 miles from a major metropolitan area like Philadelphia), while the York County Prison is around 100 miles from Philadelphia. Attorneys assisting detainees tend to be based in urban areas, and are required to travel long distances in order to meet with their clients.

In summary, the detention status of immigrants drastically affects their ability to navigate legal proceedings and the likelihood that their cases will end successfully.

## **B. Financial Limitations**

A study conducted by Peter L. Markowitz entitled *Barriers to Representation for Detained Immigrants Facing Deportation* details the financial barriers faced by detained immigrants.<sup>137</sup> Many immigrants have limited financial means. This limitation makes it difficult for them to hire an attorney. The challenges are only exacerbated when immigrants are detained because of their inability to work.<sup>138</sup>

Immigrants in Pennsylvania represent more than 6% of all residents in addition to the 8% of native-born American citizens with at least one immigrant parent.<sup>139</sup> As taxpayers, workers, business owners, and more, immigrants contribute immensely to their communities and the whole of Pennsylvania.<sup>140</sup> Despite these community and family connections, detained immigrants in removal proceedings, undocumented or otherwise, often find themselves in detention centers for much of or the entirety of their proceedings.



Attorney A described many of detained immigrants in Pennsylvania as belonging to the working class.<sup>141</sup> In discussing the struggles these detainees face, Attorney A explained that when a working class immigrant is detained as part of their removal process, they may be able to pay an attorney for a little while through savings, but, once they cannot afford to pay for an attorney, they are often left unrepresented for the balance of their proceedings.<sup>142</sup> A 2017 study from the Pew Research Center details that immigrants with lower levels of education are more likely to have jobs in agricultural work, construction work, or the beauty business; such as manicurists and pedicurists or skin care specialists.<sup>143</sup> The U.S. Bureau of Labor Statistics in 2014 stated that a manicurist earns an hourly wage of \$9.43; immigrants working as agricultural sorters earn \$9.57; and construction helpers such as painters earn \$12.46 an hour.<sup>144</sup>

These low hourly wages not only contribute to this group of detainees' inability to hire or retain representation throughout their process, but also exposes them to scams and incompetent attorneys because of their desperation to find representation.<sup>145</sup> Attorney A states that it is easy for "incompetent immigration attorneys"<sup>146</sup> to get in touch with the vulnerable population (detained immigrants) and take advantage of their vulnerability.<sup>147</sup> Unfortunately, detained immigrants facing a speedy removal process do not have as many options, or time, and often take the representation they can afford. Attorney A explained that "the immigration laws in this country are also so tough, they really are tough and it's hard to win cases. It makes it easy for bad actors to say, Hey, I gave it my best shot, but you know, the immigration judge decided against you."<sup>148</sup>

During the interview process, some attorneys, including Attorney C, expressed their concern over the growing bond amounts. They mentioned that, while an average bond typically used to be between \$3,000 and \$8,000, "they were seeing bond amounts upward of \$40,000."<sup>149</sup>

Different arguments have been given to explain the high bond amounts determined by judges including Attorney C's testimony:

Typically, with bond determination, you're determining whether someone is a danger to the community, and you're looking at the community ties that they have, and so, if it was someone who was recently arrived who didn't have any ties to the community, the judge, maybe, didn't feel reassured that the individual would show up for their hearing. That's worth a higher bond amount.<sup>150</sup>

Further, Attorney C argued that without representation, it is very hard for a detained immigrant to present a prepared case for a bond hearing or to know whether the bond amount determined by the judge is reasonable.<sup>151</sup> Complicating the request for bond is the confusion surrounding who should be mandatorily detained. Attorney C recounted cases where their clients were able to present evidence that they should be granted the option of bond under the INA but were told by a judge that they were ineligible.<sup>152</sup>

### **C. Language Barriers**

The ability to communicate effectively is crucial for ensuring that immigrants—especially detainees—obtain adequate legal representation. The 2014 Immigration and Customs Enforcement Language Access Plan set forth its current language access activities, policies, and procedures.<sup>153</sup> Among the ICE activities that occur during the intake process, detainees are provided with a handbook, in either English, Spanish,<sup>154</sup> or another language which has been made available to detention facilities upon request.<sup>155</sup> This handbook contains information critical to detained individuals, such as how they can retain a lawyer or access medical care.<sup>156</sup> ICE policy requires that language services have to be offered in “all detention facilities, including Service Processing Centers (SPC), Contract Detention Facilities (CDF), and Inter-Governmental Service Agreement (IGSA) facilities. The standards also require that language services be offered throughout the

detention process (e.g., during admission/intake, medical, classification, grievance system, discipline, legal rights group presentations, telephone access, transfer, and visitation).”<sup>157</sup>

During a 2017 inspection of five detention facilities in the United States, the DHS Inspector General found numerous breaches of these language access policies.<sup>158</sup> The report states:

At some facilities, problems began at intake where facility staff failed to use interpretation services for detainees who did not speak English. Further, according to the PBNDS [Performance-Based National Detention Standards], when detainees arrive, they are supposed to receive the ICE National Detainee Handbook and a local facility detainee handbook. These handbooks cover...the grievance system, services and programs, medical care, and access to legal counsel.<sup>159</sup>

At three of the facilities, detainees were not always given handbooks in a language they could understand.<sup>160</sup> Sometimes, even when ICE language services are provided, detained individuals have no way to effectively communicate with officials because they speak indigenous languages, which are often very rare and difficult to translate.<sup>161</sup> Further, not all residential facilities provide translation or interpretation.

Federal data collected between 1997 and 2008 by the National Immigrant Justice Center (NIJC) from EOIR showed that there was an increase in the number of immigrants in detention facilities who waived their rights to see a judge through signing deportation orders.<sup>162</sup> The study showed that “94% of the 80,844 stipulated orders of removal signed between April 1997 and February 2008 were by immigrants who spoke primarily Spanish, and most had not been charged with a crime.”<sup>163</sup> The U.S. government uses a “stipulated removal”<sup>164</sup> program to deport immigrants without having a hearing in court.<sup>165</sup> In fact, those immigrants “who sign stipulated removal orders give up their right to a hearing before an immigration judge and agree to have a formal removal order entered against them, even if they may be eligible to remain in the U.S.”<sup>166</sup> Furthermore, NIJC Director, Mary Meg McCarthy, said, “Given our work with this population,

the data backs up our longstanding concern that immigrants in detention face language barriers and do not fully comprehend the implications of signing stipulated order of removal forms.”<sup>167</sup>

Concerning the language barrier faced by a detained individual in the York County Prison, Attorney A discussed a current client’s case from Cameroon:

The immigration judge and the officer who made a first determination and then the asylum officer who did his credible fear interview, basically understood him to speak English, but a version of English that's peppered with different accents and some different words - that it's like a Cameroonian version of English – [Which] it's not. It's a separate language. This didn't come to light until later in the process. He did not have an attorney in his final hearing for asylum...He had an excellent claim; the judge even acknowledged at one of the hearings prior to the final hearing that [the] country condition would support his claim if he could bring some documentary evidence.... Also, our client, the respondent, not feeling like he had the right to have an interpreter in his preferred language because at his first hearing which was a big group, master calendar hearing, everyone was given the choice of English or Spanish.<sup>168</sup>

The EOIR language access plan is limited in scope. Interpreters are made available to immigrants only during their immigration hearing proceedings.<sup>169</sup> As such, when attorneys have an interview with a client that speaks a different language, they have to bring their own interpreter.<sup>170</sup> Usually the interpreter’s identification along with a facility clearance request needs to be sent to a detention center 48 hours ahead of time to allow ICE to run a background check and decide whether or not they can get in and speak with the immigrant.<sup>171</sup> If the clearance is not completed by the scheduled facility visit date, the attorney must reschedule their meeting with their client.

## V. Implications of Universal Representation

When making the case for state-provided free legal representation for detained immigrants, one should consider the impact of representation on the immigration court system, outcomes for the detained immigrant, as well as the impact on the broader community.

To evaluate the impact of universal representation, it is important to determine whether representation is effective in streamlining immigration court proceedings and bettering an immigrant's ability to receive a successful outcome.

### Outcomes

According to the *National Study and Evaluation of the NYIFUP* (hereinafter, *Evaluation*), immigrants who are represented by counsel fare better at every stage of the court process.<sup>172</sup> Authors in *Evaluation* detail the impact and success of the NYIFUP, the first state-wide public defender style program for immigrants in New York and the current model for state funding representation for detained immigrants.<sup>173</sup> The NYIFUP is a massive undertaking that started after the publication of the New York Immigrant Representation Study, where advocacy groups in New York were able to quantitatively identify how many immigrants in New York were facing deportation without access to any form of representation and were often deported without ever learning of the possible avenues for relief available to them.<sup>174</sup> This led to the creation of the NYIFUP Coalition, an organization that sought to create the first public defender style program for detained immigrants.<sup>175</sup> The project's first pilot program began in 2013 with funding from the New York City Council.<sup>176</sup> This pilot focused on providing free legal representation to all detained immigrants facing deportation at the Varick Street Immigration Court before receiving full funding in 2014.<sup>177</sup>

Advocates for representation believe that the current state of the immigration system does a grave injustice to immigrants who face an IJ without a lawyer at any step in the hearing process.<sup>178</sup> Lack of representation results in a system that is fundamentally unfair as it fails to afford immigrants appropriate due process under the U.S. Constitution.<sup>179</sup> The Honorable Sarah Burr, a retired IJ in New York, stated, “In order to have due process, you have to have representation of all of the parties before a judge. ...The fact is that the Constitution guarantees all people due process and equal protections.”<sup>180</sup> Representation of immigrants improves the possibility that justice is served and that hearings are fair, even if an immigrant’s case is ultimately unsuccessful.<sup>181</sup> The presence of a lawyer ensures that each immigrant is aware of their rights and potential avenues of relief from removal, such as asylum, adjustment of status, voluntary departure, cancellation of removal, or relief under the Convention Against Torture.<sup>182</sup> As in criminal proceedings, it is often impossible for a lay person to know the legal options available to them or the nature of proceedings and thus indigent citizens [in criminal proceedings] are always provided an attorney.<sup>183</sup>

The impact of universal representation on detained immigrants is significant. The authors in the *National Study and Evaluation* discussed how, in New York and nationally, immigrants with representation were more engaged at every stage of their trial; they were more likely to apply for relief, their cases were more likely to be terminated, and they are more likely to be granted relief from deportation.<sup>184</sup> Among detained immigrants, those represented by an attorney are twice as likely as unrepresented immigrants to succeed on a claim for relief, while non-detained immigrants are five times more likely.<sup>185</sup>

The *Evaluation* shows that individuals are rarely able to effectively navigate the immigration legal system without an attorney.<sup>186</sup> Immigration cases in which individuals claim a

right to remain in the United States almost always require litigation.<sup>187</sup> Without representation, immigrants would have to face and argue against trained attorneys who are arguing on behalf of the federal government.<sup>188</sup>

### The Court

Another area for evaluation of impact is whether representation for immigrants will make the Court process more efficient. In cases where there is no relief available, the average length of cases would shrink.<sup>189</sup> Time spent seeking counsel is costly for detained cases because the government spends about \$133.99 per day per detainee to house detained adult immigrants.<sup>190</sup> Many detained immigrants are not able to successfully obtain counsel even after being granted the additional time.<sup>191</sup> In a system of universal representation, attorneys could be appointed at or before the initial court appearance.<sup>192</sup>

It should be noted, however, that the connection between representation and the average length of immigrants' cases is not so simple. Immigration cases move most quickly when detainees are unable to access counsel or fail to apply for any form of relief.<sup>193</sup> By contrast, attorneys in NYIFUP engage in high levels of case activity, including making requests for custody redetermination hearings and filing multiple applications for relief.<sup>194</sup> However, one of the benefits of appointing counsel from the beginning of proceedings is that detained immigrants with lawyers are more likely to secure bond, which can often extend the total case time but saves the taxpayer the daily cost of housing detained immigrants.<sup>195</sup> Attorneys can also increase efficiency by explaining to respondent if they have no relief, whereas they may otherwise seek continuances and proceed pro se with an application that will ultimately get denied.

In a public defender system for detained immigrants, representation would be present from the outset of an immigrant's case. This representation would allow the respondent to have a plan

for moving forward in their proceedings from the outset of their trial, helping avoid the use of, and need for, continuances to find counsel.<sup>196</sup> According to the *National Study*, detained immigrants without representation file more applications for relief with the court due to the lack of knowledge regarding which forms of relief are best suited for their situation.<sup>197</sup> While there are more applications filed, their chances at having that relief granted is significantly lower, with only 23% of claims granted whereas cases with representation filed successful claims 47% of the time.<sup>198</sup> In short, an unrepresented immigrant can waste a great deal of time filing applications for relief he or she may not be eligible for; whereas, with the assistance of counsel, an unrepresented immigrant can identify what relief if any is available and proceed more rapidly on that basis.

The impact of representation is significant and goes beyond that of individual case outcomes, affecting family unity, the workforce, and the economy. The Vera Institute's evaluation shows conclusive data that NYIFUP clients are 24% more likely to be granted bond than unrepresented individuals in comparable courts.<sup>199</sup> The opportunity for release has a significant impact on the immigrant as it allows for the previously detained individuals to reunite with family, continue working, and gather crucial evidence from their community and employers that could lead to their cases culminating in successful outcomes.<sup>200</sup> As for the impact on the economy, the Vera Institute estimated in November 2017 that a total of 242 NYIFUP clients in New York will be granted work authorization permits following their successful case outcomes, allowing them to become tax paying members of the state.<sup>201</sup> Additionally, the evaluation estimated that 187 individuals will be able to maintain work eligibility status due to successful outcomes. With the help of Stout, a financial advisor firm, the Vera Institute predicted that the estimated state, local, and federal tax revenues of these immigrants with successful outcomes and work authorization would total \$2.7 million for the first year.<sup>202</sup> The NYIFUP predicts that as successful outcomes



continue, tax revenue will increase, benefitting both the workforce and the economy in New York.<sup>203</sup> And none of these statistics consider the savings from the release of detained of immigrants who no longer need be detained at taxpayer cost.

## **VI. Recommendations**

### **A. Pennsylvania should fund and implement a public defender style program to assist detained immigrants facing removal.**

Pennsylvania should fund and implement a public defender style program to assist detained immigrants facing removal. Data from EOIR underscores how representation improves a detained immigrant's ability to file an application for relief from removal.<sup>204</sup> This research underscores how important representation is to the fundamental fairness of a detained immigrant's removal proceeding and to the economic well-being of the detained immigrant, to their American citizen dependents, to their local community, and to the state economy.

### **B. EOIR must take steps to eliminate remote adjudication**

EOIR must take steps to eliminate remote adjudication. While the authors of this report are aware of the huge backlog of cases before immigration courts, we cannot recommend the use of remote adjudication through tele-video conferences to expedite the removal proceedings.<sup>205</sup> We believe that, under its current use and level of dysfunction, the use of tele-video to adjudicate removal proceedings substantially limits an immigrant's access to due process under the law and should never be used in any substantive proceedings.<sup>206</sup>

### **C. Immigration Courts must expand access to qualified interpreters.**

In conjunction with the issue surrounding the use of tele-video to conduct proceedings, we recommend that the immigration court "[i]ncrease efforts to identify, certify, and expand access to qualified interpreters in immigration proceedings, particularly interpreters for uncommon languages and indigenous regional dialects, so that noncitizens' due process rights are protected."<sup>207</sup>

## **Conclusion:**

It is essential that the Pennsylvania government do more to assist detained immigrants in locating counsel from the outset of their cases.<sup>208</sup> Having access to counsel affects an immigrant's detention status as legal counsel can advocate for release and/or affordable bond on their client's behalf as well as assist in navigation of the process.

Pennsylvania should follow in the footsteps of New York and implement a program similar to that of the NYIFUP, a state-wide universal representation system that is the current model for representation of this kind.<sup>209</sup> An evaluation of the NYIFUP data showed that, during the first three years, NYIFUP provided 1,772 low-income immigrants with free legal representation, and an evaluation of these cases quantitatively shows that immigrants facing deportation without representation face a significantly higher risk of being deported than those with representation in similar situations.<sup>210</sup>

The evaluation of the NYIFUP even went as far as to examine the other factors that affect case outcomes beyond just simple representation by creating a statistical model that would allow comparison between NYIFUP cases and “similarly situated, unrepresented cases at Varick Street and three other comparison courts: the detained dockets at Arlington, Boston, and Newark.”<sup>211</sup> The data found that, even when controlling for other factors that can influence outcome,<sup>212</sup> the likelihood of a detained immigrant receiving a successful outcome is significantly higher when provided a NYIFUP attorney from the beginning of their case.<sup>213</sup>

When asked about their thoughts on implementing a public defender system, Attorney D detailed how the government must help facilitate the implementation of a public defender program as underfunded non-profits are unable to provide *pro bono* representation at a large enough scale. They went on to explain how a public defender style system would help improve detained immigrants’ ability to explore their options for relief from removal as well as allowing them to be more informed “about the process they are being put through.”<sup>214</sup>

The 2019 American Bar Association Report on “Reforming the Immigration System” recommends that the federal government fund counsel for all indigent immigrants facing removal proceedings.<sup>215</sup> Until this public defender system is implemented on a national level, the ABA

report encourages state governments to not only fund, but prioritize programs that will ensure counsel is provided to those in need as well as putting procedures into place that will enable “immigration courts to more efficiently and fairly adjudicate complex legal claims.”<sup>216</sup>

Pennsylvania local governments have already taken important steps toward ensuring detained immigrants have access to representation during removal proceedings. As of April 2019, Philadelphia has become a member of the Vera Institute of Justice’s SAFE Network and will launch a modest pilot project to assist detainees at the York County Prison.<sup>217</sup> The SAFE Network allows local governments (cities/counties or states) to apply for grants to support public defender-like programs for representation of detained immigrants in immigration proceedings.<sup>218</sup> The Vera Institute evaluation of places in its SAFE Network found that, “in year one, a remarkable 38% of cases represented by SAFE network attorneys and completed in immigration court resulted in successful outcomes, permitting SAFE network clients to remain in the United States. By comparison, only approximately 3% of unrepresented cases nationwide are successful.”<sup>219</sup> Further, SAFE Network attorneys are responsible for the release of 41% of their detained clients on bond or through successful case outcomes.<sup>220</sup> Over 60% of SAFE Network clients were able to file applications for relief with the help of their attorneys on protection-based claims, including withholding of removal and asylum.<sup>221</sup>

Research and analysis of the data from EOIR supports the idea that representation from the beginning of a proceeding streamlines the entire process. Without representation, cases can easily become backlogged when an immigrant facing removal requests a continuance to seek representation multiple times before their trial even begins.<sup>222</sup> When discussing possible solutions to address the backlog in immigration courts, Attorney C believes that the implementation of a public defender style program would help facilitate the removal process stating:

I think it's [a public defender style program] something that's long overdue in Pennsylvania and everywhere, where individuals don't have access to counsel. It's important not only for the individual who's seeking protection in the United States but also when you're looking at it from a judicial efficiency standpoint. So much of the backlog could be avoided and so many of the issues that we're seeing now in immigration courts could be at least eased by a program like this. I think it's one of those situations where, really, everyone could be given a fair shot, be given due process. When you provide them guidance through this labyrinth of a system you're also helping with proceedings, assisting courts with how you move faster with a higher probability of a good outcome for your clients.<sup>223</sup>

By enacting a public defender style system, the state of Pennsylvania can help improve the due process rights of detained immigrants across the state. Pennsylvania will join New York, New Jersey<sup>224</sup> and other states<sup>225</sup> as they take steps to better the immigration court system by streamlining removal proceedings for all detained immigrants in need.

## **VII. List of Abbreviations**

ABA: American Bar Association

AEDPA: Antiterrorism and Effective Death Penalty Act

AIC: American Immigration Council

APA: Administrative Procedure Act

BIA: Board of Immigration Appeals

BOP: Bureau of Prisons

CBP: Customs and Border Protection

CDF: Contract Detention Facilities

DHS: Department of Homeland Security

DOJ: Department of Justice

EOIR: Executive Office for Immigration Review

FOIA: Freedom of Information Act

IC: Immigration Court

ICE: Immigration and Customs Enforcement

ICH: Individual Calendar Hearing

IGSA: Inter-Governmental Service Agreement

IHP: Institutional Hearing Program

IIRAIRA: Illegal Immigration Reform and Immigrant Responsibility Act

IJ: Immigration Judge

IM: Initial Master

INA: Immigration and Nationality Act

INS: Immigration and Naturalization Service

MPI: Migration Policy Institute

NTA: Notice to Appear

OPPM: Operating Policies and Procedures Memorandum

OSC: Order to Show Cause

PBNDS: Performance-Based National Detention Standards

SPC: Service Processing Centers

TRAC: Transactional Records Access Clearinghouse

## **VIII. Methodology**

The first step in preparing this report was identifying what information we needed to analyze. We prepared a list of questions and data points that we felt would allow us to test our hypothesis.

Once the FOIA requests were prepared, we identified which government agencies were most likely to have access to that information. We determined that we would likely obtain information concerning immigrant detention and access to counsel from Immigration and Custom Enforcement (ICE) and Customs and Border Protection (CBP), the two enforcement branches of the Department of Homeland Security (DHS). Based on a review of national studies and from New York and New Jersey, we determined that the Executive Office of Immigration Review (EOIR) would likely provide some of the most significant data concerning representation and claims for relief before an immigration court.

Having identified the proper agencies, we tailored three FOIA requests to each one. In the interest of thoroughness, there was some overlap in the type of information we sought in each FOIA. To avoid the possibility that a request was wholly denied on jurisdictional grounds, we were careful to phrase our requests to include any of the requested data that was available. FOIA requests were sent individually to EOIR, ICE, and CBP on August 9, 2018.

In our FOIA requests to EOIR, we sought data going back to 2015 (see original request in appendix N.1), but the data provided by EOIR include only cases that were completed during Fiscal Year (FY) 2018. Some of the information expressly omitted by EOIR seemed likely to be obtained from ICE or CBP, and we had already requested such data in our other FOIA requests. (see appendix N.2 for CPB FOIA request and appendix N.3 for ICE FOIA request). An appeal was filed on November 28, 2018. (see appendix N.4). As of April 25, 2019, our request was remanded

to EOIR for a further search for responsive records. We hope to provide additional data from EOIR in a future report.

On October 19, 2018, EOIR responded to our request with three documents. One document was a “Signed Letter” advising that the information included in the email was responsive to our FOIA request (see appendix N.5). Another document called “Notes” gave a brief description of the data provided and specifically explained that some requested data had not been included because EOIR was unable to provide it (appendix N.6). The omitted information included how long immigrants were in detention and where in the U.S. immigrants lived.

The third document we received from EOIR was an Excel Workbook with 5 tabs describing the hearing proceeding for each individual case. Each tab responded to sets of data we had requested related to the two main immigration courts in Pennsylvania: York and Philadelphia. The first tab provided general statistical data regarding cases in immigration court. Each table in Tab 1 includes the number of cases that were either represented or unrepresented in both Philadelphia and York courts for different forms of relief.

The rest of the tabs contained data on individual cases. In fact, the second tab—named “Case and Proceeding Level Data”—contains information about the numerical identifier for each case and proceeding; the order to show cause date; nationality; the date of entry; and the date the E-28 was filed, which pertains to the date on which an attorney made an appearance. This tab has 4,152 entries. The third tab is labeled “Hearing Level Data” and contains the numerical identifier for each case and proceeding; the adjournment date and reason; the calendar type; and the schedule type. This tab contains 14,338 entries. Tab 3 contains significantly more entries as most, if not all, individual cases have multiple hearings throughout the adjudication process. The fourth tab is called “Charges Data” and contains the numerical identifier for each case and proceeding, the



charge, and the description. This tab contains 4,710 entries. The fifth tab is labeled “Bond Data” and contains the numerical identifier for each case and proceeding, the bond hearing request date, the initial bond, the new bond, the completion date, and the bond decision description. This tab contains 3,296 entries. Sometimes the tabs contained a titled column, such as “Initial Bond”, but contained no data in any cell. We have assumed that missing data does not mean there was no data available for those tabs, just that the data was not provided.

Looking at each table alone, we were unable to draw any major conclusions. However, we noticed that in each tab, the case identification number was repeated. Given their deep experience with FOIA, we consulted the American Immigration Council (AIC) and in turn decided to gather these tabs into one table that illustrates the whole proceeding for each individual case. Compiling this data into one table formed a more complete data set for each individual case represented in the spreadsheet, allowing us to draw in-depth conclusions. In order to move forward with the project, we reached out to professors at Penn State University with backgrounds in statistical analysis. Through this outreach we made contact with Professor Jennifer Lynne Van Hook, the Director of the Penn State Graduate Program in Sociology and a Professor of Sociology and Demography with a focus in immigration and migration. Professor Van Hook explained to us the steps necessary to combine and analyze this type of data and created a new excel workbook by merging the data in each of the tabs together.

After creating the new excel workbook, we defined the codes and terms contained in the differing tabs, identified our variables for the purpose of this project and finally, created specific questions for statistical analysis to test our hypotheses. (see appendix N.7).

Tab 1 does not identify cases by number, but instead provides general statistical information. We analyzed the information in Tab 1 separately from the rest of the data. Because

of the limitations of the dataset itself, we were unable to determine the outcome of each individual case.

While the data set provided to us by EOIR did not contain an umbrella term to categorize when a case is adjourned in order for the immigrant to file an application for relief, we were able to locate a memorandum from the Department of Justice titled “Definition and Uses of Adjournment, Call-up, and Case Identification Codes[,]” which allowed us to define and organize the adjournment codes in the “Hearing Level Data” tab.<sup>226</sup> Using this information, we were able to separate adjournments concerning “Applications for Relief” from other continuances. This report identifies the following adjournment codes as different “Applications for Relief”:

- Alien Claim to US Citizenship
- Alien to File for Asylum
- Alien to File other Application
- DHS Application Process – Alien Initiated
- DHS Application Process – DHS Initiated
- Supplement Asylum Application

One of the biggest limitations of the data by EOIR is that it does not provide the outcome in individual cases. As such, this report analyzes each individual cases’ opportunity for success through an analysis of whether an individual was represented supported by our qualitative study and other variables that affect success.<sup>227</sup> With the help of Ms. Kelsey Cundiff,<sup>228</sup> a PhD Candidate in the Criminology Department of Pennsylvania State University, we were able to analyze the percentage of individuals who had representation, when they received it, and whether any applications for relief were filed.<sup>229</sup>

This report recognizes the importance of the data from the EOIR Statistics Yearbook FY 17. However, this report does not use data from the yearbook as part of our analysis in section IV. Due to the nature of this project, the data we obtained using FOIA requests to EOIR contained

case specific variables making it more relevant to this report's hypotheses. Additionally, the data received contained the most recent numbers on represented and non-represented detained immigrants facing removal in Pennsylvania. Furthermore, the information made available in the EOIR Statistics Yearbook FY 17 does not contain any data concerning the representation status at the immigration court. The EOIR Statistics Yearbook FY 2017 did inform our greater understanding on the immigration court system in Pennsylvania by showing that most of the detained cases in Pennsylvania were adjudicated at the York Immigration Court while a few outlying detainees were adjudicated in Philadelphia.

Because no public defender system for immigrants is in place, we are unable to determine any conclusions without the inherent bias that surrounds representation. The data at hand provides no information as to whether an immigrant is unable to acquire representation because they cannot access it or because of the facts of their case are such that private attorneys do not feel it is worth their time. However, we maintain that the presence of counsel strengthens the likelihood that due process will be met.

On February 9, 2019, CBP responded to our request with a one-page document that was appealed on May 8, 2019. This document omitted most of our requests and provided nothing from which we could draw any conclusions.

In June 2019, we received a data set from ICE. We hope to incorporate the data from ICE in the next version of this report.

In order to add more credibility to our conclusions, we contacted practicing immigration attorneys and non-governmental organizations (NGOs) involved with representing immigrants in York and Philadelphia to obtain anecdotal data. To obtain the broadest possible sample of answers from practicing attorneys, we created a survey on SurveyMonkey and sent it to listservs of

practicing attorneys. Knowing that an overly-detailed survey may not produce many responses, we sought to narrow down the list of questions (see appendix N.8). In addition, we conducted a qualitative investigation in order to paint an accurate picture of the state of representation for detained immigrants in Pennsylvania (see appendix N.9). First, we sent out an email explaining our project to a number of organization and attorneys that represent immigrants in Pennsylvania. Then, we scheduled interviews conducted over the phone with those that expressed an interest in contributing. Finally, the information obtained in these interviews was used throughout the report to help support our quantitative data and to paint an accurate picture of the state of representation for detained immigrants in York, Pennsylvania.<sup>230</sup>

During February and March 2019, we conducted four interviews, each about 30 minutes long, with the following immigration practicing attorneys in Pennsylvania working in the private sector or with NGOs based in Pennsylvania.

- Attorney A is an immigration attorney practicing for over 9 years and currently practicing in western Pennsylvania. They were employed full-time by a human-rights oriented nonprofit organization. The interview was conducted on March 21, 2019.
- Attorney B is an attorney currently located in south-eastern Pennsylvania. They have been practicing since 2007 and have worked in a number of public interest fields including immigration. The interview was conducted on March 22, 2019.
- Attorney C is an immigration attorney currently practicing in south central Pennsylvania. They received their law degree in 2010 and have been working in immigration law full time since 2015. The interview was conducted on February 26, 2019.
- Attorney D is an immigration lawyer currently practicing in eastern Pennsylvania. They have been working in the field of immigration law for over 10 years. The interview was conducted on March 15, 2019.

## IX. Glossary

This report includes some words or phrases that have multiple meanings or interpretations.

Words that appear consistently in this report are defined below for clarity:

In this report, we use immigrant or noncitizen to refer to any individual that is not a U.S. citizen.

**Detention** refers to any immigrant in custody of ICE or CBP. Immigrants may be detained in ICE-owned, contract, state, federal or county facilities.

**Removal** means deportation. An immigrant may be ordered removed by an immigration judge from DHS.

**Department of Justice (DOJ)** houses the immigration court system in a unit known as the Executive Office for Immigration Review (EOIR). Immigration Judges are employees of the DOJ. There are two immigration courts in Pennsylvania: the Philadelphia Immigration Court and the York Immigration Court.

**Counsel** and **attorney** refer to legal representatives trained and licensed to practice law. Representation refers to the services of counsel or attorneys to advocate on behalf of immigrants before immigration courts or the Department of Homeland Security.

**Asylum** is a form of protection that may be sought by anyone in the United States. To qualify for asylum, an immigrant must have a well-founded fear of future persecution or must have suffered persecution in the past, due to a protected ground. Protected grounds for asylum include race, religion, nationality, political opinion, or membership in a particular social group.

**Detainees or immigrants in detention** refer to any immigrants held in custody by ICE or CBP before, during or after their immigration proceedings. Immigrants may also be housed in federal, state, and local correctional facilities on criminal charges.

**Non-detained immigrants** are those who are not held in the custody of ICE or CBP during the pendency of their immigration proceedings.

**Family detention** refers to the detention of children with parents by ICE or CBP. One or more children may be detained with one or both parents.

**Due process** refers to the substantive and procedural protections that must be afforded a person before they are deprived of life, liberty, or property. These rights apply to all persons within the United States, regardless of whether the person is a citizen, and regardless of whether the person is in or out of legal status.

**Notice to Appear** is a charging document alerting an immigrant of the charges against them and requiring them to appear in immigration court. When DHS files the NTA with the immigration court, EOIR assumes full jurisdiction.

**Removal Hearings** are formal proceedings triggered when charges are filed with immigration court. At the hearing, an immigrant responds to information contained in the NTA and is given the opportunity to challenge removal and/or raise a claim for relief from removal. Immigration judges preside over removal hearings and other types of hearings. Removal proceedings may be initiated against noncitizens in facilities which operate the Institutional Hearing Program.

**Institutional Hearing Program** is a form of remote adjudication enacted through the Immigration Reform and Control Act. Through the IHP immigrants have their Section 240

removal proceedings decided before they are ever released from federal prison, and those found removable will be sent back to their country of origin immediately upon release.

**Remote adjudication** occurs when a detained immigrant has a hearing through a video or telephone. Detained immigrants may not be physically present in the courtroom as their case is heard and considered by an immigration judge.

**Pro bono** refers to legal service provided to immigrants without charging them.

**Pro Se** refers to self-representation. Immigrants who appear before an immigration judge or DHS officials without counsel are pro se.

**Transactional Records Access Clearinghouse** is a data gathering, data research and data distribution organization at Syracuse University. The purpose of TRAC is to provide the American people — and institutions of oversight such as Congress, news organizations, public interest groups, businesses, scholars and lawyers — with comprehensive information about staffing, spending, and enforcement activities of the federal government.

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<sup>1</sup> This coalition includes the ACLU of Pennsylvania, Aldea, CASA, Casa San Jose, Casa de la Cultura, CATA Farmworkers, Church World Service - Lancaster, Franklin County Legal Services, Free Migration Project, HIAS PA, Juntos, Make the Road Pennsylvania, Movement of Immigrant Leaders in PA (MILPA), National Services Center (NSC), New Sanctuary Movement of Philadelphia, Pennsylvania Immigrant Resource Center (PIRC), Pennsylvania Immigration and Citizenship Coalition (PICC), UNITE HERE Local 274, and Viet Lead.

<sup>2</sup> Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, 132 Stat. 348; Consolidated Appropriations Act of 2018, Pub. L. No. 115-31, 131 Stat. 135; Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2242. *See also* American Immigration Council, *Government Quietly Increases ICE Detention to 48,000 Beds During the Shutdown*, IMMIGRATION IMPACT (Jan. 31, 2019), <http://immigrationimpact.com/2019/01/31/increases-ice-detention-beds-shutdown/>.

<sup>3</sup> Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 8–9 (2015).

<sup>4</sup> Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 25, 2017).

<sup>5</sup> Jack Herrera, *The Shutdown Deal Includes More ICE Detention Beds. That Doesn't Mean Mattresses.*, PACIFIC STANDARD (Feb. 14, 2019), <https://psmag.com/news/the-shutdown-deal-includes-more-ice-detention-beds>.

<sup>6</sup> Matter of M-S-, 27 I. & N. Dec. 509 (A.G. 2019) (“An alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.”).

<sup>7</sup> Aria Bendix, *ICE Shuts Down Program for Asylum-Seekers*, ATLANTIC (June 9, 2017), <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>; Women’s Refugee Comm’n, *Backgrounder: Family Case Management Program*, <https://www.womensrefugeecommission.org/images/zdocs/Backgrounder-FCMP.pdf>

<sup>8</sup> John Kelly, Dep’t of Homeland Security, Memorandum on Enforcement of the Immigration Laws to Serve the National Interest (Feb. 20, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0220\\_S1\\_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf](https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf).

<sup>9</sup> Gretchen Frazee, *What Constitutional Rights Do Undocumented Immigrants Have?*, PBS NEWS HOUR (June 25, 2018), <https://www.pbs.org/newshour/politics/what-constitutional-rights-do-undocumented-immigrants-have>.

<sup>10</sup> U.S. CONST. amend. V (“no person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law”).

<sup>11</sup> Frazee, *supra* note 8.

<sup>12</sup> U.S. CONST. amend. VI.

<sup>13</sup> U.S. CONST. amend. V.

<sup>14</sup> *Bridges v. Wixon*, 326 U.S. 135, 147 (1945).

<sup>15</sup> *Leslie v. Attorney General*, 611 F.3d 171, 181 (3d Cir. 2010).

<sup>16</sup> Immigration and Nationality Act § 240 (b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) (2019) (“the alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings”); Immigration and Nationality Act § 292, 8 U.S.C. § 1362 (2019) (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”).

<sup>17</sup> *Wong Wing v. United States*, 163 U.S. 228, 237 (1896) (“It must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law.”).

<sup>18</sup> Attorney A is an immigration attorney who has practiced for over 9 years and is currently practicing in western Pennsylvania. The interview was conducted on March 21, 2019. They made this argument and further stated, “It’s [due process] so much poorer than due process in the criminal system, given the stakes can be way higher. So, I’m Johnny from Mexico. I’m undocumented in the United States. If I get picked up for theft and I face a possible maximum of six months in jail, our system considers that deprivation of liberty so potentially great that I would have a right to an attorney even if I can’t afford my own attorney, right? And then all the other things apply in article 3 courts, such as discovery, rules of evidence. And in removal proceedings, I think . . . the stakes are higher than being



in jail for six months. First of all, you're in jail. They say that you're not in jail, you're just being detained. But you're in jail. But you're also facing removal from the only home you've known, family separation which should be considered a human right, and possible deportation to a place where you'd face grave danger. But you don't have those same procedural protections."

<sup>19</sup> *Philadelphia Immigration Court*, DEP'T OF JUSTICE, <https://www.justice.gov/eoir/philadelphia-pa> (last visited Apr. 21, 2019).

<sup>20</sup> *York Immigration Court*, DEP'T OF JUSTICE, <https://www.justice.gov/eoir/york-immigration-court> (last visited Apr. 21, 2019).

<sup>21</sup> Brett Sholtis, *Detained by ICE in York Prison, He Begs to be Deported*, YORK DAILY RECORD (Apr. 4, 2017), <https://www.ydr.com/story/news/2017/04/04/detained-ice-york-prison-he-begs-deported/99864534/>.

<sup>22</sup> Tanvi Misra, *Where Cities Help Detained Immigrants*, CITYLAB (Jul. 10, 2018), <https://www.citylab.com/equity/2018/07/where-cities-help-detain-immigrants-mapped/563531/>.

<sup>23</sup> Both of these programs involve technology rather than in person hearings. There is evidence that these programs pose another barrier to fair and just adjudications, but the fairness of these programs is beyond the scope of this paper. For more information on this subject, see Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NORTHWESTERN U. L. REV. 933 (2015).

<sup>24</sup> An argument could be made that non-detained immigrants facing deportation proceedings should also have a right to government appointed counsel for due process to be satisfied. However, the data collected for this report relates to detained immigrants only and therefore discussions regarding the due process rights of non-detained immigrants are beyond the scope of this report.

<sup>25</sup> PETER L. MARKOWITZ ET AL., STEERING COMMITTEE OF THE NEW YORK IMMIGRANT REPRESENTATION STUDY REPORT, ACCESSING JUSTICE: THE AVAILABILITY AND ADEQUACY OF COUNSEL IN IMMIGRATION PROCEEDINGS (Dec. 2011), <https://cardozo.yu.edu/sites/default/files/New%20York%20Immigrant%20Representation%20Study%20I%20-%20NYIRS%20Steering%20Committee%20%281%29.pdf>.

<sup>26</sup> JENNIFER STAVE ET AL., EVALUATION OF THE NEW YORK IMMIGRANT FAMILY UNITY PROJECT: ASSESSING THE IMPACT OF LEGAL REPRESENTATION ON FAMILY AND COMMUNITY UNITY (2017) [hereinafter EVALUATION].

<sup>27</sup> *Id.* at 2–3.

<sup>28</sup> *Id.*

<sup>29</sup> Mazin Sidahmed, *'It's Like an Automatic Deportation if You Don't Have a Lawyer'*, N.Y. TIMES (Aug. 13, 2019), <https://www.nytimes.com/2019/08/13/opinion/facing-the-injustice-of-immigration-court.html>.

<sup>30</sup> American Bar Association 115 Resolution, p.2. Available at: <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/115.pdf>. As early as 2001, "the ABA supported government-appointed counsel at government expense for unaccompanied minors in all stages of immigration processes and proceedings." (ABA Recommendation 106A, adopted February 2001, available at [http://www.americanbar.org/content/dam/aba/directories/policy/2001\\_my\\_106a.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/policy/2001_my_106a.authcheckdam.pdf)). In 2006, "the ABA adopted a policy supporting the establishment of a system to provide legal representation . . . to people with disabilities and people with mental health conditions in all immigration processes and procedures." (14 ABA Resolution 107A, *supra* note 6.) In 2011, "the ABA also adopted a resolution to improve access to counsel for individuals in immigration removal proceedings, focused on *pro bono* services." ("That resolution included developing regulations to strengthen eligibility requirements for pro bono providers, encouraging an increase in pro bono efforts, requiring BIA recognized agencies to provide more pro bono services, increasing training and expertise and minimizing the unauthorized practice of law." American Bar Association 115 Resolution, p.3. Available at: <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/115.pdf> ABA See primary source: Resolution 118, adopted August 8-9, 2011. Available at: [http://www.americanbar.org/content/dam/aba/directories/policy/2011\\_am\\_118.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/policy/2011_am_118.authcheckdam.pdf)).

<sup>31</sup> ABA COMM'N ON IMMIGRATION, REFORMING THE IMMIGRATION SYSTEM: PROPOSALS TO PROMOTE INDEPENDENCE, FAIRNESS, EFFICIENCY, AND PROFESSIONALISM IN THE ADJUDICATION OF REMOVAL CASES (2019).

<sup>32</sup> *Id.* at UD i-5.

<sup>33</sup> *Id.*

<sup>34</sup> Donald M. Kerwin, *Revisiting the Need for Appointed Counsel*, 4 MIGRATION POLICY INSTITUTE INSIGHT 1, 1 (2005).

<sup>35</sup> *Id.* at 5.

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<sup>36</sup> Immigration and Nationality Act § 240, 8 U.S.C. 1229a (2019).

<sup>37</sup> Immigration and Nationality Act § 240(b)(5), 8 U.S.C. § 1229a(b)(5) (2019).

<sup>38</sup> Eagly & Shafer, *supra* note 2, at 9, 59.

<sup>39</sup> *Id.* at 8.

<sup>40</sup> *Id.* at 7–8.

<sup>41</sup> *Id.* at 48.

<sup>42</sup> *Id.* at 9.

<sup>43</sup> *Id.* at 15.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 21.

<sup>46</sup> Immigration and Nationality Act § 240, 8 U.S.C. 1229a (2019); U.S. Dep’t of Justice, FY 2017 Performance Budget 6.

<sup>47</sup> 8 C.F.R. § 1003.16(a) (2019); Office of Principal Legal Advisor, *Enforcement and Litigation*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/enforcement-and-litigation>, (last updated June 23, 2017).

<sup>48</sup> Immigration and Nationality Act § 239, 8 U.S.C. § 1229 (2019); 8 C.F.R. § 1003.14. *See also* U.S. DEP’T OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW: AN AGENCY GUIDE (2017).

<sup>49</sup> 8 C.F.R. §§ 1003.14

<sup>50</sup> *Id.* *See also* U.S. DEP’T OF JUSTICE, *supra* note 47.

<sup>51</sup> Immigration and Nationality Act § 239; 8 U.S. Code § 1229 (2019).

<sup>52</sup> *Id.*

<sup>53</sup> Immigration and Nationality Act § 236(a), 8 U.S.C. § 1226(a) (2019).

<sup>54</sup> 8 C.F.R. § 287.3(d) (2019).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* § 236.1(d); U.S. DEP’T OF JUSTICE, *supra* note 47.

<sup>57</sup> 8 C.F.R. § 1003.19 (2019).

<sup>58</sup> Immigration and Nationality Act § 236(c), 8 U.S.C. § 1226(c) (2019).

<sup>59</sup> *Id.* § 236(a)(2)(A).

<sup>60</sup> *Id.*

<sup>61</sup> 8 C.F.R. § 1003.19(b)–(d).

<sup>62</sup> Attorney C is an immigration attorney currently practicing in south central Pennsylvania. They received their law degree in 2010 and have been working in immigration law full-time since 2015. The interview was conducted on February 26, 2019. They stated, “[T]here are benefits to having representation in a bond hearing...I think a lot of individuals, when you’re alone and you’re in court and you’re in front of the immigration judge for the first time, it’s already difficult enough to even advocate for yourself in this foreign system... If you’re represented and the bond amount might seem a little high, an attorney might try to advocate for a smaller bond amount and maybe get it.”

<sup>63</sup> Matter of Urena, 25 I. & N. Dec. 140, 141 (BIA 2009) (clarifying that an immigration judge may not release a person on bond who has not met his burden of demonstrating that his “release would not pose a danger to property or persons”). *See also* 8 CFR §§ 236.1(c)(8), 1236.1(c)(8).

<sup>64</sup> Matter of Guerra, 24 I. & N. Dec. 37 (BIA 2006).

<sup>65</sup> Matter of Patel, 15 I. & N. Dec. 666 (BIA 1979). Attorney C’s statements concurred, stating that “[w]hen represented...[y]ou’re sometimes able to obtain evidence more quickly...through someone who’s able to facilitate getting letters of support from family, from community members. All those records you need to present to the immigration judge in order to get a reasonable bond.”

<sup>66</sup> 8 C.F.R. § 1240.10(a)(2). It is key to note that these are lists of possible providers of assistance. Most, if not all, *pro bono* resources are stretched too thin to accommodate all requests for assistance. Simply contacting someone on a list who provides free immigration legal services does not guarantee free immigration legal assistance for the person seeking it.

<sup>67</sup> *Id.* § 1240.10(c).

<sup>68</sup> *Id.* § 1240.11.

<sup>69</sup> Eagly & Shafer, *supra* note 2, at 21.

<sup>70</sup> 8 C.F.R. § 1003.29 (“The Immigration Judge may grant a motion for continuance for good cause shown.”). *See also id.* § 1240.6.

<sup>71</sup> MaryBeth Keller, Exec. Office of Immigration Review, Operating Policies & Procedures Memorandum 17-01 on Continuances 4 (July 31, 2017), <https://www.justice.gov/eoir/file/oppm17-01/download>.

<sup>72</sup> 8 C.F.R. § 1003.29, which permits IJs to continue a hearing for good cause shown, and 8 C.F.R. § 1240.6, which permits IJs to grant a “reasonable adjournment at his or her own instance” or for good cause shown by a requesting party. Note that a continuance means that an immigrant detained at the time of the Initial Master Calendar hearing will continue to be detained until the next hearing date unless a bond or other form of release has been granted.

<sup>73</sup> Sara Wise et al., *The Process of Deportation*, USA TODAY (June 25, 2018), <https://www.usatoday.com/pages/interactives/graphics/deportation-explainer/>.

<sup>74</sup> 8 C.F.R. § 1240.11.

<sup>75</sup> *Id.* § 1240.10; Sara Wise et al., *supra* note 72.

<sup>76</sup> 8 C.F.R. § 1240.10; Sara Wise et al., *supra* note 72.

<sup>77</sup> U.S. CONST. amend. VI; *Gideon v. Wainwright*, 372 U.S. 335 (1963). However, it is important to note that, according to the *National Study*, immigrants identified in EOIR data as “represented” had an attorney present at their Individual Calendar Hearings 95% of the time, a 41% increase in representation from the Initial Master Calendar Hearing. Eagly & Shafer, *supra* note 2, at 21 (“At the initial master calendar hearing; attorneys were only recorded as present 54% of the time.”).

<sup>78</sup> 8 C.F.R. §§ 1240.11, 1240.13.

<sup>79</sup> *Id.* § 1240.13. *See also* Sara Wise et al., *supra* note 72.

<sup>80</sup> 8 C.F.R. § 1240.15. *See also* Sara Wise et al., *supra* note 72.

<sup>81</sup> Immigration and Nationality Act § 239(c), 8 U.S.C. § 1229(c) (2019).

<sup>82</sup> 8 C.F.R. § 1003.10.

<sup>83</sup> *Id.* §§ 1003.10(b), 1240.41.

<sup>84</sup> 8 C.F.R. § 1101(b)(4). *See also* TRAC Immigration, *Judicial Oversight v. Judicial Independence*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, [https://trac.syr.edu/immigration/reports/194/include/side\\_4.html](https://trac.syr.edu/immigration/reports/194/include/side_4.html) (last updated 2008).

<sup>85</sup> The government asserted in recent litigation: “Although denominated as judges in their job titles, immigration judges are in fact non-supervisory career attorneys employed by DOJ. By statute and regulation, they are ‘subject to such supervision and . . . perform such duties as the Attorney General shall prescribe.’” Final Brief for Appellees at 3-4, *American Immigration Lawyers Association v. Executive Office of Immigration Review, et al.*, 830 F.3d 667 (D.C. Cir. 2016) (No. 15-5201), 2015 WL 7860873 (citations omitted).

<sup>86</sup> Immigration and Nationality Act § 101(b)(4).

<sup>87</sup> 8 C.F.R. § 1003.3(a)(1) (allowing for either party to appeal IJ decisions to the BIA).

<sup>88</sup> Press Release, U.S. Dep’t of Justice, EOIR Announces Largest Ever Immigration Judge Investiture (Sept. 28, 2018), <https://www.justice.gov/opa/pr/eoir-announces-largest-ever-immigration-judge-investiture>.

<sup>89</sup> *Id.*

<sup>90</sup> TRAC Immigration, *Immigration Court Backlog Tool: Pending Cases and Length of Wait by Nationality, State, Court, and Hearing Location*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, [https://trac.syr.edu/phptools/immigration/court\\_backlog/](https://trac.syr.edu/phptools/immigration/court_backlog/) (last updated June 2019).

<sup>91</sup> In order to execute section 701 of the Immigration Reform and Control Act, EOIR sought to implement a national hearing program for removable incarcerated immigrants, which later became the Institutional Hearing Program. Pub. L. No. 99-603, 100 Stat. 3359 (1986), <https://www.eeoc.gov/eeoc/history/35th/thelaw/irca.html> (“In the case of an alien who is convicted of an offense which makes the alien subject to deportation, the Attorney General shall begin any deportation proceeding as expeditiously as possible after the date of the conviction.”); U.S. DEP’T OF JUSTICE, INSTITUTIONAL HEARING PROGRAM (2018).

<sup>92</sup> *Id.*; Eagly, *supra* note 22, at 944-945.

<sup>93</sup> Press Release, U.S. Dep’t of Justice, Attorney General Sessions Announces Expansion and Modernization of Program to Deport Criminal Aliens Housed in Federal Correctional Facilities (Mar. 30, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-expansion-and-modernization-program-deport-criminal>.

<sup>94</sup> U.S. DEP’T OF JUSTICE, *supra* note 89; U.S. DEP’T OF JUSTICE, PROGRAM STATEMENT (2006), [https://www.bop.gov/policy/progstat/5111\\_004.pdf](https://www.bop.gov/policy/progstat/5111_004.pdf).

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<sup>95</sup> U.S. DEP'T OF JUSTICE, *supra* note 89; U.S. Dep't of Justice, *supra* note 91; STATE OF N.Y. DEP'T OF CORR. SERVS., VIDEO TELECONFERENCING FOR DEPORTATION Hearings (2007), [http://www.doccs.ny.gov/Research/Reports/2007/Televideo\\_Report\\_July2007.pdf](http://www.doccs.ny.gov/Research/Reports/2007/Televideo_Report_July2007.pdf).

<sup>96</sup> U.S. DEP'T OF JUSTICE, *supra* note 89.

<sup>97</sup> U.S. DEP'T OF JUSTICE, STATISTICS YEARBOOK FISCAL YEAR 2017 21, <https://www.justice.gov/eoir/page/file/1107056/download>.

<sup>98</sup> Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 30, 2017).

<sup>99</sup> *Id.* §§ 2–5.

<sup>100</sup> The Pennsylvania facilities involved in this program are: Allenwood, PA LSCI; Allenwood, PA FCI; Allenwood, PA USP, Moshannon Valley, PA CC AMERICAN IMMIGRATION LAWYERS ASSOCIATION, EOIR FOIA RESPONSE PROVIDES LIST OF POTENTIAL INSTITUTIONAL HEARING PROGRAM LOCATIONS (2017), AILA Doc. No. 17050230.

<sup>101</sup> U.S. Dep't of Justice, *supra* note 91.

<sup>102</sup> Eagly & Shafer, *supra* note 2, at 24.

<sup>103</sup> Note that the EOIR data analyzed for this report is limited to initial case completions from FY 2018 only with the earliest hearing taking place March 28, 2015. The last hearing in the data set took place on December 19, 2018.

<sup>104</sup> Importantly, attorneys interviewed for this report are not affiliated with the authors of this report.

<sup>105</sup> EOIR-28 forms are used by attorneys to file their appearance in a case.

<sup>106</sup> Attorney A, *supra* note 17. In addition, Attorney D shared their experience, stating, “By the time they get to you, they probably have already had at least one, maybe two hearings.” Attorney D is an immigration lawyer currently practicing in eastern Pennsylvania. They have been working in the field of immigration law for over 10 years. The interview was conducted on March 15, 2019.

<sup>107</sup> In order to ascertain the number of cases that were represented, we matched the “Adjournment Reason: alien to seek representation” in the Hearing Level data tab that we received from EOIR with the “E-28 Date” in the Case and Proceeding Level Tab. To determine the rate of representation in detained immigrants’ cases, we examined those cases with York listed as the base city code in the Case and Proceeding Level Data Tab. In this analysis, we assumed that all individuals with “York” listed as the base city code were detained, as York County Prison is the detained immigration court in Pennsylvania. Conversely, cases with the base city code “Philadelphia” were assumed to be non-detained cases.

<sup>108</sup> Kelsey Cundiff, a doctoral candidate in the Department of Sociology and Criminology at the Pennsylvania State University. She primarily studies the life course of individuals and neighborhoods in relation to crime and delinquency.

<sup>109</sup> Attorney C, *supra* note 61.

<sup>110</sup> Attorneys D and B expressed that they had clients contact them in similar ways. See *supra* note 104 and *infra* note 117.

<sup>111</sup> Attorney D, *supra* note 104.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> During interviews with Attorneys C and D, both talked about the limitations surrounding the visiting hours in York Detention Center.

<sup>115</sup> Attorney D, *supra* note 104.

<sup>116</sup> Attorney C, *supra* note 61.

<sup>117</sup> Kelsey Cundiff, *supra* note 106. EOIR data shows that 334 cases adjourned to file for relief more than one time. 209 cases adjourned twice, 75 cases adjourned three times, 22 cases adjourned four times, 13 cases adjourned five times, two cases adjourned six times, four cases adjourned seven times, three cases adjourned nine times, two cases adjourned 10 times, one case adjourned 11 times, two cases adjourned 12 times, and one case adjourned 22 total times to file for relief. In order to determine the percentage of represented cases that filed applications for relief, we first determined if a case had an EOIR-28 filing date then counted how many times they were adjourned so an immigrant could file an application for relief. For the purpose of this report, Adjournment Status Codes for Application for Relief include: Alien Claim to US Citizenship, Alien to File for Asylum, Alien to File Other Application, DHS Application Process – Alien Initiated, DHS Application Process – DHS Initiated and Supplement Asylum Application. For more information, see *infra* Methodology.

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<sup>118</sup> A Chi-Square test was run to test for significant differences between those with and without representation on decisions to file for relief. The Chi-Square statistic is 407.45 ( $p < .001$ ), indicating that there is a significant difference between individuals with representation and without on their decisions to file for relief. The Chi-Square test for independence is used to determine whether there is a significant association between variables. Essentially, it compares the difference between the values one would expect to find for a particular population by chance alone with the observed values in the sample. The Chi-Square test examines the difference in expected and observed values to determine if the difference is “significant” and therefore due to an underlying relationship between two variables rather than by chance. So, for the purposes of this report, the test looked to see if there was a significant relationship between representation and filing for relief, essentially that the number of individuals with and without representation who filed for relief is not just due to chance, but that there is an underlying relationship between having representation and filing for relief. Kelsey Cundiff, *supra* note 106. Description provided on April 11, 2019;

<sup>119</sup> Attorney B is an attorney currently located in south-eastern Pennsylvania. They have been practicing since 2007 and have worked in a number of public interest fields including immigration. The interview was conducted on March 22, 2019.

<sup>120</sup> Eagly & Shafer, *supra* note 2, at 36.

<sup>121</sup> Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541, 548 (2009).

<sup>122</sup> Adiel Kaplan, *DHS Transferred \$169 Million from Other Programs to ICE for Migrant Detention*, NBC NEWS (Sept. 13, 2018), <https://www.nbcnews.com/politics/immigration/dhs-transferred-169-million-other-programs-ice-migrant-detention-n909016>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Attorney A, *supra* note 17. They stated that putting a client in segregation can happen for many reasons including “some sort of disciplinary issue.” For example, some detainees are punished for “giving someone else food from their dinner tray or accepting someone else’s extra food from the dinner tray.”

<sup>126</sup> Attorney A, *supra* note 17.

<sup>127</sup> *Id.*

<sup>128</sup> TRAC Immigration, *Who is Represented in Immigration Court?*, TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, <https://trac.syr.edu/immigration/reports/485/> (last updated Oct. 16, 2017).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Results derived from court records analyzed by the Transactional Records Access Clearinghouse at Syracuse University. Underlying case-by-case records obtained by TRAC under the Freedom of Information Act.

<sup>132</sup> Eagly & Shafer, *supra* note 2, at 33.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 34.

<sup>135</sup> Markowitz, *supra* note 119, at 559.

<sup>136</sup> Shannon Najmabadi, *Detained migrant parents have to pay to call their family members. Some can't afford to.*, THE TEXAS TRIBUNE (July 3, 2018, 2:00 PM), <https://www.texastribune.org/2018/07/03/separated-migrant-families-charged-phone-calls-ice/>.

<sup>137</sup> Markowitz, *supra* note 119, at 548.

<sup>138</sup> *Id.*

<sup>139</sup> American Immigration Council, *Immigration in Pennsylvania* 1. (2017), [https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_pennsylvania.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_pennsylvania.pdf).

<sup>140</sup> *Id.* at 4.

<sup>141</sup> Attorney A, *supra* note 17. They stated, “[Y]ou you also lose your job when you're detained, right? So, I might have a stable job and an ability to pay an attorney and everything. Maybe it's not a huge job. Maybe I don't have a lot of savings, but that money can go pretty quick when you're talking about a retainer, attorneys travel fees, doing a bond hearing or not on top of the regular hearing... That's great. There goes the little savings you have. You're not working anymore and what happens when a private attorney's client stops paying them? They stop representing them. So, a lot of people have an attorney for a little while but get left high and dry.” *See also* Markowitz, *supra* note 119, at 548.

<sup>142</sup> *Id.*

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<sup>143</sup> Drew Desilver, *Immigrants Don't Make Up a Majority of Workers in Any U.S. Industry*, PEW RESEARCH CENTER (Mar. 16, 2017), <http://www.pewresearch.org/fact-tank/2017/03/16/immigrants-dont-make-up-a-majority-of-workers-in-any-u-s-industry/>.

<sup>144</sup> Octavio Blanco, *Immigrant Workers Are Most Likely to Have These Jobs*, CNN BUSINESS (Mar. 16, 2017), <https://money.cnn.com/2017/03/16/news/economy/immigrant-workers-jobs/index.html>. The provided average wages are based on the U.S Bureau of Labor Statistics in 2014.

<sup>145</sup> Attorney A, *supra* note 17. They said that “vulnerable populations can bring out bad actors and you might have incompetent or actually malicious immigration attorneys that when you’re detained you are drawn to because you want a lawyer. So, if someone comes into York County Prison and does a quick client meeting with you and quotes a good price and makes some unrealistic promises, you really want a lawyer . . . . You want to get out of jail . . . . We get a lot of people coming to us after they had a bad attorney and we try to figure out how to fix that situation. And there are some people who are competent attorneys in one area, sometimes even in one area of immigration law, but really shouldn’t be doing deportation defense.”

<sup>146</sup> Attorney A, *supra* note 17.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Attorney C, *supra* note 61.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* Attorney C argued that they were suddenly started seeing “terribly high bond amounts[,]” even when evidence showed that clients deserve reasonable bond. They also argued that there is a large benefit of having representation during bond hearing because lawyers are familiar with what a reasonable bond should be. They think that it is very hard to represent itself in a foreign system and harder and more intimidating to ask a judge for a bond.

<sup>152</sup> *Id.* Attorney C explained that bond is becoming more complicated because some people “are being treated as mandatory detainees or people who are not given the option of bond when they should be . . . . So, it’s not to say that, people are not getting bond anymore, but I just know personally or a client that we personally just assisted last year, he should have been eligible for bond and he did not see it. It wasn’t even an option for him.”

<sup>153</sup> U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, LANGUAGE ACCESS PLAN (2015).

<sup>154</sup> *Id.* at 6.

<sup>155</sup> *Id.* at 7.

<sup>156</sup> OFFICE OF THE INSPECTOR GEN., CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT DETENTION FACILITIES 4 (2017).

<sup>157</sup> U.S IMMIGRATION AND CUSTOMS ENFORCEMENT, *supra* note 151, at 10.

<sup>158</sup> OFFICE OF INSPECTOR GEN., *supra* note 154. *See also* Kelly Cohen, *ICE Detainees’ Rights ‘Undermined’ at Four Detention Facilities: Inspector General*, WASH. EXAMINER (Dec. 14, 2017), <https://www.washingtonexaminer.com/ice-detainees-rights-undermined-at-four-detention-facilities-inspector-general>.

<sup>159</sup> OFFICE OF INSPECTOR GEN., *supra* note 154, at 4.

<sup>160</sup> *Id.*

<sup>161</sup> U.S IMMIGRATION AND CUSTOMS ENFORCEMENT, *supra* note 153, at 10.

<sup>162</sup> *Policy Brief: Data Suggests Language Barriers Lead Immigrants to Waive Right to Hearing Before Deportation*, NAT’L IMMIGRANT JUSTICE CTR., <https://www.immigrantjustice.org/research-items/policy-brief-data-suggests-language-barriers-lead-immigrants-waive-right-hearing> (last updated June 3, 2008).

<sup>163</sup> *Id.*

<sup>164</sup> Immigration and Nationality Act § 239, 8 U.S.C. § 1229 (2019) (“The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien’s representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien’s removability from the United States.”).

<sup>165</sup> Jayashri Srikantiah & Karen Tumlin, *Backgrounder: Stipulated Removal*, STANFORD IMMIGRANTS’ RIGHTS CLINIC 1 (2008), [https://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/163220/doc/slspublic/Stipulated\\_removal\\_backgroundunder.pdf](https://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/163220/doc/slspublic/Stipulated_removal_backgroundunder.pdf).

<sup>166</sup> Jennifer Lee Koh, Jayashri Srikantiah & Karen C. Tumlin, *Deportation Without Due Process*, NAT’L IMMIGRATION L. CTR. 1 (2011), <https://www.nilc.org/wp-content/uploads/2016/02/Deportation-Without-Due-Process-2011-09.pdf>.

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<sup>167</sup> NAT'L IMMIGRANT JUSTICE CTR., *supra* note 166.

<sup>168</sup> Attorney A, *supra* note 17. They described their client's case as follows: "Part of the nature of his [Attorney A's client] asylum claim is opinion based on what are divisions between the Anglophone and the Francophone parts of the country and what the government's preferred language is in different regions in the country . . . . But most of those are colonizer languages and there are also dozens if not hundreds of other languages that people speak in the home and at work."

<sup>169</sup> Laura Abel, *Language Access in Immigration Courts*, BRENNAN CTR. FOR JUSTICE 3 (2011), [http://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language\\_Access\\_in\\_Immigration\\_Courts.pdf](http://www.brennancenter.org/sites/default/files/legacy/Justice/LangAccess/Language_Access_in_Immigration_Courts.pdf).

<sup>170</sup> Attorney A, *supra* note 17.

<sup>171</sup> Attorney B, *supra* note 117. They described the complications that can arise related to bringing your own translator to an interview as follows: "The clearances that they require for interpreters or other staff to enter the facility are another barrier to providing legal services. We rely on student interns to interpret in our cases. Occasionally someone will have to call out sick, which presents a problem when you have to obtain advance permission to enter a detention facility. We had a situation where an interpreter called out sick, so we found a volunteer to come with us instead. We emailed ICE the volunteer's identification in the morning, but when we arrived at the detention facility, they still had not reviewed it. The interpreter was never allowed in."

<sup>172</sup> Eagly & Shafer, *supra* note 2, at 2; EVALUATION, *supra* note 25, at Report Summary.

<sup>173</sup> EVALUATION, *supra* note 25, at Report Summary.

<sup>174</sup> EVALUATION, *supra* note 25, at 2.

<sup>175</sup> *Id.* at 1.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 2, 7 ("In New York City, cases of detained immigrants are heard at the Varick Street location, while non-detained cases are heard at 26 Federal Plaza.").

<sup>178</sup> *Id.* at 1.

<sup>179</sup> *Id.* at 31.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 32.

<sup>182</sup> *Id.* at 32, 33.

<sup>183</sup> *Id.* at 21-22; *Gideon*, 372 U.S. 335.

<sup>184</sup> EVALUATION, *supra* note 25, at 24, 32; Eagly & Shafer, *supra* note 2, at 9.

<sup>185</sup> EVALUATION, *supra* note 25, at 49-51.

<sup>186</sup> *Id.* at 22.

<sup>187</sup> *Id.* at 21.

<sup>188</sup> *Id.* at 22.

<sup>189</sup> *Id.* at 64.

<sup>190</sup> Dep't of Homeland Security, U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2018 14.

<sup>191</sup> Eagly & Shafer, *supra* note 2, at 60.

<sup>192</sup> *Id.* at 62 n.200 (citing Kirk Semple, *New Help for Poor Immigrants Who Are in Custody and Facing Deportation*,

N.Y. TIMES (Nov. 6, 2013), <http://www.nytimes.com/2013/11/07/nyregion/new-help-for-poorimmigrants-who-are-in-custody-and-facing-deportation.html> [http://perma.cc/28VZ-6WA4] ("[NYIFUP] operates on such a model, informing the judge as early as the first court appearance if a client is 'prepared to be deported.'").

<sup>193</sup> EVALUATION, *supra* note 25, at 38-39.

<sup>194</sup> *Id.* at 32, 60.

<sup>195</sup> Eagly & Shafer, *supra* note 2, at 59-60.

<sup>196</sup> Eagly & Shafer, *supra* note 2, at 61, 62.

<sup>197</sup> *Id.* at 66.

<sup>198</sup> *Id.*

<sup>199</sup> EVALUATION, *supra* note 25, at 50.

<sup>200</sup> *Id.* at 48.

<sup>201</sup> *Id.* at 56.

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<sup>202</sup> *Id.* at 58.

<sup>203</sup> *Id.* at 58–59.

<sup>204</sup> Of the 2,064 cases with representation, 789 (39.3%) filed an application for relief. Of the cases without representation, 246 (11.8%) filed for relief. 263 of the cases that had representation from the beginning of their trial filed for relief (34.0%).

<sup>205</sup> Some could argue that the use of tele-video to adjudicate detained immigrants is an efficient hearing tool in all types of immigration cases. Notably, one-third of all cases adjudicated between 2007 and 2012 were heard over tele-video. Eagly, *supra* note 22, at 934; FUNMI E. OLORUNNIPA, ADMIN. CONFERENCE OF THE U.S., AGENCY USE OF VIDEO HEARINGS: BEST PRACTICES AND POSSIBILITIES FOR EXPANSION 33 (2011), <https://www.acus.gov/sites/default/files/documents/revised-draft-report-on-agency-use-of-Video-Hearings4-22-11.pdf> [<https://perma.cc/B3VS-FQAY>]. Compare Aaron Haas, *Videoconferencing in Immigration Proceedings*, 5 PIERCE L. REV. 59, 60–61 (2006) (stating that the “government believes that these proceedings are more efficient, less time-consuming, and more secure than traditional in-person hearings.”) with Eagly, *supra* note 22, at 939 (arguing that remote adjudication maximizes efficiency but is “far from a neutral adjudicative tool, [and] tele-video should instead be understood as an intentional design element of a rapidly evolving detention-to deportation pipeline”).

<sup>206</sup> ABA COMM’N ON IMMIGRATION, *supra* note 30, at UD 2-31.

<sup>207</sup> *Id.*

<sup>208</sup> On average, it took 281.74 days to secure representation (ranging from 0 to 2,037 days). Detained immigrants took an average of 37.16 days to secure representation. Non-detained immigrants took an average of 404.81 days to secure representation.

<sup>209</sup> EVALUATION, *supra* note 25, at 2–3. *New York Immigrant Family Unity Project*, BRONX DEFENDERS, <https://www.bronxdefenders.org/programs/new-york-immigrant-family-unity-project/> (last visited Apr. 23, 2019).

<sup>210</sup> EVALUATION, *supra* note 25, at 23.

<sup>211</sup> *Id.* at 28.

<sup>212</sup> *Id.* at 28–29 (factors may include “an individual’s years in the United States since their most recent entry, the number and type of NTA charges, the individual’s legal status . . . whether the person received bond . . . and the length of stay in detention prior to final disposition”).

<sup>213</sup> *Id.*

<sup>214</sup> “For agencies like ours, we’re small and we’re very underfunded ourselves. We don’t do a great number of *pro bono* detained cases just because detained cases are costly. . . . So, a Public Defenders’ Fund for detained individuals would be huge. There are a lot of people who just don’t even get access to an attorney and they just get their rights taken away without exploring other options. I’m not saying that . . . if you do get deported that means that you were wrongfully deported in every situation. But I am saying that it is a process and it would be ideal if people can be fully informed about the process they are being put through. That way they can explore all forms of relief if they have any viable ones.” For more information about Attorney D, see *infra* Methodology.

<sup>215</sup> ABA COMM’N ON IMMIGRATION, *supra* note 30, at UD 5-25.

<sup>216</sup> *Id.* at UD 5-26.

<sup>217</sup> The Safety and Fairness for Everyone (SAFE) Cities Network is a project created by the Vera Institute of Justice following the popularity and success of the NYIFUP in an effort to spread the same message on a local level. The network, now made up of 12 cities and counties across 8 different states, was created to connect local and state leaders who have already committed to allocating taxpayer dollars to providing access to at risk immigrants in detention and facing deportation. Additionally, the network acts as an advocacy group, encouraging other states and municipalities to consider implementing programs that promote universal representation for all immigrants going through the immigration court system. Annie Chen, *Safety and Fairness for Everyone (SAFE) Network: Local Leaders Keeping Immigrant Families Together and Communities Safe*, VERA INSTITUTE OF JUSTICE, <https://www.vera.org/projects/safe-network> (last visited Apr. 23, 2019).

<sup>218</sup> *SAFE Network Announces Expansion and Celebrates Successes at One Year*, VERA INSTITUTE OF JUSTICE (Nov. 15, 2018), <https://www.vera.org/newsroom/press-releases/safe-network-announces-expansion-and-celebrates-successes-at-one-year-a-dozen-communities-united-to-provide-public-defense-to-immigrants-facing-deportation>.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*



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<sup>222</sup> 205 cases adjourned to seek representation more than one time; 161 cases adjourned twice; 33 cases adjourned three times; and 11 cases adjourned four times to seek representation.

<sup>223</sup> For more information about Attorney C, see *infra* Methodology.

<sup>224</sup> See LORI A. NESSEL & FARRIN R. ANELLO, SETON HALL LAW CTR. FOR SOC. JUSTICE, DEPORTATION WITHOUT REPRESENTATION: THE ACCESS-TO-JUSTICE CRISIS FACING NEW JERSEY'S IMMIGRANT FAMILIES (2016). Much like the study that led to the implementation of the NYIFUP, the New Jersey study addresses that, according to EOIR, detained immigrants with representation in New Jersey are three times more likely to have successful outcomes in removal proceedings than their non-represented counterparts. *Id.* at 15. Further, according to the study, "initially detained immigrants were more than five times as likely to request relief if represented." *Id.* at 17. Advocates for funding representation in New Jersey were able to clearly identify why and how using of attorneys from non-profits cannot handle the current case load, particularly concerning cases involving detainees. *Id.* at 25. Currently, New Jersey has committed \$2.1 million to finding representation for detained immigrants; these funds have been promised to local nonprofits like the Legal Services of New Jersey. *Murphy Administration Delivers on Promise to Provide Legal Representation for Immigrants Facing Detention and Deportation*, STATE OF N.J. (Nov. 19, 2018), <https://www.state.nj.us/governor/news/news/562018/approved/20181119a.shtml>.

<sup>225</sup> Other localities involved in the program include Atlanta, Ga.; Austin, Tex.; Baltimore, Md.; Chicago, Ill.; Columbus, Ohio; Dane County, Wis.; Denver, Colo.; Oakland/Alameda County, Cal.; Prince George's County, Md.; Sacramento, Cal.; San Antonio, Tex.; Santa Ana, Cal. Chen, *supra* note 215.

<sup>226</sup> MaryBeth Keller, Exec. Office of Immigration Review, Operating Policies & Procedures Memorandum 17-02 on Definitions and Use of Adjournment, Call-up, and Case Identification Codes (Oct. 5, 2017), <https://www.justice.gov/eoir/file/oppm17-02/download>.

<sup>227</sup> See *infra* app. N.8.

<sup>228</sup> Ms. Kelsey Cundiff is a doctoral candidate in the Department of Sociology and Criminology at the Pennsylvania State University. She primarily studies the life course of individuals and neighborhoods in relation to crime and delinquency.

<sup>229</sup> For this purpose, we examined the percentage of detained and non-detained immigrants' cases that adjourned to seek representation; the percentage of immigrants' cases with representation who file an application for relief compared to those who are not represented; and the number of cases which were continued due interpreter errors. We analyzed the percentage of detained immigrants who were released on bond. Finally, we examined the number of detained and non-detained immigrants who were adjourned for video malfunction.

<sup>230</sup> In order to obtain these anecdotes, we conducted phone interviews with both immigration attorneys and NGOs where we asked different questions about describing a situation where a detained immigrant had difficulty obtaining counsel; where representation was absolutely key to securing an immigrant's freedom; or where the difference in the outcome between detained and non-detained represented immigrants was particularly marked. We interviewed four practicing immigration attorneys. For more information about the attorneys and list of questions, see *infra* app. N.8.

## Appendix

### Appendix N.1: Original EOIR FOIA Request

Requester seeks, to the extent this office has jurisdiction, disclosure of any and all records that were prepared, received, transmitted, collected, and/or maintained by the Executive Office of Immigration Review (EOIR) that describe, refer, or relate to: the numbers of noncitizens in Pennsylvania who are detained in immigration court proceedings, in expedited removal proceedings, in administrative removal proceedings, or in reinstatement of removal proceedings; whether those noncitizens are represented by counsel; and whether those noncitizens are successful in obtaining bail or obtaining some form of relief from removal.

The requested records span from January 2015 to the present. These records include, but are not limited to:

1. The number of noncitizens in removal proceedings in an immigration court in Pennsylvania
2. The number of noncitizens in expedited removal proceedings in Pennsylvania
3. The number of noncitizens in withholding only proceedings in Pennsylvania
4. The number of noncitizens whose negative credible fear determination are reviewed by an Immigration Judge
5. The number of noncitizens whose negative reasonable fear determinations are reviewed by an Immigration Judge
6. The number of noncitizens detained by ICE in Pennsylvania who obtain bond from an Immigration Judge
7. The number of noncitizens in Pennsylvania who obtain asylum or another form of relief
8. The number of noncitizens in Pennsylvania whose cases are terminated
9. Cross tabs showing the percentage of noncitizens who are represented or unrepresented for the each of the data points requested above
10. The percentage of noncitizens in Philadelphia immigration court who are represented
11. The percentage of represented/non-represented noncitizens in the Philadelphia immigration court who obtain relief
12. The percentage of noncitizens in York immigration court who are represented
13. The percentage of represented/non-represented noncitizens in York immigration court who obtain relief
14. The number of noncitizens whose cases are in the Institutional Hearing Program in Pennsylvania

For each noncitizen detained in—or whose immigration court proceedings were held in—Pennsylvania, I request all case level, proceeding level, hearing level, and bond data including, but not limited to, the following information:

1. A unique numerical identifier
2. Date of entry to U.S.
3. Length of stay in U.S.
4. State of origin/apprehension
5. County of origin/apprehension
6. Category of removability  
Arriving aliens/present without admission/admitted but removeable

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7. Whether the applicant has legal counsel or a Form G-28 on file
  8. The length of time in detention
  9. Any comments about the person or decision

## Appendix N.2: Original CBP FOIA Request

### Requester

The Center for Immigrants' Rights ("the Center") is an immigration law clinic at the Penn State University School of Law. Immigration law expert Shoba Sivaprasad Wadhia directs the Center, where students gain the skills required to be effective immigration advocates and attorneys. The Center seeks to educate the public about immigration and how it affects the community. Students produce whitepapers, practitioner toolkits, and primers of national impact for institutional clients based in Washington D.C. and across the nation. The Center also provides legal support in individual cases of immigrants challenging removal or seeking protection by the Department of Homeland Security and in the courts.

### Request for Information

Requester seeks, to the extent this office has jurisdiction, disclosure of any and all records that were prepared, received, transmitted, collected, and/or maintained by U.S. Customs and Border Protection (CBP) that describe, refer, or relate to: the numbers of noncitizens in Pennsylvania who

are detained in immigration court proceedings, in expedited removal proceedings, in administrative removal proceedings, or in reinstatement of removal proceedings; whether those noncitizens are represented by counsel; and whether those noncitizens are successful in obtaining bail or obtaining some form of relief from removal.

The requested records span from January 2015 to the present. These records include, but are not limited to:

1. The number of noncitizens detained in CBP facilities or detention centers in Pennsylvania
2. The number of noncitizens in removal proceedings in an immigration court in Pennsylvania
3. The number of noncitizens in expedited removal proceedings in Pennsylvania
4. The number of noncitizens in administrative removal proceedings in Pennsylvania
5. The number of noncitizens in reinstatement of removal proceedings in Pennsylvania
6. The number of noncitizens in withholding only proceedings in Pennsylvania
7. The number of noncitizens with a credible fear hearing before an Immigration Judge
8. The number of noncitizens whose negative reasonable fear determinations are reviewed by an Immigration Judge
9. The number of noncitizens detained by CBP in Pennsylvania who obtain bond
10. The number of noncitizens in Pennsylvania who obtain asylum or another form of relief
11. Cross tabs showing the percentage of noncitizens who are represented or unrepresented for the each of the data points requested above

For each noncitizen detained in—or whose immigration court proceedings were held in—Pennsylvania, I request all case level, proceeding level, hearing level, and bond data including, but not limited to, the following information:

1. A unique numerical identifier
2. Date of entry to U.S.
3. Length of stay in U.S.
4. State of origin/apprehension
5. County of origin/apprehension
6. Category of removability  
Arriving aliens/present without admission/admitted but removable
7. Whether the applicant has legal counsel or a Form G-28 on file
8. The length of time in detention
9. Any comments about the person or decision

Requester asks that the information be provided in electronic format on a CD-ROM or USB storage device. Requester asks that any documents stored in Portable Document Format (PDFs) be provided as individual files in a searchable PDF format. Ideally, the information above would be provided in an Excel spreadsheet. All requested records that are responsive may be provided with personally identifying details redacted.

## Appendix N.3: Original ICE FOIA Request

### Requester

The Center for Immigrants' Rights ("the Center") is an immigration law clinic at the Penn State University School of Law. Immigration law expert Shoba Sivaprasad Wadhia directs the Center, where students gain the skills required to be effective immigration advocates and attorneys. The Center seeks to educate the public about immigration and how it affects the community. Students produce whitepapers, practitioner toolkits, and primers of national impact for institutional clients based in Washington D.C. and across the nation. The Center also provides legal support in individual cases of immigrants challenging removal or seeking protection by the Department of Homeland Security and in the courts.

### Request for Information

Requester seeks, to the extent this office has jurisdiction, disclosure of any and all records that were prepared, received, transmitted, collected, and/or maintained by U.S. Immigration and Customs Enforcement (ICE) that describe, refer, or relate to: the numbers of noncitizens in Pennsylvania who are detained in immigration court proceedings, in expedited removal proceedings, in administrative removal proceedings, or in reinstatement of removal proceedings; whether those noncitizens are represented by counsel; and whether those noncitizens are successful in obtaining bail or obtaining some form of relief from removal.

The requested records span from January 2015 to the present. These records include, but are not limited to:

1. The number of noncitizens detained by ICE in detention centers in Pennsylvania
  - a. Berks Family Residential Center in Leesport, PA
  - b. Clinton County Correctional Facility in McElhattan, PA
  - c. Pike County Correctional Facility in Lords Valley, PA
  - d. York County Prison in York, PA
  - e. Beaver County Jail in Aliquippa, PA
  - f. Cambria County Jail in Ebensburg, PA
  - g. George W. Hill Correctional Facility in Glen Mills, PA
2. The number of noncitizens who are undergoing removal proceedings through the Institutional Hearing Program while detained in detention centers in Pennsylvania
  - a. United States Penitentiary in Allenwood, PA
  - b. Moshannon Valley Correctional Center in Philipsburg, PA
3. The number of noncitizens in removal proceedings in an immigration court in Pennsylvania
4. The number of noncitizens in expedited removal proceedings in Pennsylvania
5. The number of noncitizens in administrative removal proceedings in Pennsylvania
6. The number of noncitizens in reinstatement of removal proceedings in Pennsylvania
7. The number of noncitizens in withholding only proceedings in Pennsylvania
8. The number of noncitizens with a credible fear hearing before an Immigration Judge
9. The number of noncitizens whose negative reasonable fear determinations are reviewed by an Immigration Judge
10. The number of noncitizens detained by ICE in Pennsylvania who obtain bond
11. The number of noncitizens in Pennsylvania who obtain asylum or another form of relief
12. Cross tabs showing the percentage of noncitizens who are represented or unrepresented for the each of the data points requested above

For each noncitizen detained in—or whose immigration court proceedings were held in—Pennsylvania, I request all case level, proceeding level, hearing level, and bond data including, but not limited to, the following information:

1. A unique numerical identifier
2. Date of entry to U.S.
3. Length of stay in U.S.
4. State of origin/apprehension

5. County of origin/apprehension
6. Category of removability  
Arriving aliens/present without admission/admitted but removeable
7. Whether the applicant has legal counsel or a Form G-28 on file
8. The length of time in detention
9. Any comments about the person or decision

Requesters ask that the information be provided in electronic format on a CD-ROM or USB storage device. Requesters ask that any documents stored in Portable Document Format (PDFs) be provided as individual files in a searchable PDF format. Ideally, the information above would be provided in an Excel spreadsheet. All requested records that are responsive may be provided with personally identifying details redacted.

## **Appendix N.4: FOIA Request Appeal filed in November 28, 2018**

Dear Freedom of Information Act Officer:

On August 9, 2018, requester made a FOIA request to your agency for data pertaining to noncitizens in Pennsylvania in immigration court proceedings and detention. The request was assigned the following identification number: FOIA 2018-44588. On October 19, 2018, your agency responded to the request, but the response did not include all requested data points. Enclosed are copies of the request, the signed response letter from the FOIA Officer, and a Notes document from the FOIA officer explaining what data had been provided. The agency's response indicated a 90 day window for filing an appeal. The original request and response letters are attached to this appeal.

We accept the agency's determination that it cannot provide statistical on item number 2 of the first data set (the number of noncitizens in expedited removal proceedings in Pennsylvania). We also accept the agency's determination that it cannot provide data on items 3, 4, 8, and 9 of the second data set (individual length of stay in the United States, the state of origin/apprehension, the length of time in detention, and any additional comments).

However, for all requested data points, we requested data from records spanning January 2015 to the present. The Notes document clearly explains that data was obtained solely from case completions in FY 2018. We appeal the omission of requested records spanning from January 2015 to the present.

Our request also included data on the number of noncitizens in various proceedings. The agency's response includes the representation statistics for pending removal proceedings, but does not include any data on any other pending proceeding. We appeal this omission, and request data on all pending cases and proceedings for all requested data points.

The first data set in our request included cross tabs showing the percentage of noncitizens who are represented or unrepresented for data points 1-8. We received statistics on bond completions by disposition, and we received the number of bond completions by representation status, but we do not know the disposition of individuals represented in bond proceedings. We request cross tabs indicating the number of bond completions by disposition who were represented or unrepresented.

## **Appendix N.5: EOIR Letter to FOIA Request**

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek data regarding noncitizens in detention in Pennsylvania.

Responsive documents are enclosed. There will be no charge for these documents. Please note that EOIR does not keep data on all your requested datapoints. Some of this data may be available from the Department of Homeland Security. Please see note attached.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may

submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."



## **Appendix N.6: EOIR Notes on the Data**

The attached Excel Spreadsheet includes five tabs of data.

**Tab 1:** FY 2018 various statistics (data points: #1 - #14) for the Philadelphia and York Immigration courts. Please note that we are unable to provide data on #2.

**Tab 2:** Proceeding and Case level data for the Philadelphia and York Immigration Courts. For the proceeding level I brought in FY 2018 Initial Case Completions that had a base city of PHI or YOR. For the case level data I linked the proceeding data to the case table and brought in the necessary fields.

**Tab 3:** Hearing level data for the Philadelphia and York Immigration Courts. This data includes the hearings from the proceeding/case level data in Tab 2.

**Tab 4:** Charges data for the Philadelphia and York Immigration Courts. This data includes the charges from the proceeding/case level data in Tab 2.

**Tab 5:** Bond data for the Philadelphia and York Immigration Courts. FY 2018 Bond completions that had PHI or YOR as the base city.

**Note:** Tab 2 to Tab 5 are for the second set of data points requested (#1 - #9). We are unable to provide information on #3, #4, and #8 (DHS may be able to provide this data). Information for #9 is also unavailable for us to provide.

## Appendix N.7: Codes Definitions and Questions, February 17, 2019

### I. Definitions

- **Case and Proceeding Level Data Tab**

**OSC\_Date:** Order to Show Cause Date

**Date\_Of\_Entry:** Date of Entry into America

**E\_28\_Date:** Date Lawyer signed E-28 form/start of representation

**IDNCASE:** Case Number

**IDNPROCEEDING:** Individual Proceeding Number

- **Hearing Level Data**

#### Schedule Type definitions

**Initial Master:** First Master Calendar Hearing/New Cases

**Individual:** Cases where alien presents their case on applications for relief

**Master Reset:** Case moved forward, but was reset to a NEW master calendar hearing

#### Adjournment Reason: Application for Relief

1. **Alien Claim to US Citizenship:** Application for relief
2. **Alien to File for Asylum:** Application for Relief - Adjourned to allow the alien to file an asylum application with the Immigration Court.
3. **Alien to File Other Application:** Application for Relief - Adjourned to allow the alien to file an application for relief (other than for asylum) with the Immigration Court.
4. **DHS Application Process – Alien Initiated:** Application of Relief (pending) - Adjourned to allow the adjudication of an application pending with DHS.
5. **DHS Application Process – DHS Initiated:** Application of Relief (Pending) - Adjourned to allow the adjudication of an application pending with DHS.
6. **Supplement Asylum Application:** Application for Relief (Supplement) - Adjourned to file additional attachments or updates to a previously filed Form I-589.

#### Adjournment Reason: Other

**Notice Sent/Served incorrectly:** Other/ Continuance - Attorney and/or alien does not appear at the scheduled hearing due to the notice of hearing containing inaccurate information, or, alien/attorney appears but has not received adequate notice of hearing of the proceedings.

**Pending IJ Response to Motion or Request:** Other/ Continuance - motion for change of venue; motion for termination; request for continuance, etc.

**Alien to Seek Representation:** Alien is unrepresented/ would like to be

## II. Questions

### Immigrants and Representation

1. How many cases that adjourned to find counsel (**Alien to Seek Representation**) were able to access counsel (**E-28 Date**)?
  - a. Detained (**YOR**) v. Non-Detained (**PHIL**)
  - b. How long after adjourning to find counsel, did they secure representation? (Compare adjournment date “**Alien to Seek Representation Date**” to “**E-28 Date**”)
2. How many cases had counsel (E-28 Date) from the beginning of their trial (Initial Master)? → **E-28 Date = Initial Master Date**
  - a. Detained (**YOR**) v. Non-Detained (**PHI**)
  - b. E-28 date matched Initial Master date

### Immigrants and Application for Relief

3. How many cases with representation (**E-28**) file (**from 1 to 6 adjournment reasons below**) an application for relief?
  - a. How many cases without representation (**blank E-28**) file an application for relief (**from 1 to 6 adjournment reasons below**)?
  - b. How many cases with representation from Initial Master Hearing (**E-28=IM**) file application for relief (**from 1 to 6 adjournment reasons below**)?
  - c. **Adjournment Status Codes for Application for Relief include:**
    1. Alien Claim to US Citizenship
    2. Alien to File for Asylum
    3. Alien to File Other Application
    4. DHS Application Process – Alien Initiated
    5. DHS Application Process – DHS Initiated
    6. Supplement Asylum Application
4. What percentage of cases filed some sort of application for relief?
  - a. Detained (**York**) v. Non-Detained (**PHIL**); AND
  - b. Represented (**E-28**) v. Non-Represented (**E-28 BLANK**)

### Detained Immigrants and Bond Release

5. How many detained immigrants (**York**) were released on bond?
  - a. What is the average price for bond?

## **Appendix N.8: SurveyMonkey sent to Practicing Immigration Attorneys in Pennsylvania**

**1. From January 2015 to the present day, how many noncitizens did you represent in the following types of proceedings in Pennsylvania?**

Removal proceedings	<input type="text"/>
Expedited removal proceedings	<input type="text"/>
Withholding only proceedings	<input type="text"/>
Credible fear interview	<input type="text"/>
Reasonable fear interview	<input type="text"/>
Review of negative credible fear determination	<input type="text"/>
Review of negative reasonable fear determination	<input type="text"/>

## **Appendix N.9: Questions to Solicit Anecdotal Information**

### ***I. List of Questions***

1. How many years have you been practicing in general and how many years have you been practicing in York?
2. What access to counsel looks like York v. Philadelphia?
3. What cases have you represented more of: detained or non-detained?
  - a. How did you come into contact with your clients?
4. What are the differences in represented detained v. non-detained immigrants?
  - a. Is there one?
  - b. Is it significant?
5. Have you had any issues with translators/regarding language?
  - a. If so, what?
6. What does the process look like from point of representation (E-28 Date) to completion?
  - a. Detained v. Non-detained
  - b. When an immigrant starts detained and is then released on bond.
  - c. At what point in the case do you usually begin representation?
  - d. Do you attend all hearings?
7. Are there any memorable stories regarding the difficulties that immigrants face to access representation?
8. Do you believe immigrants can navigate immigration courts without representation? And what do you think are their chances to succeed?
9. Are there any difficulties you have faced to meet your clients at York detention center?
10. Do you have any experience in dealing with clients who have been transferred?
  - a. How has that affected your ability to represent your client?
11. How would you feel about a public defender system for immigrants?
  - a. Do you think it will make a difference like the NY project?
  - b. Do you think it should be modeled after the NY project?
12. Do you have a quote you would like to share on this subject?